

OPINION
67-141

April 5, 1967 (OPINION)

Mr. Weldon Haugen

Motor Vehicle Registrar

RE: Motor Vehicles - Ton Fee Tax - Probation

This is in reply to your letter of March 28, 1967, in which you state the following facts and questions:

This office is charged with the administration of chapter 39-04a of the North Dakota Century Code, which provides for a 'ton fee tax' on certain motor vehicles engaged in the transportation of property.

Section 2 of this chapter provides that the fee shall be levied annually and is made payable on January first of each year. Section 39-04a-04, as amended, among other things provides for a minimum fee of \$10 for each motor vehicle subject to the fee. Additionally, it specifically provides in the last sentence for a prorationing of the fee for vehicles placed in service after June thirtieth, in which case the fee is one-half of the annual rate and if the vehicle is placed in service after September thirtieth, then the fee is one-fourth of the annual rate.

Section 39-04-21 under the registration laws, provides for the temporary registration of motor vehicles in North Dakota. It is not infrequent where a motor vehicle will be in North Dakota on a temporary basis, and those vehicles under the present rules and regulations may be registered for a three month period upon payment of the prescribed fees. However, if the vehicles falls within the class described in chapter 39-04a, it would appear that such vehicle would be subject to the total annual fee if it were brought into the state prior to the thirtieth day of June.

In view of these requirements, is it permissible for this office to assess the fees due under chapter 39-04a in proportion to the period for which the vehicle is temporarily registered in North Dakota? Thus, if a vehicle were registered on a temporary basis for a period of ninety days, can the registrar under the existing law assess the 'ton fee tax' at twenty-five percent of the annual fee due on such vehicle? Your answer to the questions posed herein would be appreciated."

Section 39-04a-02 of the North Dakota Century Code provides:

LEVY OF ADDITIONAL ANNUAL FEE - ADMINISTRATION - RULES AND REGULATIONS. There is hereby levied on motor vehicles engaged in the transportation of property, an annual fee which shall be in addition to the license fee paid under the requirements of section 39-04-19 for the licensing of such motor vehicles.

Such fees shall be due on January first of each year and shall be payable to the motor vehicle registrar and deposited with the state treasurer to the credit of the highway construction fund. The provisions of this chapter shall be administered by the motor vehicle registrar, who shall have authority to promulgate rules and regulations to carry out the provisions of the chapter."

Section 39-04a-04 of the North Dakota Century Code, as amended, provides:

FEES. Such annual fees shall be based on the gross weight for which the motor vehicle is licensed by the motor vehicle registrar and shall be in the following amounts:

1. This chapter shall not apply to motor vehicles having a registered gross weight of ten thousand pounds or less;
2. Motor vehicles licensed for a gross weight of twelve thousand pounds or more, and including twenty-four thousand pounds, four dollars for each two thousand pounds of registered gross weight.

The minimum fee shall be ten dollars for each motor vehicle. A resident farmer engaged in the business of custom harvesting shall be entitled to registration under this chapter upon payment of such minimum fee. The fee for motor vehicles placed in service after June thirtieth and before September thirtieth shall be one-half of the annual fee, after September thirtieth, one-fourth of the annual fee."

Section 39-04-21 of the North Dakota Century Code provides:

FEES FOR MOTOR VEHICLES FIRST REGISTERED IN STATE. When a motor vehicle first becomes subject to registration during the calendar year, the registration fee shall be for the remainder of the year prorated on a monthly basis, one-twelfth of the annual registration fee for each calendar month or fraction thereof. Penny adjustments shall be carried to the next quarter dollar. Temporary registrations shall be issued in such manner as is prescribed by the motor vehicle registrar."

It is to be noted that the fee collected under chapter 39-04a is in addition to the license fee required by chapter 39-04 and is not necessarily governed by the specifications of chapter 39-04. It would not appear, therefore, that the authority contained in section 39-04-21 to issued temporary licenses would be applicable to chapter 39-04a.

Chapter 39-04a does contain a statutory provision for prorating the "ton fee tax." Thus section 39-04a-04 of the North Dakota Century Code provides the fee for motor vehicles placed in service after June thirtieth and before September thirtieth shall be one-half of the annual fee, and if placed in service after September thirtieth, one-fourth of the annual fee. In view of this specific provision for prorating the fee, it would not appear the motor vehicle registrar would be entitled to adopt additional provisions for prorating the

fee even though section 39-04a-02 permits the registrar to promulgate rules and regulations to carry out the provisions of the chapter. The affirmative requirement of a statute that a certain act shall be done in a certain manner impliedly negatives the doing of such act in any other manner. See *Swiggum v. Valley Inv. Co.*, 73 N.D. 396, 15 N.W.2d. 467.

We have been unable to discover any provision of chapter 39-04a which suggests that the fee should be paid in accordance with the period for which the vehicle is licensed under the provisions of chapter 39-04. While the requirement that the fee be paid in accordance with section 39-04a-04 of the North Dakota Century Code, as amended, rather than in accordance with the period for which the vehicle is licensed under chapter 39-04 may, in some instances appear to be rather harsh, this is a matter which should be considered by the legislature since it does not appear the determination as to whether the fee is payable under the law is an administrative decision.

In direct response to your question, it is our opinion that the motor vehicle registrar may not assess the fees due under chapter 39-04a in proportion to the period for which the vehicle is temporarily registered in North Dakota, but rather that the fee must be assessed in accordance with the provisions of section 39-04a-04 of the North Dakota Century Code, as amended.

HELGI JOHANNESON

Attorney General