

## Opinion No. 80

## Taxation—Motor Vehicles, Use Tax—County Budget Law.

- Held:** 1. That if a motor vehicle which is in the hands of a dealer prior to January 1, and upon which the dealer pays the property tax as provided in Section 53-114, Revised Codes of Montana, 1947, is sold subsequent to January 1, the purchaser is not required to pay the use tax provided in Section 3A, Chapter 208, Session Laws of 1949.
2. That the 5% of the tax collected and retained by the County Treasurer under the provisions of Section 7, Chapter 208, Session Laws of 1949, can only be expended by the County Treasurer in conformity with the County Budget Law and under appropriations detailed in the County Budget.

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January 11, 1950.

Mr. James T. Harrison  
County Attorney  
Phillips County  
Malta, Montana

Dear Mr. Harrison:

You have requested my opinion concerning the application of the tax provided in Section 3A of Chapter 208, Session Laws of 1949 to cars in the possession of a dealer prior to January 1 and upon which the dealer pays taxes.

You have also asked whether the 5% of the use tax retained by the Counties to cover the cost of administering the act can be added to the Budget of the County Treasurer and expended by him in addition to the amounts already set up for his use under the County Budget Law.

Section 53-114, Revised Codes of Montana, 1947, formerly Section 1759, Revised Codes of Montana, 1935, as last amended by Chapter 72, Laws of 1937, provides in part:

"Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the State of Montana, provided that in no event shall any motor vehicle be the subject of assessment, levy and taxation more than once in each year, viz., the first day in January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealers' possession or in dead storage, as well as in use, subsequent registrations, if any, of the same vehicle in the same year not being subject to payment of taxes."

It is to be noted that the above quoted Section provides that motor vehicles in the possession of the dealer on January 1 are subject to

taxation. The last sentence of Section 3A, Chapter 208, Session Laws of 1949 reads as follows:

"The tax herein provided for shall not be imposed or collected from the purchaser of any new passenger motor vehicle on which a property tax as now provided by law, has been imposed and paid."

In construing the above two Sections of our statutes together, I am led to the conclusion that if a dealer in motor vehicles had cars in stock on January 1st on which the tax imposed by Section 53-114, supra, was paid, then the purchaser of such a car from the dealer would not have to pay the use tax provided in Section 3A, Session Laws of 1949.

Your second question is concerned with Section 7, Chapter 208, Session Laws of 1949, which reads as follows:

"Each County Treasurer in the State of Montana at the time application is made for a license under this act, shall retain 5% of the license so collected for the cost of administering this act and the remaining 95% shall be remitted monthly to the State Treasurer of the State of Montana for deposit in the State Highway General Fund on forms to be furnished the County Treasurers by the State Highway Commission of the State of Montana."

The expenditure of the 5% retained by the County must come within the limitations of the Budget Law. Section 16-1906, Revised Codes of Montana, 1947, (formerly Section 4613.5, Revised Codes of Montana, 1935), provides that in the making of expenditures the County officials shall be limited to the amount of the detailed appropriations contained in the budget and transfers made as authorized by law. Section 16-1906 contains this very specific limitation:

"Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, shall not be a liability of the County, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond."

It is apparent from the above quoted Sections of our codes that Section 7, Chapter 208, Laws of 1949, does not authorize the County Treasurer to expend the 5% of the funds realized from the license unless an appropriation has been made in the County Budget for the Treasurer's office-authorizing such expenditures. This means that the funds realized by the Counties under Section 7, Chapter 208, Laws of 1949, will not be immediately available for use because of the lack of appropriations in the Budget and this statute is not to be construed as a waiver of the Budget law. A rule of construction that is helpful in this situation is found in *Register Life Ins. Co. v. Kenniston*, 99 Mont. 191, 43 Pac. (2d) 251, which reads as follows:

"Statutes which are not inconsistent with one another, and which relate to the same subject matter, are in pari materia and should be construed together and effect given to both if it is possible to do so."

It is, therefore, my opinion that if a motor vehicle which is in the hands of a dealer prior to January 1, and upon which the dealer pays the property tax as provided in Section 53-114, Revised Codes of Montana, 1947, is sold subsequent to January 1, the purchaser is not required to pay the use tax provided in Section 3A, Chapter 208, Laws of 1949.

It is also my opinion that the 5% of the tax collected and retained by the County Treasurer under the provisions of Section 7, Chapter 208, Laws of 1949, can only be expended by the County Treasurer in conformity with the County Budget law and under appropriations detailed in the County Budget.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.