

Opinion No. 85**Taxation—Motor Vehicles—Use Tax.**

- Held:**
1. All passenger motor vehicles in the State prior to twelve o'clock noon January 1st are subject to assessment for property taxes but are not required to pay the \$32.00 tax imposed by Chapter 208, Laws of 1949.
 2. All new passenger motor vehicles brought into the State of Montana after twelve o'clock noon January 1st are subject to the tax specified in Section 3-A of Chapter 208, Laws of 1949, and must also pay the use tax set forth in Section 3 of Chapter 208 if such vehicle is required to be registered.

January 23, 1950.

The State Board of Equalization
Helena, Montana
Attention: Mr. John A. Matthews, Chairman

Gentlemen:

You have requested my opinion concerning the new motor vehicle use tax (Chapter 208, Laws of 1949) with respect to the questions hereinafter stated in substance as follows:

1. Where a new passenger motor vehicle was brought into the State and was purchased late in December, 1949, and application for registration was made on or after twelve o'clock noon January 1st, 1950, is such vehicle subject to the \$32.00 use tax?
2. Where a new passenger motor vehicle is subject to the tax specified in Section 3-A of Chapter 208, Laws of 1949, should the

County Treasurer collect in addition thereto the \$3.00 use tax mentioned in Section 3 thereof?

Section 3-A of Chapter 208, *supra*, imposing a tax which decreases from \$32.00 for the first quarter year to \$8.00 for the last quarter, depending upon the time when such motor vehicle was purchased, clearly applies only to new passenger motor vehicles that **are not subject to assessment for ad valorem taxes**. It is expressly provided by the last sentence thereof that:

"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."

Sections 53-114 and 84-406, Revised Codes of Montana, 1947, provide for assessment of motor vehicles for ad valorem taxation and read as follows in part:

"Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of 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. . . ." (Section 53-114, Revised Codes of Montana, 1947).

"The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M of the first day of January in each year." (Section 84-406, Revised Codes of Montana, 1947).

All such motor vehicles brought into the State prior to twelve o'clock noon January 1st are subject to assessment for tax purposes. The tax must be paid when application for registration is made, as provided by Section 53-114, *supra*. In addition, the applicant must then pay the \$3.00 use tax provided for in Section 3, Chapter 208, Laws of 1949, however, as stated above, the automobiles assessed for ad valorem tax purposes are not subject to the graduated tax imposed by Section 3-A of Chapter 208, *supra*.

It is my opinion that your second question must be answered in the affirmative, that is, all new passenger motor vehicles which are not assessed for ad valorem purposes and therefor pay the graduated tax imposed by Section 3-A of Chapter 208, must also pay the use tax imposed by Section 3 of Chapter 208 if such vehicles are required to be registered under Section 1759, Revised Codes of Montana, 1935, (now Section 53-114, Revised Codes of Montana, 1947). The provisions of Section 3 and Section 3-A are clear and explicit and any vehicle that comes within the purview of such provisions must pay the fees imposed. It is only reasonable to conclude that the tax imposed by Section 3-A was imposed in lieu of property taxes and that the legislative intent was that such vehicles should also be subjected to the use tax imposed by Section 3 of Chapter 208.

It is therefore my opinion that all passenger motor vehicles in the State prior to twelve o'clock noon January 1st are subject to assessment for property taxes, but are not required to pay the \$32.00 tax imposed by Section 3-A, Chapter 208, Laws of 1949.

All new passenger motor vehicles brought into the State after twelve o'clock noon, January 1st, are subject to the tax specified in Section 3-A of Chapter 208, Laws of 1949, and must also pay the use tax set forth in Section 3 of Chapter 208, if such vehicle is required to be registered.

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