

either three fourths or three eighths of one per cent of the F.O.B. factory list price of the vehicle, depending upon the quarter of the year in which the license is sought. The legislature did not intend to reduce the tax to three eights or three sixteenths of one per cent of the factory list price.

2. A trailer, the principal use of which is living quarters, temporary or permanent, will not be subject to the itinerant trip tax, even though it is not licensed in another jurisdiction.

3. If a trailer, the principal use of which is living quarters, temporary or permanent, is not registered in another jurisdiction, such trailer will not be subject to the itinerant trip tax, but will be subject to the gross weight tax imposed by Section 1, Chapter 219, Session Laws of 1951.

January 2, 1952.

Mr. Harry H. Jones, Attorney
State Highway Commission
Helena, Montana

Dear Mr. Jones

You have requested my opinion on the proper interpretation to be given to certain portions of Chapter 219, Session Laws of 1951. Chapter 219 is the highway revenue measure passed at the last session of the legislature. The questions you have submitted are as follows:

1. What tax must be paid by an owner upon a new passenger motor vehicle which he seeks to have licensed after July 1st, but before January 1st of the succeeding year?

2. What fee must be paid for trailers, the principal use of which is living quarters, if such trailer is not registered in another jurisdiction but which is operated upon an itinerant basis in the State of Montana?

Section 3 of Chapter 219 provides that a motor vehicle "sales tax" shall be imposed upon all new passenger vehicles which have not been otherwise assessed and not subject to assessment and taxation in Montana. The sales tax

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**Taxation—Motor Vehicles—New
Passenger Automobiles—Trailers**

Held: 1. A new passenger motor vehicle for which a license is sought after the first day of July of any year will be subject to a "sales" tax. The tax will be

is to be computed on the F. O. B. factory list price of the automobile. If a license is sought during the first quarter of the year the tax is to be one and one-half per cent (1½%) of the list price; if the license is sought during the second quarter of the year then the tax is one and one-eighth per cent (1⅛%); during the third quarter three fourth (¾) of one per cent (1%); and during the fourth quarter three-eighths (⅜) of one per cent (1%).

Were it not for Section 4 it would be perfectly clear that the tax on a new passenger motor vehicle licensed after July 1st on any year would be either three quarters or three eighths of one per cent depending upon the quarter in which the license was sought.

Section 4 of Chapter 219, supra, provides:

"Residents of the State of Montana who own trucks, trailers or semi-trailers, busses or new passenger automobiles and operate the same upon the highways of the State of Montana shall at the time they make application for their Montana license as provided for in Section 53-114, Revised Codes of Montana, 1947, pay the fees herein prescribed ; **provided that said residents who make application for a license after the 1st day of July of any year shall pay one-half (½) of the fees provided for herein.**" (emphasis supplied)

The question then arises is a new passenger motor vehicle subject to but one-half of the graduated tax provided for in Section 3 if application for a license is made after July 1st?

The legislature history of Chapter 219 shows that it was originally introduced in the Senate as a Senate substitute for House Bill 414. The bill as it was originally introduced did not include the underscored portion of Section 4 quoted above. Section 1 of the original bill set forth a schedule of fees to be imposed upon trucks, trailers, semi-trailers and busses. Section 2 set forth the fees to be paid for itinerant trucks, trailers and semi-trailers. Section 3 imposed the graduated rates for new passenger motor vehicles. As the bill progressed through the legislature the House Committee of the Whole added the above quoted proviso on the end of Section 3 of the original bill. Before the amendment, Section 4

of the original Act simply set forth the time when residents would pay the fees prescribed in the three preceding sections. It is apparent that the intent of the legislature in making the amendment was to decrease by one half the yearly fees imposed upon trucks, trailers and semi-trailers, if the license was purchased in the latter half of the year. However, Section 3 itself already had established a graduated rate by decreasing the percentage of the list price, which is the base on which the tax was to be computed, by three-eighths of one per cent for each succeeding quarter. It is apparent by reading both Sections 3 and 4 of the Act, and keeping in mind the amendment that was made in the original bill as it was introduced, that the legislature did not intend to decrease by one-half the graduated rates already established by Section 3 pertaining to the tax on new passenger motor vehicles.

It is elementary law that the intention of the legislature is to be pursued in the construction of statutes. This is made the rule by statute, (Section 93-401-16, Revised Codes of Montana, 1947) and numerous Montana cases have so held. See, *Lerch v. Missoula Brick & Tile Co.*, 45 Mont. 314, 123 Pac. 25; *Pomeroy v. State Board of Equalization*, 99 Mont. 534, 45 Pac. (2d) 316; *State v. Board of Commissioners of Cascade County*, 89 Mont. 37, 296 Pac. 1. It is also a rule that the office of the court is simply to ascertain what is in terms or substance contained in a statute, and not to insert what has been omitted, or omit what has been inserted. *Siuru v. Sell*, 108 Mont. 438, 91 Pac. (2d) 411. However, this rule is subject to modification because where it is manifest **from the face of an act** that an error was made in the use of words, the court will treat it as corrected to express the legislative will. *State ex rel. Krona v. Holmes*, 114 Mont. 373, 136 Pac. (2d) 220.

Hence, it is my opinion that the legislature did not intend to decrease by one-half the graduated tax imposed upon a new passenger motor vehicle by Section 3, Chapter 219, Session Laws of 1951. A new passenger motor vehicle for which a license is sought after the first day of July of any year will be taxed at either three quarters or three eighths of one per cent of the F. O. B. factory list price of the vehicle depend-

ing upon the quarter of the year in which the license is sought.

Your second question is what tax will be imposed upon a trailer, the principal use of which is living quarters, temporary or permanent, if such unit is not registered in another jurisdiction.

Section 2, Chapter 219, supra, provides as follows:

“In addition to other fees for the licensing of vehicles, there shall be collected for each motor truck, trailer and semi-trailer licensed for that year in another jurisdiction and operated upon itinerant basis in this state upon each entrance into the State of Montana, based upon the application of the licensee, a fee to be computed as follows:

Five dollars (\$5.00) for each trip for the first four hundred (400) miles or less, ten dollars (\$10.00) for each trip over four hundred (400) miles, on any vehicle or combination of vehicles of over six thousand (6,000) pounds gross weight; provided, however, such fees shall not apply to any trailer the principal use of which is living quarters, temporary or permanent.”

This section specifically excludes trailers, the principal use of which is living quarters, temporary or permanent, from the itinerant trip tax, provided such trailers are licensed in another jurisdiction.

However, a “house” trailer not licensed in another jurisdiction which comes into Montana will be subject to the gross weight tax imposed upon trailers by Schedule II of Section 1 of Chapter 219, supra. If the trailer is licensed in another jurisdiction then whether it will be subject to the gross weight tax will depend on whether it is licensed in a State with which Montana has a reciprocity agreement.

Very truly yours,
ARNOLD H. OLSEN
Attorney General