MOTOR VEHICLES; SALES OR USE TAX; EXEMPTIONS; 1)When a surviving spouse inherits motor vehicle from deceased owner who paid sales or use tax required by Secs. 144.440 and 144.450, Laws of Mo. 1951, and adds names of children to application for title as co-owners and surviving spouse's interest is exempt from tax under latter sec., children are not entitled to exemption under said sec. They are required to pay tax in amount of 2% of purchase price of vehicle less value of interest of surviving spouse.

2)A motor vehicle registered and operated in another state in good faith by owner 90 days, then moved into Missouri where certificate of title is sought, if sales tax paid by owner on purchase price in state of registry, and application for title is only in name of owner, he is exempt from sales or use tax under Sec. 144.450, supra. If owner gives spouse an interest in vehicle and desires spouse's name on application and certificate of title, Missouri sales or use tax is due. Tax is 2% of purchase price or appraised value of vehicle less value of interest retained by owner.

July 21, 1953

Honorable David A. Bryan
Supervisor
Motor Vehicle Registration
Department of Revenue
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

> "It is respectfully requested that an opinion be given to each of the specific questions herein contained.
>
> "1. In an instance where a surviving spouse inherits a motor vehicle and meets the requirements for exemption from use tax (Sec. 144.450), then at the time Missouri title is applied for said surviving spouse desired to add one or more child's name to the new title -
>
> a. Would any sales or use tax be due?
> b. If answer to 1(a) is 'yes', how much?
>
> "2. In an instance where a person is moving a motor vehicle into this state from another state and shall have registered and in good faith regularly operated said vehicle in said

other state at least ninety days prior to the date such person applies for Missouri title and therefore meets the requirements for exemption from use tax (Sec. 144.450) but desires to add spouses name to the new title -

a. Would any sales or use tax be due?
b. If answer to 2(a) is 'yes', how much?"

From the facts given above, it appears that a surviving spouse inherited a motor vehicle from the deceased owner, and in making application for a certificate of title said spouse desires to have the names of his or her children added to the application, and to the certificate of title when issued, although it does not appear that an assignment of the deceased owner's title was ever made to such surviving spouse.

Section 301.210, RSMo 1949, requires an assignment of the certificate of title to be made by the owner when the motor vehicle described in said title is sold or otherwise transferred to another person. Unless the assignment is made in the manner provided by statute, the sale of the motor vehicle is fraudulent and void. Said section reads as follows:

"1. In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the director of revenue, with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer.

"2. The buyer shall then present such certificate, assigned as aforesaid, to the director of revenue, at the time of making application for the registration of such motor vehicle or trailer, whereupon a new certificate of ownership shall be issued to the buyer, the fee therefor being one dollar.

"3. If such motor vehicle or trailer is sold to a resident of another state or

> country, or if such motor vehicle or trailer is destroyed or dismantled the owner thereof shall immediately notify the director of revenue. Certificates when so signed and returned to the director of revenue shall be retained by the director of revenue and all certificates shall be appropriately indexed so that at all times it will be possible for him to expeditiously trace the ownership of the motor vehicle or trailer designated therein.
>
> "4. It shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless at the time of the delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void."

The deceased owner could not personally assign his title to the surviving spouse but his executor or administrator might properly make the assignment to said spouse. Upon the assignment having been made such spouse should then make application for title only in his or her name. Upon receipt of proper application, together with satisfactory proof that the applicant is the owner of the vehicle described therein, the Director of Revenue could legally issue a certificate of title in the name of the surviving spouse.

The proper procedure to be followed in assigning the title of the deceased owner, through his executor or administrator to a vendee or other transferee was discussed in an opinion of this department furnished to the Honorable H. A. Kelso, Probate Judge, Vernon County, Missouri, on March 6, 1953, a copy of which is enclosed for your consideration.

Unless the statutory procedure for assignment of title has been followed, and certificate of title issued in the name of the surviving spouse, then he or she never did acquire whatever title the deceased had in the motor vehicle. The mere adding of of the child's, or children's, names to the application for title could not convey any interest in said vehicle to them. Therefore, such attempted transfer of any interest to said children would not be an effective transfer or assignment of title within the meaning of Section 301.210, supra. Under these circumstances,

the Director of Revenue could not issue a certificate of title to the surviving spouse and children, since no satisfactory evidence could be produced that the applicants were the actual owners of the vehicle.

In the event the above-mentioned statutory procedure has been followed, and the surviving spouse has been issued a certificate of title in his or her name, then if such spouse desires to give an interest in the motor vehicle to his or her children, it is believed that the only way in which this can be done is for said spouse to assign the title to himself or herself and the child or children named. Application for new title should then be made to the Director of Revenue in the names of such assignees, and upon a satisfactory showing of the respective interests, certificate of title may be issued in the names of such assignees.

This brings us to the point in our discussion when a consideration of the subject-matter of the first inquiry is necessary.

Section 144.440, page 858 Laws of Missouri, 1951 imposes a tax upon every person for the privilege of using the highways of this state, and reads as follows:

> "1. In addition to all other taxes now or hereafter levied and imposed upon every person for the privilege of using the highways of this state, there is hereby levied and imposed a tax equivalent to two per cent of the purchase price, as defined in section 144.070, which is paid or charged on new and used motor vehicles purchased or acquired for use on the highways of this state which are required to be registered under the laws of the state of Missouri.
>
> "2. That at the time the owner of any such motor vehicle makes application to the director of revenue for an official certificate of title and the registration of the same as otherwise provided by law, he shall present to the director of revenue, evidence satisfactory to said director showing the purchase price paid by or charged to the applicant in the acquisition of said motor vehicle, or that said motor vehicle is not subject to the tax herein provided, and, if

> said motor vehicle is subject to the tax herein provided, such applicant shall pay or cause to be paid to the director of revenue the tax provided herein.
>
> "3. In the event that the purchase price is unknown or undisclosed or that the evidence thereof is not satisfactory to the director of revenue, the same shall be fixed by appraisement by the director.
>
> "4. No certificate of title shall be issued for such motor vehicle unless said tax for the privilege of using the highways of this state has been paid."

Section 144.450, page 859, Laws of Missouri, 1951, provides exemptions from the tax referred to in the preceding section and reads as follows:

> "In order to avoid double taxation under the provisions of this act, any person who purchases a motor vehicle in any other state and seeks to register it in this state shall be credited with the amount of any sales tax or use tax shown to have been previously paid by him on the purchase price of such motor vehicle in such other state. The tax imposed by section 144.440 shall not apply to motor vehicles on account of which the sales tax provided by this act shall have been paid, nor to motor vehicles brought into this state by a person moving any such vehicle into Missouri from another state who shall have registered and in good faith regularly operated said motor vehicle in said other state at least ninety days prior to the time it is registered in this state, nor to motor vehicles acquired by registered dealers for resale, nor to motor vehicles purchased, owned or used by any religious, charitable or eleemosynary institution for use in the conduct of regular religious, charitable or eleemosynary functions and activities, nor to motor vehicles owned and used by religious organizations in transferring pupils to and from schools

> supported by such organization, nor where the motor vehicle has been acquired by the applicant for a certificate of title therefor by gift or under will or by inheritance, and tax hereby imposed has been paid by the donor or decedent, nor to any motor vehicle owned or used by the state of Missouri or any other political subdivision thereof, nor by an educational institution supported by public funds, nor to farm tractors."

The last quoted section specifically provides that the tax imposed by Section 144.440 shall not apply to motor vehicles upon which the tax provided by the chapter has been paid, and also, when the motor vehicle has been acquired by the applicant for a certificate of title by gift or under a will or by inheritance and the taxes have been paid by the donor or decedent.

We refer to the two particular instances of exemption from tax, among the various ones referred to in this section, for the reason that such instances are the only ones in point with the facts given in the first inquiry of the opinion request.

The facts given in said first inquiry do not indicate whether the sales or use tax imposed by section 144.440, supra, had been paid previous to the death of the owner of the motor vehicle nor does it indicate whether the child or children referred to, acquired their interest in the motor vehicle by purchase or as a gift from the surviving spouse of the deceased owner.

For the purpose of our discussion it will be assumed that the deceased owner had previously paid the sales or use tax and that the surviving spouse in desiring to have the names of the children added to the application for title is assumed to give each child an interest in the motor vehicle.

In the event the deceased owner had paid the tax and his surviving spouse inherits the motor vehicle from him as stated, then such spouse is exempt from the payment of the tax, provided, that he or she is able to prove the prior tax payment to the satisfaction of the director of revenue. The burden of proof is upon the applicant to establish the right to the exemption, for the exemptions authorized by Section 144.450, supra, are to be strictly construed in accordance with the terms of the statute, and unless the proof is sufficiently clear, no exemption will be allowed. This principle was held to be the law in the case of State v. Bates, 224 S. W. (2d) 996. The court at l. c. 1000 said:

> "Exemptions from the class to be taxed must be founded upon some rational basis. The use of exemption provisos in such legislation to limit the boundaries of the class established must rest upon some sound reason of public policy. To warrant the taxing of one object or person and the exemption of another object or person within the same natural class, the exemption must be founded upon a reason public in nature which in a reasonable degree, at least, would justify restricting the natural class. Exemptions from taxation are a renunciation of sovereignty, must be strictly construed and generally are sustained only upon the grounds of public policy. They should serve the public, as distinguished from a private, interest. Such is the basis of equal and uniform taxation.* * *"

If a satisfactory showing as above stated is made to the director of revenue, then under the express terms of the exemption statute, the surviving spouse would not be required to pay the tax provided the application for title applied for was in the name of such spouse, since no tax is due upon a motor vehicle not subject to the tax. However, the question arises as to whether the motor vehicle is exempt from tax if the names of the children are inserted in the application along with that of the surviving spouse.

In this connection we repeat that portion of Section 144.450 supra, which we believe to be particularly applicable in attempting to answer above question. Said section provides for exemption from the tax and reads as follows:

> "* * *nor where the motor vehicle has been acquired by the applicant for a certificate of title therefor by gift or under will or by inheritance, and the tax hereby imposed has been paid by the donor or decedent, * * *."

In attempting to arrive at the meaning of this statute, we call attention to some of the rules of statutory construction which we believe to be so well recognized as not to require any citations from court decisions of this state.

One of the cardinal principles of statutory construction is to arrive at the intention of the lawmakers, and, if possible, from the words used in the statute under construction. In such instance, the words used are to be given their ordinary or common meaning unless from the context it appears that some other or different meaning was intended. In the construction of statutes it is also a well established rule that the legislature is presumed to enact a law which would in its operation or effect be reasonable, rather than unreasonable.

Keeping the above mentioned rules of statutory construction in mind, it is believed that Section 144.450 provides one exemption from the sales or use tax, and that the exemption can be allowable only to the person entitled to it, and once that exemption has been allowed to an applicant for title under the terms of the statute, no further exemption can be allowed to a person on the same motor vehicle. To construe the statute in any other manner would do violence to the clearly expressed intention of the legislators, and would result in a ridiculous and absurd situation.

Applying the provisions of Section 144.450 to the facts given above, the children whose names have been added or which shall be added to the application, in order to be entitled to an exemption from the sales or use tax must submit satisfactory evidence to the director of revenue that their donor had previously paid the tax, and that the property was not subject to the tax.

This showing the children cannot make because their donor inherited the vehicle from the deceased owner who had paid the tax. Such donor paid no tax as none was due and such donor is the only person entitled to the one exemption provided by the statute, consequently, the children cannot claim any further exemptions, but must pay the tax to the extent of the value of their interests in the motor vehicle. It is believed that the above construction of the statute, and its application to the facts before us is the only reasonable one which can be made under the circumstances and one which is believed to be in accord with the intention of the legislature as clearly expressed in the terms of said statute. To construe the statute and to apply it to such facts in any other manner would result in a very unusual, if not a ridiculous situation.

To allow the children the exemption from the payment of the tax would be to ignore the statutory condition that their donor must have paid it, and this would have the effect of allowing

them an exemption based upon a prior exemption, which of course, would violate the statute which allows only one exemption.

If the children-donees should become donors of their respective interests in the title of the vehicle mentioned, and their donees were also exempt from the payment of the tax and this procedure were to be continued indefinitely, then no tax would ever be collected and the only tax that ever has been paid was that by the deceased owner. Such procedure would serve as an instrumentality for defeating the intention and purpose of the legislature in the enactment of this taxing statute.

Under the provisions of paragraph 2, Section 144.440, supra, when the surviving spouse and children apply for a certificate of title they are required to submit evidence along with the application, satisfactory to the director of revenue of the amount of the purchase price paid or charged to the applicants in the acquisition of the motor vehicle, and that the sales or use tax provided by paragraph 1, of said section has been paid, or that the vehicle is exempt from the tax as aforesaid.

The purchase price cannot be shown since the applicants paid nothing for their respective interests but under the provisions of paragraph 3, of Section 144.440, supra, the director may have the vehicle appraised and the appraised value thus obtained shall be the basis upon which to compute the tax.

Ordinarily the entire appraised value of the vehicle would constitute the basis for computing the tax, but in the instant case the surviving spouse's interest is exempt, and must be deducted from the appraised value, for only the remainder or net value is subject to the tax.

The facts given in the opinion request fail to state the fractional part owned by the surviving spouse or the proportional part it bears to the whole as compared with the interests of the other co-owners. Such information is necessary before it can be dtermined what is the net amount of the children's interest subject to taxation. Once the value of the interest of the surviving spouse is known and said amount is deducted from the appraised value of the vehicle, the remainder will be the net amount upon which the tax is to be computed at the rate of 2% as provided by paragraph 1, Section 144.440, supra.

Therefore, in answer to your inquiry 1(a), for the reasons given above, it is our thought that a sales or use tax is due upon the motor vehicle referred to in the inquiry.

In answer to inqurry 1(b), it is our further thought that the tax due and owing will be 2% of the appraised value of the motor vehicle, less the value of the interest of the surviving spouse in said vehicle.

From the facts given in the second inquiry, it appears that one who had purchased a motor vehicle and registered it in a state other than Missouri, and in good faith has operated it in that state for at least ninety days and subsequently moved the vehicle into Missouri where he seeks to have the same registered in the names of himself and spouse. It is claimed that under these circumstances the owner would be exempt from Missouri sales or use tax, but we do not agree with this statement, except with qualifications. It is assumed that the exemption to which the owner is said to be entitled is that mentioned in the first part of Section 144.450, supra. While it is not stated that the sales tax referred to by this section has been previously paid in the other state, for the purposes of our discussion it will be assumed that such tax has been paid in accordance with the terms of the statute and that when the application for Missouri title is made, proof of the prior tax payment is submitted to the Director of Revenue. Should such owner apply for title only in his own name, he would be entitled to the exemption, but would not be entitled to such exemption if the application is made in the names of himself and spouse, for reasons to be noticed presently.

What we have said above concerning the assignment of titles under the provisions of Section 301.210, supra, has no application to the facts before us, since that section refers only to the assignment or transfer of titles of vehicles registered in Missouri. In placing his spouse's name on the application for a Missouri certificate of title, it does not appear that the provisions of said section will have been violated by the owner of said vehicle.

The addition of the name of the spouse to the application is prima facie proof of the gift of some interest in the vehicle by the owner, the particulars of which must be shown to the director of revenue, and proof offered that the applicants are the actual owners of the vehicle and the extent of the interest claimed by each applicant.

Among the exemptions provided by Section 144.450, supra, is

that in an instance when a motor vehicle or an interest therein is given to the donee who "had paid the tax imposed thereby", but this refers to the payment of the Missouri sales or use tax and the exemption does not apply if the payment of the sales tax had been made in some other state.

When the owner gives an interest in the vehicle to his spouse, as evidenced by the application for title, the donee would not receive such interest from a donor who had paid the Missouri sales or use tax upon the purchase price of the vehicle, and, of course, would not be entitled to the exemption.

Therefore, in answer to inquiry 2(a), it is our thought that the tax would be due and owing.

In answer to inquiry 2(b) it is our thought the tax would be 2% of the purchase price, or the appraised value of the vehicle less the value of the interest retained by the owner of said vehicle.

CONCLUSION.

Therefore, it is the opinion of this department that when a surviving spouse inherits a motor vehicle from a deceased owner who paid the sales or use tax on same as required by Sections 144.440 and 144.450, Laws of Missouri, 1951, and said spouse makes application for a Missouri certificate of title to which application the names of children are added as co-owners and the interest of the surviving spouse is exempt from tax under the provisions of the latter section, said children are not entitled to an exemption from the tax under the provisions of the latter section. They are required to pay the tax in an amount equivalent to 2% of the purchase price of the motor vehicle, less the value of the interest of the surviving spouse.

It is further the opinion of this department that when one has previously registered a motor vehicle in another state and operated the vehicle for at least ninety days in said state, and moves the vehicle into Missouri where he applies for a Missouri certificate of title, and satisfactory proof is submitted to the director of revenue that the sales tax upon the purchase price of the motor vehicle was paid in the

state of registry, then the owner is entitled to the exemption provided by Section 144.450, supra, if the application is made in the name of such registered owner. But when the owner becomes donor of some interest in the vehicle to his spouse, and desires to add said spouse's name to the application, and the certificate of title when issued, then the Missouri sales or use tax is due and owing to the extent of value of the interest of said spouse. Said tax is to be computed at the rate of 2% of the purchase price or appraised value of the vehicle, less the value of the interest retained by the owner in said motor vehicle.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

PNC:A