

LETTER OPINION
2000-L-15

February 2, 2000

Mr. Marshall W. Moore
Director
Department of Transportation
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Dear Mr. Moore:

Thank you for your letter asking how to define a "new motor vehicle" for purposes of administration of the motor vehicle dealer licensing law, N.D.C.C. ch. 39-22.

Your question is in the context of a motor vehicle dealer obtaining possession of a previously untaxed motor vehicle from a new motor vehicle dealer that has a contract or franchise in effect with a manufacturer or distributor of that kind of motor vehicle. The vehicle in question may or may not have been titled. In your scenario, the dealer receiving the untaxed, but possibly titled, motor vehicle is either a used car dealer or another new car dealer that does not have in effect at the time of receipt of the vehicle a contract or franchise with the manufacturer of that kind of motor vehicle.

N.D.C.C. § 39-22-02 provides, in part:

Whenever a motor vehicle dealer purchases or holds for sale a new motor vehicle for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, such new motor vehicle becomes, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3.

Title 39 of the Century Code does not include a definition of "new motor vehicle," but its meaning is provided in the North Dakota Administrative Code as follows:

The terms used throughout this article have the same meaning as in North Dakota Century Code title 39, except "new motor vehicle" means a motor vehicle which has never been taxed and titled.

N.D. Admin. Code 52-02-01-01. Words of a statute must be given their plain, ordinary, and commonly understood meaning, and consideration should be given to the ordinary sense of the words, the context in which

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they are used, and the purpose which prompted their enactment. Coldwell Banker-First Realty, Inc. v. Meide and Son, 422 N.W.2d 375, 379 (N.D. 1988); N.D.C.C. § 1-02-02.

As noted above, the Century Code does not define "new" motor vehicle for purposes of Title 39. "Used" motor vehicle, however, is defined for purposes of that title in N.D.C.C. § 39-01-01(88). The lead-in phrase of N.D.C.C. § 39-01-01 states the definitions contained therein apply "[i]n this title, unless the context or subject matter otherwise requires." The context of the relevant paragraph of N.D.C.C. § 39-22-02 requires determining the nature of a new vehicle as discussed therein. The portion of N.D.C.C. § 39-22-02 quoted above was added to the section in 1977 by Senate Bill 2349 which amended only N.D.C.C. § 39-22-02, relating to motor vehicle dealer licensing. It added new and specific limitations on new vehicle dealers or used vehicle dealers in possession of new vehicles for which they did not have a franchise from the manufacturer. See 1977 N.D. Sess. Laws ch. 368, § 1.

N.D. Admin. Code § 52-02-01-01 was thereafter amended to add a definition for new vehicle that was lacking in the Century Code. The authority for the rule was N.D.C.C. § 39-22-10(2) and the law implemented was N.D.C.C. § 39-22-02. The rule was approved by this office and published in the Administrative Code. Rules thus approved, adopted, and published have the force and effect of law until amended or repealed by the agency or otherwise invalidated pursuant to N.D.C.C. § 28-32-03(3). No invalidating events apply to N.D. Admin. Code § 52-02-01-01.

The import of the Administrative Code definition is that until a motor vehicle is both taxed and titled, it is a new motor vehicle.

To obtain a North Dakota vehicle title, information must be presented pursuant to N.D.C.C. § 39-05-05(1). If the vehicle in question has not been previously taxed and titled and is leaving the possession of a new vehicle dealer who at the time has a contract or franchise with the manufacturer of that vehicle, then a certificate of origin for the vehicle must be presented. N.D.C.C. § 39-05-05(3). If the transferee of the vehicle which requires a certificate of origin to be presented for initial titling is a used vehicle dealer or a new vehicle dealer that does not at the time have a contract or franchise with the manufacturer of the vehicle in question, that transferee-dealer must at the time of that transfer pay the motor vehicle registration fee for the vehicle, obtain a title for the vehicle, and pay the motor vehicle excise tax for the transfer of the vehicle. N.D.C.C. § 39-22-02.

Your office informed a member of my staff that your agency permits new car dealers to obtain regular North Dakota vehicle titles for vehicles of the type for which they have a manufacturer's franchise by completing

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the appropriate form under N.D.C.C. § 39-05-05, paying the titling fee, and submitting either the certificate of origin or other evidence of ownership. The other evidence could include a title or some other document showing ownership issued by another jurisdiction, including a Canadian province. (In Manitoba, for example, this evidence is known as a TOD, Transfer of Ownership Document, under Part 4 of the Highway Traffic Act of Manitoba.) If, under these circumstances, the new car dealer just wants a title for its vehicle, there is no taxable transaction. However, if that new car dealer later transfers the vehicle in question to a used car dealer or another new car dealer that does not have a franchise with the manufacturer of the type of the vehicle in question (transferee-dealer), and the vehicle has not been previously taxed, it is a new vehicle. Therefore, upon the transfer to the transferee-dealer, that transferee-dealer must pay all registration and titling fees and the excise tax due on the price of the vehicle.

It is my opinion that if a new vehicle dealer has possession of a titled, but previously untaxed, vehicle for which that dealer has a contract or franchise with the manufacturer of the kind of vehicle in question, that vehicle is still a new vehicle under N.D. Admin. Code § 52-02-01-01. It is my further opinion that if the titled, but previously untaxed, vehicle is conveyed to a dealer that does not at the time have a contract or franchise with the manufacturer of the kind of vehicle in question, that transferee-dealer must pay the registration fee and excise tax applicable to the transfer. When this transferee-dealer conveys the vehicle, it is no longer a new vehicle under N.D. Admin. Code § 52-02-01-01.

Sincerely,

Heidi Heitkamp
Attorney General

rel/pg