

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 91-13

Date issued: September 20, 1991
Requested by: Heidi Heitkamp
North Dakota State Tax Commissioner

- QUESTIONS PRESENTED -

I.

Whether a motor vehicle is subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by the tribe or by an enrolled member of the tribe.

II.

Whether a motor vehicle is subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by an enrolled member of the tribe and used on North Dakota streets and highways outside of the reservation.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a motor vehicle is not subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by the tribe or by an enrolled member of the tribe.

II.

It is my further opinion that a motor vehicle is not subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by an enrolled member of the tribe and used on North Dakota streets and highways outside of the reservation, unless the North Dakota Legislative Assembly enacts a statutory provision which apportiones the tax based upon the amount of actual use outside of the reservation.

- ANALYSIS -

I.

North Dakota imposes "an excise tax at the rate of five percent of the purchase price of any

motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state." N.D.C.C. § 57-40.3-02. "Purchase price" is defined under N.D.C.C. § 57-40.3-01(4). The director of the department of transportation, acting as the agent of the tax commissioner, collects the tax and does not issue a title or license registration until the tax is paid or the motor vehicle is otherwise deemed tax exempt. N.D.C.C. §§ 57-40.3-01(6), 57-40.3-06, 57-40.3-07 and 57-40.3-12.

An earlier opinion of this office recognized that the motor vehicle excise tax has the characteristics of a sales tax. 1980 N.D. Op. Att'y Gen. 67, 69. This opinion concluded that the motor vehicle excise tax applies to an Indian tribe or its enrolled members "upon the purchase of, or application for title to, motor vehicles used both within and outside the Indian reservation boundaries" unless the Legislature or the courts require otherwise. *Id.* 67, 70.

The Supreme Court has limited state taxation on Indian reservations as follows:

"[I]n the special area of state taxation, absent accession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and McClanahan v. Arizona State Tax Comm'n . . . lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent."

Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 474, 475-76 (1976) (quoting Mescalero, 411 U.S. at 148). See also Montana v. Blackfoot Tribe of Indians, 471 U.S. 759, 764 (1985) ("Indian tribes and individuals generally are exempt from taxation within their own territory").

After Mescalero Apache Tribe v. Jones, 411 U.S. 151 (1973); McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973); Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 474 (1976); Washington v. Confederated Tribes of Colville, 447 U.S. 165 (1980) and White Eagle v. Dorgan, 209 N.W.2d 621 (N.D. 1973), neither the North Dakota Sales tax nor the North Dakota motor vehicle excise tax may be imposed when a motor vehicle is purchased on an Indian reservation by the tribe or by an enrolled member of the tribe, without Congressional consent. Congressional consent has not been given. It is therefore my opinion that a motor vehicle is not subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by the Tribe or by an enrolled member of the Tribe.

To the extent that this opinion conflicts with 1980 N.D. Op. Att'y Gen. 67, that opinion is overruled.

II.

In the Confederated Tribes case, supra, the Supreme Court rejected the State of Washington's argument that its annual excise tax on motor vehicles should be applicable to a motor vehicle owned by a tribal member if the motor vehicle is used both on and off the reservation because the tax is imposed for the privilege of using the motor vehicle in the State:

We do not think Moe and McClanahan can be this easily circumvented. While Washington may well be free to levy a tax on the use outside of the reservation of Indian-owned vehicles, it may not under that rubric accomplish what Moe held was prohibited. Had Washington tailored its tax to the amount of actual off-reservation use, or otherwise varied something more than mere nomenclature, this might be a different case. But it has not done so, and we decline to treat the case as if it had.

447 U.S. 163-164.

The North Dakota motor vehicle excise tax is imposed on "any motor vehicle purchased or acquired . . . for use on the streets and highways of this state." N.D.C.C. § 57-40.3-02. (Emphasis supplied.) Further, there is no statutory provision which apportions the tax based upon the amount of actual use outside of the reservation.

Because of the Supreme Court's decision in Confederated Tribes, supra, it is my opinion a motor vehicle is not subject to the North Dakota motor vehicle excise tax if it is purchased on an Indian reservation by an enrolled member of the tribe and used on North Dakota streets and highways outside of the reservation, unless the North Dakota Legislative Assembly enacts a statutory provision which apportions the tax based upon the amount of actual use outside of the reservation.

- 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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