

Bar Tel

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

EDWARD MONTGOMERY,	)	Docket 540	Page 272
	)		
Petitioner,	)		
	)		
v.	)		CLERK OF JUSTICE
	)		
STATE OF NEBRASKA	)	ORDER	AUG 08 1996
DEPARTMENT OF REVENUE, M.	)		
BERRI BALKA,	)		
	)		
Respondents.	)		

This is an appeal from a decision of the State Tax Commissioner, rendered on March 20, 1996, denying the petitioner's claim for a refund of sales/use tax. Pursuant to NEB. REV. STAT. § 77-27,127 (Reissue 1990), the appeal is brought under the Nebraska Administrative Procedure Act. NEB. REV. STAT. §§ 84-901 through -920 (Reissue 1994, as amended). Accordingly, review is conducted by the court, without a jury, de novo on the record of the State Tax Commissioner. NEB. REV. STAT. § 84-917(5)(a) (Reissue 1994).

**Statement of Facts**

On May 10, 1995, the petitioner, a resident of Nebraska, executed an "Application for the Certificate of Export Vehicle Registration for a Car or Motorcycle." On June 16, 1995, the petitioner received a bill of sale for a 1995 Volvo [the Volvo]. On June 27, 1995, the petitioner received an Export Vehicle Registration Certificate [the Certificate]. On his application, the petitioner stated that he intended to use the Volvo for one day, June 29, 1995. According to the information on the Nebraska Sales/Use Tax and Tire Fee Statement, the Volvo was brought to Nebraska on August 13, 1995. On September 1, 1995, the Volvo was transferred, as a gift, from the petitioner to his wife, with no sales tax paid on the transaction.

The Tax Commissioner informed the petitioner, by letter, that sales/use tax was

required on a gift transaction, unless the donor had already paid the tax, and requested that the petitioner submit proof of payment or pay the tax. The petitioner asserted that the Volvo was exempt from sales/use tax, under NEB. REV. STAT. § 77-2703(2)(g)(i) and (ii), and submitted to the Tax Commissioner the Export Vehicle Registration application and the Certificate. The Tax Commissioner sent the petitioner a second letter, stating that the Certificate was insufficient proof that the car was registered, titled and licensed in Sweden. This second letter also made reference to a telephone conversation between the Tax Commissioner's office and the petitioner, during which the petitioner asserted that he had to get the car licensed and insured before the dealer would give him the keys and that license and insurance fees were included in the purchase price. The bill of sale does not refer to any insurance or license fees. The Tax Commissioner did not accept the petitioner's position and requested him to pay the sales/use tax, which he did.

The petitioner then filed a claim for a refund of the sales/use tax paid on the Volvo, asserting that the Volvo was exempt from the tax under the previously mentioned statute. In response, the Tax Commissioner requested further proof that the Volvo fell under the statutory exemption. The petitioner provided no further proof. The Tax Commissioner then denied the petitioner's request for refund, for two reasons: (1) the petitioner failed to provide further proof that the Volvo was registered, titled and licensed in Sweden, and (2) the petitioner provided no proof that sales tax was actually paid when the car was purchased. This appeal followed.

#### **Discussion**

Insofar as applicable to this case, § 77-2703(2) (g)(i) and (ii) provide for an exemption from the Nebraska sales/use tax, if the petitioner shows the following:

- (1) that the Volvo was purchased in Sweden;
- (2) that he purchased the Volvo with the intent of using it for its intended purpose in Sweden;

- (3) that the Volvo was used for its intended purpose in Sweden; and
- (4) that, prior to being brought into Nebraska, the Volvo was licensed for operation on the highways of Sweden.

The record clearly shows that the Volvo was purchased in Sweden and that, on June 27, 1995, the petitioner was issued the Certificate, which allowed him to operate the Volvo in the European Economic Community, until either December 27, 1995, or June 30, 1996.

The respondents argue that the Certificate does not establish that the Volvo was licensed for operation on the highways of Sweden. The respondents' position is that the limited and/or temporary nature of the Certificate precludes it from satisfying the § 77-2703(2)(g)(ii) requirement. In this regard, in their brief, the respondents state: "... [T]he licensure requirement imposed under the statute relates to registration and licensure of a permanent nature, where a similar tax has been imposed, as opposed to the issuance of a temporary permit to operate a vehicle pending exportation of the vehicle."

As set forth in *Omaha Public Power Dist. v. Neb. Department of Revenue*, 248 Neb. 518, 522, 537 N.W.2d 312, \_\_\_\_ (1995), "... tax exemption provisions are strictly construed." Further, in *State v. Crowdell*, 234 Neb. 469, 473-373, 451 N.W.2d 469, \_\_\_\_ (1990), the Supreme Court stated that, "[w]hen statutory language is plain and unambiguous, no judicial interpretation is needed to ascertain the statute's meaning so that, in the absence of a statutory indication to the contrary, words in a statute will be given their ordinary meaning." (Citation omitted.)

The language of § 77-2703(2)(g)(ii) is plain on its face. It requires a showing that the Volvo was licensed for operation on the highways of Sweden, prior to being brought into Nebraska. The statute does not distinguish between permanent and temporary licensure. The Certificate issued to the petitioner allowed him to operate the Volvo on the highways of Sweden. The petitioner has established the conditions

set forth in paragraphs (1) and (4), *supra*.

As previously noted, the Tax Commissioner's denial of the petitioner's claim was based upon a finding that the petitioner failed to provide adequate proof that the Volvo was registered, licensed and titled in Sweden and a finding that the petitioner failed to provide proof that sales tax was paid when the Volvo was purchased. With respect to the former, for the reasons set forth above, the court finds that the Tax Commissioner's conclusion was in error. With respect to the latter, the court finds, likewise, that the Tax commissioner's conclusion was in error. There is no statutory requirement that, for the exemption to be applicable, the petitioner must establish that he paid sales/use taxes in Sweden.

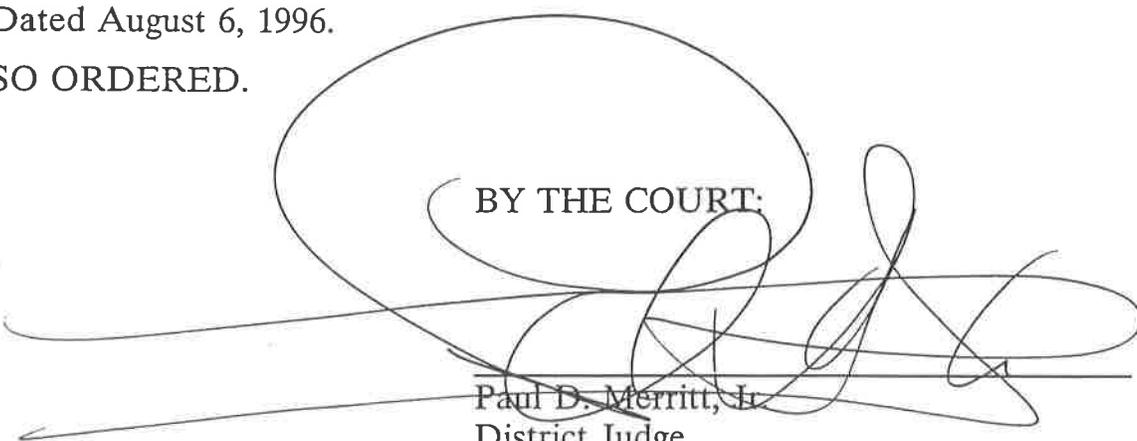
The record does not reveal that the Tax Commissioner addressed whether the Volvo was purchased by the petitioner, with the intent of using it for its intended purpose in Sweden, and whether it was actually used for its intended purpose in Sweden. Pursuant to NEB. REV. STAT. § 84-917(5)(b) (Reissue 1994), the court finds that this case should be, and hereby is, remanded to the Tax Commissioner to address the conditions set forth in paragraphs (2) and (3) herein.

A copy of this order is sent to counsel of record.

Dated August 6, 1996.

SO ORDERED.

BY THE COURT:



Paul D. Merritt, Jr.  
District Judge