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LETTER OPINION
2019-L-01

March 1, 2019

Mr. Kyle Wanner
Executive Director
North Dakota Aeronautics Commission
2301 University Drive Bldg 22
Bismarck, ND 58504-7595

Dear Mr. Wanner:

Thank you for your letter requesting my opinion regarding the correct application of the aircraft excise tax as per N.D.C.C. § 57-40.5-02.

For the following reasons, it is my opinion payment of the aircraft excise tax is a condition of registration and must be paid, or a statutory exemption must be met, prior to the issuance of an aircraft registration certificate. Furthermore, if a purchase requiring registration under the laws of the state of North Dakota occurs, the aircraft excise tax must be calculated based on the purchase price, not the subsequent lease or rental cost.

ANALYSIS

North Dakota law imposes "an excise tax at a rate of five percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of this state, except on aircraft or helicopters designed or modified for exclusive use as an agricultural aircraft ...the excise tax imposed is at the rate of three percent..."¹ Purchase price is defined by N.D.C.C. § 57-40.5-01(3).

Prior to implementation of the aircraft excise tax in 1983, aircraft were taxed by the State Tax Department under the sales and use tax law.² Under the sales and use tax law, the sale of a new or used aircraft between private individuals, anyone other than an aircraft dealer, was tax exempt, regardless of where the transaction occurred.³ As a result, the majority of aircraft purchases occurred between private individuals.

¹ N.D.C.C. § 57-40.5-02.

² *Hearing on H.B. 1518 Before the House Comm. on Approp.*, 1983 N.D. Leg. (Statement of Harold G. Varra).

³ *Id.*

The purpose of the 1983 legislation was to eliminate the casual sales tax exemption and require a one-time excise tax with no trade-in allowance, on the sale or use of all aircraft, at the time the aircraft was registered with the Aeronautics Commission.⁴ The law was patterned after the South Dakota regulation which required an excise tax on aircraft sales to be collected upon registration.

After the one-time application of the aircraft excise tax was imposed on an aircraft, further transfers of the aircraft were exempt from taxation. In 1987, the exemption for a previously taxed aircraft was repealed, therein requiring the aircraft excise tax be paid on every transaction.⁵ The legislation also amended the definition of "purchase price" to include a trade-in allowance for an aircraft previously subject to the aircraft excise tax.⁶ The trade-in allowance was patterned after the motor vehicle law.⁷

You indicate the Aeronautics Commission's previous practice was to allow the purchaser of an aircraft to register the aircraft prior to paying the aircraft excise tax. The purchaser then created an entity to which it leased the aircraft. The Aeronautics Commission allowed the purchaser to pay the aircraft excise tax quarterly based on the entity's usage of the aircraft. You ask whether this practice correctly interprets the law.

The North Dakota Supreme Court has stated "we interpret statutes in context and in relation to others on the same subject to give meaning to each without rendering one or the other useless."⁸ Statutes are to be construed "in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted."⁹ Whenever possible, statutes are harmonized to avoid conflict between them.

The statutory provisions of N.D.C.C. §§ 57-40.5-02, 57-40.5-05, 57-40.5-06, and 2-05-11 must be read in harmony. Except for aircraft registered in accordance with N.D.C.C. § 2-05-11.3, "every aircraft or ultralight vehicle operating within the state for more than thirty days must be registered with the aeronautics commission"¹⁰ The director of the Aeronautics Commission is prohibited from issuing an aircraft registration certificate unless the excise tax has been paid,¹¹ or one of the statutory exceptions are met.¹² When read in harmony, it is clear the law does not authorize the aircraft excise tax to be paid quarterly on a usage basis as the aircraft excise tax must be paid prior to the issuance of a

⁴ *Id.*

⁵ *Hearing on H.B. 1548 Before the House Comm. on Finance and Taxation, 1987 N.D. Leg. (Feb. 2, 1987) (Statement of Gary R. Ness).*

⁶ *Id.*

⁸ *ASAF Corp. v. Symington*, 512 N.W.2d 692 (N.D. 1994).

⁹ *State v. Fasteen*, 740 N.W.2d 60, 63 (N.D. 2007).

¹⁰ N.D.C.C. § 2-05-11.

¹¹ N.D.C.C. § 57-40.5-06.

¹² N.D.C.C. § 57-40.5-03.

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registration certificate. Had the Legislature intended for the aircraft excise tax to be paid on a usage basis, it would not have required payment of the excise tax prior to the issuance of a registration certificate.

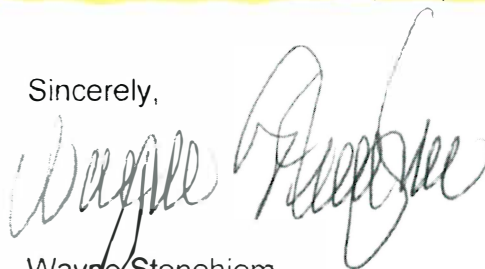
You also ask whether N.D.C.C. § 57-40.5-02 authorizes payment of the aircraft excise tax quarterly based on the entity's usage, as opposed to purchase price.

The language of N.D.C.C. § 57-40.5-02 requires an excise tax be paid at a rate of five¹³ percent on the (1) **purchase price** of any aircraft purchased or acquired either in or outside the state of North Dakota and required to be registered under the laws of the state of North Dakota; or (2) **lease or rental cost** of any aircraft, less fuel, if rented dry and required to be registered under the laws of the state of North Dakota.

The Legislature repealed the casual sales and use tax and enacted the excise tax to ensure every sale and use of an aircraft that was required to be registered was subject to the aircraft excise tax unless a statutory exemption was met.¹⁴ The inclusion of the language requiring the aircraft excise tax be paid on the purchase price **or** the lease or rental cost was to ensure all purchases requiring registration, even those made through a lease or rental agreement, are subject to payment of the aircraft excise tax. The language does not provide the purchaser of an aircraft with the option to bypass the fact that a taxable purchase occurred.

Therefore, if a purchase requiring registration under the laws of the state of North Dakota occurs, the aircraft excise tax must be calculated based on the purchase price, not the subsequent lease or rental cost. It is further my opinion, the law does not authorize the aircraft excise tax to be paid quarterly as the aircraft excise tax must be paid prior to the issuance of a registration certificate.

Sincerely,



Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁵

¹³ A rate of three percent is applied to aircraft used exclusively for agricultural purposes.

¹⁴ *Hearing on H.B. 1518 Before the House Comm. on Approp.*, 1983 N.D. Leg. (Statement of Harold G. Varra).

¹⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).