

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-12

Date issued: July 2, 1992
Requested by: Heidi Heitkamp
State Tax Commissioner

- QUESTION PRESENTED -

Whether a motor vehicle is subject to the North Dakota motor vehicle excise tax if it is purchased by an Indian tribe or an enrolled member of the tribe from a seller located off the tribe's reservation if the situs of the transfer of the title and possession is on the reservation.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a motor vehicle is not subject to the North Dakota motor vehicle excise tax if it is purchased by an Indian tribe or an enrolled member of the tribe from a seller located off the tribe's reservation if the situs of the transfer of the title and possession is on the reservation.

- ANALYSIS -

Attorney General's Opinion 91-13 addresses the question whether a motor vehicle purchased on an Indian reservation by the tribe or a tribal member is subject to the motor vehicle excise tax of N.D.C.C. ' 57-40.3-02. The opinion states that the tax does not apply to such purchases. The present issue is whether the tax applies if transfer of title and possession occur on the reservation. This implies a concern that transfer of title and possession may not constitute a purchase. However, as a general rule, a sale of personal property occurs upon the transfer of title. E.g., N.D.C.C. ' 57-40.3-01(7) ("sale" and "purchase" "includes any transfer of title or ownership of a motor vehicle"); N.D.C.C. ' 41-02-06(1) ("in this chapter ["Sales"] unless the context otherwise requires . . . '[s]ale' consists in the passing of title from the seller to the buyer for a price"); Boeing Co. v. Omdahl, 169 N.W.2d 696, 713 (N.D. 1969) ("[w]here delivery and transfer of title or possession in this State by a retailer occurs at the same instant, then a retail sale has occurred"); Black's Law Dictionary 1503 (4th rev. ed. 1968) (a sale is the transfer of title and possession from seller to buyer).

The key to answering the question is determining where the purchase and sale take place. As mentioned, the essence of a sale is the transfer of title. Since the factual situation presented states that the transfer of title and possession occur on the reservation, then the reservation is the location of

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the purchase and sale. Therefore, the situation presented falls within Attorney General's Opinion 91-13 and the transaction is not subject to the motor vehicle excise tax.

- EFFECT -

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.

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