

**LETTER OPINION
2006-L-15**

April 24, 2006

The Honorable Don Vigesaa
State Representative
PO Box 763
Cooperstown, ND 58425-0763

Dear Representative Vigesaa:

Thank you for your letter asking whether the Department of Transportation ("DOT") can require auto dealers to collect the state's motor vehicle excise tax from members of Indian tribes. It is my opinion that DOT may not require auto dealers to collect the state's motor vehicle excise tax from members of Indian tribes.

ANALYSIS

The motor vehicle excise tax is a 5% tax imposed on the purchase of motor vehicles.¹ The State Tax Commissioner administers the tax.² The DOT, however, is charged with collecting it.³

While the tax purports to apply to all North Dakotans, the state's taxation authority has limits in transactions involving members of an Indian tribe. These limits often depend on geography -- when the taxable event occurs on a reservation and involves a tribal member, the state typically lacks jurisdiction to tax.⁴ A tribe's sovereign interests are greatest when on-reservation activities are at issue.⁵

This office has addressed the applicability of the motor vehicle excise tax to transactions involving Indians. A 1991 opinion concluded that an on-reservation purchase by a tribal member is exempt from the tax.⁶ A year later this office considered

¹ N.D.C.C. § 57-40.3-02.

² N.D.C.C. § 57-40.3-12.

³ Id.

⁴ E.g., Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676, 681 (2005).

⁵ E.g., id. at 687 ("the doctrine of tribal sovereignty . . . has a 'significant geographical component.'") (citation omitted).

⁶ N.D.A.G. 91-F-13. See also N.D.A.C. § 81-05.1-01-05 ("Purchases of motor vehicles by Indians are subject to the motor vehicle excise tax for titling purposes, unless the

LETTER OPINION 2006-L-15

April 24, 2006

Page 2

the situation in which the seller is not located on the reservation. The transaction is nonetheless tax-exempt if transfer of the vehicle's title and transfer of its possession to the tribal member occur on that Indian's reservation.⁷ Conversely, if an Indian buys a car off the reservation and title and possession are transferred off the reservation, the tax applies.⁸

Your question pertains to this latter circumstance. You ask if DOT can require an auto dealer to collect the tax from an Indian purchaser if the transaction, including transfer of title and possession, occurs off the reservation. Neither the tax statutes nor the tax's implementing regulations impose a duty on a dealer to collect the tax.⁹ In fact, sections of the motor vehicle excise tax chapter imply that paying the tax to DOT is solely the purchaser's responsibility.¹⁰

My office spoke with a Tax Department employee responsible for administering the tax. The employee stated that he is unaware of any requirement that a dealer must collect the tax from an Indian or any other purchaser. My office also spoke with DOT. It too expresses the view that the purchaser, not the dealer, is responsible for the tax and that DOT cannot require dealers to collect it.¹¹

Based on these agency views and my review of the statutes, the answer to your question is that DOT cannot require auto dealers to collect the tax from Indian purchasers. The Legislature did not make dealers tax collectors.

There is, however, an important caveat to my opinion. It arises not because the Legislature has imposed a tax collection duty on dealers, but because statutes require that the tax be paid prior to licensing and registration, coupled with the dealer practice to assist customers with licensing and registration. A condition to registration requires that the motor vehicle excise tax be paid. The DOT "shall refuse registration . . . [w]hen any

purchase occurs on an Indian reservation by an enrolled member of the tribe or by the tribe.").

⁷ N.D.A.G. 92-F-12.

⁸ See Potawatomi Nation, 126 S. Ct. at 688 ("Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.") (citation omitted).

⁹ N.D.C.C. ch. 57-40.3; N.D.A.C. ch. 81-05.1-01.

¹⁰ N.D.C.C. §§ 57-40.3-05, 57-40.3-06, 57-40.3-07.

¹¹ The excise tax applies not only to motor vehicle sales but also to leases. N.D.C.C. § 57-40.3-02.1. Your question and this opinion, however, deal with sales, not leases.

LETTER OPINION 2006-L-15

April 24, 2006

Page 3

sales tax or motor vehicle excise tax, properly due, has not been paid.”¹² This requirement, which has some limited exceptions, is expressed in other provisions:

No title or license registration shall be issued by the director of the department of transportation for the ownership or operation of any motor vehicle to any applicant for title or license registration unless the tax imposed by this chapter shall be paid by the applicant to the director
13
....

Auto dealers often assist customers with registering newly purchased vehicles. Purchasers can immediately operate their vehicle on North Dakota roads if a dealer issues what is known as the “30-day certificate.” Section 39-04-17, N.D.C.C., states that “a notary public or an authorized agent of a licensed vehicle dealer” may prepare a certificate containing information about the vehicle and stating that an application for registration has been filed. The certificate is “prima facie evidence of compliance with [the] motor vehicle law . . . for . . . thirty days.”¹⁴ Auto dealers often issue a “30-day certificate” as a service to their customers. But this certificate should only be issued if the dealer has collected the motor vehicle excise tax and remitted it to DOT along with the registration application.¹⁵

In sum, dealers do not have a duty to collect the motor vehicle excise tax when they sell a vehicle. Even so, dealers often collect and remit the tax to DOT when assisting a customer in complying with the customer’s obligations under the motor vehicle laws. If dealers submit to DOT an application for registration, it will be approved only if payment of the excise tax accompanies the application. Collecting and submitting the tax under this circumstance applies to any customer not exempt from the tax, whether non-Indian or Indian.

Sincerely,

¹² N.D.C.C. § 39-04-05(6).

¹³ N.D.C.C. § 57-40.3-07. See also N.D.A.C. § 81-05.1-01-02(5) (“The motor vehicle excise tax must be paid to the . . . department of transportation’s motor vehicle division when application is made for registration plates or for a certificate of title for a motor vehicle. Registration plates and certificates of title will not be issued unless the tax is paid.”); N.D.C.C. § 39-05-20.3(6); N.D.A.C. § 52-07-01-01(2)(d).

¹⁴ N.D.C.C. § 39-04-17. Section 39-04-36(3), N.D.C.C., also contains provisions on 30-day temporary registration certificates.

¹⁵ See N.D.C.C. §§ 39-04-05(6), 39-05-20.3(6), 57-40.3-07, N.D.A.C. § 81-05.1-01-02(5).

LETTER OPINION 2006-L-15

April 24, 2006

Page 4

Wayne Stenehjem
Attorney General

cmc/pg

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.¹⁶

¹⁶ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).