

VOLUME NO. 33

Opinion No. 5

MOTOR VEHICLES, transfer of license plates, Certificate of Registration; MOTOR VEHICLES, Taxes and Fees, Transfer of License Plates; TAXATION, Transfer of License Plates, Current Registration Year; MOTOR VEHICLES, New Car Sales Tax, Payment by Military Personnel — Chapter 127, Laws of 1969; Sections 53-114 and 32-3315, R.C.M. 1947.

- HELD:**
- 1. The “original certificate of registration” in section 2 of Chapter 127 refers to the certificate of registration for the vehicle to which the license plates are being transferred.**
 - 2. The new owner of a transferred motor vehicle must make application and pay the registration fees and taxes as provided by section 53-114, before he can drive the vehicle upon the public highways.**

3. No fees or taxes need be paid, other than a two dollar (\$2.00) transfer of registration fee, for the registration of a motor vehicle to which license plates are being transferred unless these fees and taxes have not been previously paid during the current registration year.
4. Under a recent decision of the United States Supreme Court, military servicemen are not exempt from state sales and use taxes in Montana.

June 18, 1969

Mr. Edward Ellsworth, Jr.
Registrar of Motor Vehicles
Montana State Prison
Deer Lodge, Montana 59722

Dear Mr. Ellsworth:

You have requested my opinion concerning an interpretation of Chapter 127, Laws of 1969, which pertains to the authorized transfer of license plates from one motor vehicle to another upon transfer of ownership.

1. Section 2 of Chapter 127, states, in part:

“Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application, in the office of the county treasurer where the motor vehicle is taxable . . . **accompanied by the original certificate of registration**, for the transfer of the license plates.” (Emphasis supplied.)

The question you have raised is whether the emphasized words refer to the certificate of registration for the motor vehicle from which the license plates were removed or to the certificate of registration for the motor vehicle to which the license plates are being transferred.

The sentence quoted above contains the language “another motor vehicle” and “where the motor vehicle is taxable.” This is the motor vehicle to which the license plates are being transferred. Clearly, “the original certificate of registration” refers to the certificate of registration for this vehicle.

2. Section 3 of Chapter 127, states:

“The new owner of the transferred motor vehicle shall, before operating or driving the same upon the public highways of this state, make application and pay the registration fees and

taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year.”

Section 8 of Chapter 127, states, in part:

“ . . . any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of ten (10) days from the date of purchase to make such application for registration and obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such new or used motor vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the said ten-day period”

You have asked whether these two sections are in conflict and whether the grace period extends to purchasers who purchase a vehicle from someone other than a duly licensed motor vehicle dealer.

Section 3 as a general provision can be construed together with section 8. It is readily apparent that section 8 contains a specific exception to the general provision and there is no inherent conflict. The following rules of statutory construction dictate this result:

1. When there is a statute dealing with general terms, and another dealing with the same subject in a more definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but if there is any necessary repugnance between them, the special will prevail over the general. *Storey Gold Dredging Co. v. Wilson*, 106 Mont. 166, 175, 76 P.2d 73.

2. In the construction of a statute the intention of the legislature is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it. Section 93-401-16, R.C.M. 1947.

3. If conflicting provisions are found in different sections of the same chapter, the provisions of the section last in numerical order must prevail. Section 12-212, R.C.M. 1947.

Therefore, it is my opinion that the new owner of a transferred motor vehicle must make application and pay the registration fees and taxes under section 53-114, R.C.M. 1947, before operating the vehicle upon the public highways. An exception is made for purchasers from a duly licensed motor vehicle dealer. Such purchasers have a ten-day grace period from the date of purchase to make application for registration and to obtain registration plates.

3. Section 3 of Chapter 127 above states, in part:

“... make application and pay the registration fees and taxes as provided by section 53-114, **as if the same was being registered for the first time in that registration year.**” (Emphasis supplied.)

You have asked whether the emphasized words mean that registration fees in the amount of \$5.50 or \$10.50 as provided in section 53-106 and 53-122, R.C.M. 1947, are payable by the new owner of the transferred motor vehicle.

Section 53-114 (3), R.C.M. 1947, to which section 3 of Chapter 127 refers, states, in part:

“... shall upon filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer”

It is my opinion that the words in parenthesis would preclude the payment of the registration fee, the personal property taxes, and the new motor vehicle sales tax against the vehicle, if these fees and taxes have been previously paid for the current year of registration for the vehicle.

Likewise, since the Gross Vehicle Weight fees authorized by Chapters 32 and 33 of Title 32, R.C.M. 1947, are based on the weight of the vehicle, under section 4 of Chapter 127 no additional G.V.W. fees should be paid when the license plates are transferred unless these fees have not been previously paid for the current year of registration for the vehicle. However, the two dollar (\$2.00) transfer of registration fee provided in section 53-112, R.C.M. 1947, shall be collected by the county treasurer.

4. In addition to the information contained in this opinion, I want to direct your attention to a recent decision of the United States Supreme Court. In the case, *Sullivan v. United States et al.*, decided May 26, 1969, the Supreme Court held that section 514 of the Soldiers' and Sailors Civil Relief Act does not exempt servicemen in the military from state use and sales taxes. It is my opinion that this holding applies to Montana, in particular to the new car sales tax under section 32-3315, R.C.M. 1947. Therefore, the tax upon all sales of new motor vehicles as provided in this section should be collected by the county treasurer when a person in the military service applies for his original

Montana license. This is true notwithstanding prior directives from this office concerning the collection of this tax from military personnel.

In conclusion, I would appreciate your communicating the information contained in this opinion to all franchised new and used car dealers and to all dealers in other types of motor vehicles. I make this request because as Registrar of Motor Vehicles you have a current listing of the names and addresses of these dealers and such a list is not available to my office.

Thank you for your cooperation.

Very truly yours,

ROBERT L. WOODAHL
Attorney General