

MOTOR VEHICLES:

Provision for refund of motor vehicle registration fee, found in Section 8369b, Mo. R.S.A., Laws of Missouri, 1947, page 382, is constitutional. Refund applies to all motor vehicles regardless of period for which registered.

September 9, 1949

Mr. John H. Allison, Supervisor
Motor Vehicle Registration
Division of Collection
Department of Revenue
Jefferson City, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"We respectfully request an Opinion, concerning Refunds, Section 8369-B, Permanent-Staggered Registration, House Bill #273, Lines 43 to 49 inclusive.

"Does Refund apply only to Vehicles registered for a period exceeding twelve (12) months. Or, is it applicable to all Applicants, upon cessation of operation of the Vehicle and the return of the License Plate."

The provision for refund of motor vehicle registration fees referred to in your letter of inquiry appears as a part of Section 8369b, Mo. R.S.A., Laws of Missouri, 1947, p. 382. This section, insofar as pertinent to your inquiry, reads as follows:

"(1) Motor vehicles not previously registered in Missouri and operated for the first time on the public highways of this state after January 1, 1949, shall be registered for a full twelve month period without regard for the varying period of registration provided for during the period of change-over to the staggered registration system, subject, however, to the following provisions: (1) Notwithstanding any requirement to the contrary, motor vehicles may be initially registered for less than a twelve

month period at the Director's option, when in his judgment such fractional registration period shall tend to fulfill the purpose of the monthly series registration system. (2) Upon expiration of the initial fractional registration periods, motor vehicles so registered shall thereafter be registered for twelve month periods as provided in Section 8369a. (3) Whenever the Director shall determine from an increase or decrease in the number of registrations of all types of motor vehicles in any given month, that the volume of clerical work of registration of all types of motor vehicles in such month has become so disproportionate to the volume of work in the remaining registration periods as to render the system burdensome or inefficient, he is authorized and empowered to change the registration period of such number of motor vehicles as may be necessary to increase or reduce the volume of registration in one or more periods by advancing the renewal date and shortening the registration period of such motor vehicles. Such shifting of registration periods shall be accomplished by notifying the registrants of the change, giving them credit for that portion of the registration period not yet elapsed. In such instances the Director shall order the registrant to surrender the license plate and registration certificate held by him and shall assign and issue, without cost to the owner, a new plate and registration certificate designating the new registration expiration date. (4) When the owner of a motor vehicle moves the vehicle to another state, he shall return the license plate to the Director of Revenue within ninety (90) days or upon the expiration of the period of reciprocity granted by the new state of residence; or if the owner of a motor vehicle ceases to operate the motor vehicle in Missouri he shall return the license plate to the Director of Revenue within ninety (90) days. The owner of said motor vehicle in each case shall be entitled to a refund to be computed on the basis of one-twelfth of the full year's registration fee prescribed for such vehicles, multiplied by the number of months, not to exceed five, which have not expired at the time of his removal or cessation of operation."

You will note that subparagraph 4 exists as a qualification or proviso in said section 8369b. The Legislature did not make this proviso as clear as they might have. Prior to this section, which was enacted by the 1947 Legislature, we had no provision for the refund of registration fees upon the return of the license plate or plates. Now we have the permanent use of license plates upon motor vehicles as stated in the title of the Act, that is, permanent staggered registration.

The entire Act must be construed as a whole because it was passed as a whole, and not in parts or sections, and was enacted for one general purpose or intent, and that was to have staggered registration of motor vehicles and permanent use of license plates.

Consequently, the provision in regard to refunds should be construed in connection with every other part or section of the Act so as to produce a harmonious whole. (See Sutherland's Statutory Construction, Section 4703.) The presumption is that the Legislature had a definite purpose in every enactment and has adopted and formulated the subsidiary provision in Section 8369b in harmony with that purpose, so the intent or purpose of the whole Act shall control in construing any proviso or any section. A proviso should be interpreted consistently with the general Legislative intent.

Our Supreme Court in *Bowers v. Mo. Mutual Association*, 62 S.W. (2d) 1058, 333 Mo. 492, stated the rule as follows:

"The section as reenacted and now appearing in the statute book is not as clearly worded as it might be, but all of its provisions must be considered as well as its evident purpose, and its proper construction gathered from the whole, giving due effect to all parts thereof. Where certain terms of a statute are ambiguous, we are at liberty to go to the title of the act as a clue or guide to the intention of the legislature. The Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible to further those ends, and avoid giving them an unreasonable effect."

Subsection 1 and subsection 2 of Section 8369b clearly apply to motor vehicles not previously registered in Missouri and operated for the first time after January 1, 1949. Subsection 3 of said Section 8369b would not operate successfully if it did not apply to all motor vehicles.

It could be argued by reasonable men that Subsection 4 of said Section 8369b only applies to the registrants who register for the first time under the first and main clause of said Section 8369b because said first or main clause states that it is "subject, however, to the following provisions," and that said Subsection 4 is a proviso, and that it only relates to the section in which it is found and therefore would be unconstitutional by favoring one class of motor vehicle owners over another. This would be the correct construction under the old rules, but Sutherland's Statutory Construction, Section 4934 says: "Originally the proviso was said to restrict only the section to which it was attached, the modern rule applies the proviso to all sections of the Act if it can be determined that that was the legislative intent."

State v. Reagan, 108 S.W. (2d) 398, 1.c. 400 quotes the rule of construction from 59 C. J., page 495, Section 595, to be:

"Provided always that the interpretation is reasonable and not in conflict with the legislative intent, it is a cardinal rule of construction of statutes that effect must be given, if possible, to the whole statute and every part thereof. * * *"

This cardinal rule also applies to provisos according to 59 C.J., page 1088, Section 639.

State ex rel. v. City of St. Louis, 73 S.W. 623, 1.c. 629; 174 Mo. 125, says: "If the context requires, the proviso may be construed as a limitation extending over more than what immediately precedes, or may amount to an independent enactment."

Castilo v. State Highways Commission, 279 S.W. 683, 1.c. 677; 312 Mo. 244, says: "Appellants persist in the erroneous view that a proviso may not confer power as well as impose restrictions." The court in this case construed the proviso as an independent grant of power to the Highway Commission.

59 C.J., page 1091, Section 641 says of provisos, : "Where from the language employed it is apparent that the Legislature intended a more comprehensive meaning; it must be construed to assume the function of an independent enactment."

Subsection 4 of said Section 8369b states: "When the owner of a motor vehicle * * *." The entire language of this subsection shows that it applies to any owner of a motor vehicle. The fact it is a subsection, or proviso to the first or main clause in Section 8369b is not the controlling factor. The whole Act must be studied and no other section of the Act provides for a refund. It would be unjust for a motor vehicle owner, subject to the provisions of Section 8369a, who had to pay for seventeen months registration of his motor vehicle, to be forced to lose more than one year's license fee if he moved to another state, or ceased to operate the motor vehicle before the seventeen months had expired. That may be the reason for the five months limit on the amount of the refund, but we cannot speculate upon the reason for the limit. But the provision for refund is so worded that if it was given a separate section number it would clearly apply to all motor vehicle owners. The terms for refund are clear and if the motor vehicle owner qualifies under the provisions of said subsection 4 of Section 8369b as to moving the vehicle to another state and returning the license plates to the Director of Revenue within the time specified, or if the owner ceases to operate the motor vehicle in Missouri and shall return his license plate to the Director of Revenue within the time limit then he is entitled to a refund according to the provisions of said section.

The provision for refund is applicable to all owners of license plates who qualify as stated in said subsection 4 of Section 8369b regardless of the period for which their vehicle was registered. They cannot recover a refund for more than the unexpired term of their registration, nor more than five months if the unexpired term of their registration is more than five months.

CONCLUSION

Therefore, we are of the opinion that the refund provision relating to motor vehicle registration fees found as a part of Section 8369b, Mo. R.S.A., Laws of Missouri, 1947, p. 382, is

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constitutional and applies to all owners of motor vehicles registered with your department regardless of the period of time for which they are registered, and the refund upon the return of the license plate shall be made if the owner qualifies under the provisions of said Subsection 4 of Section 3869b, Laws of Missouri, 1947, p. 382.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw