

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

October 28, 1994

SUBJECT: Taxation and Revenue - Evidence of transfer of title within S.C. Code Ann. Section 12-37-2725 (Supp. 1993).

SYLLABUS: While it is not possible to identify all circumstances that may evidence a transfer of title under Section 12-37-2725, conclusive evidence is established when the auditor is presented with a certification from the Motor Vehicle Division of the Department of Revenue that a new Certificate of Title has been issued to a subsequent owner. Other evidence, such as presentation of a retained copy of the Certificate of Title showing the required signature of transfer, in the absence of fraud or collusion, is compelling evidence that title has transferred to another party. Other evidence may be examined, and it is the auditor's duty to establish reasonable means to determine that the vehicle has in fact been transferred to a subsequent owner.

TO: Honorable James G. Fickling  
Auditor, Barnwell County

From: Ray N. Stevens *RNS*  
Chief Deputy Attorney General

QUESTION: What degree of proof is needed by an auditor in ascertaining whether title has been transferred for purposes of Section 12-37-2725?

APPLICABLE LAW: S.C. Code Ann. Section 12-37-2725 (Supp. 1993).

DISCUSSION:

Section 12-37-2725, as amended by House Bill 3907, Section 32, effective August 31, 1994, states, in pertinent part, the following:

When the title to a licensed vehicle is transferred, or the owner of the vehicle becomes a legal resident of another state and registers the vehicle in the

new state of residence, the license plate and registration certificate issued the transferor may be returned for cancellation. . . . The auditor, upon receipt of the license plate, registration certificate, and the request for cancellation, shall order and the treasurer shall issue a credit or refund of property taxes paid by the transferor on the vehicle. . . .

The section is operable only when the title to a licensed vehicle is transferred, or an owner becomes a legal resident of another state. The inquiry here concerns that portion of the statute that deals with the transfer of title. The issue is what evidence is necessary to establish the statutory requirement of having "the title to a licensed vehicle . . . transferred."

It is always the aim of interpretation to construe a statute so as to carry out the legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). In the absence of any factor to the contrary, it is presumed that the General Assembly intended the words in a statute to be given their plain and ordinary meaning and are to be applied literally. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948).

"Title," in its general and ordinary sense, means that which constitutes evidence of the legal right to control and dispose of property. American Heritage Dictionary. The word "transferred" means to have made over to another the legal title to something. American Heritage Dictionary. Thus, there must be evidence presented which shows the party has taken sufficient steps to remove the right to control and dispose of the property, and to place such right in the hands of another party.

Since there are no specific directions on what methodology the auditor must use to establish that a title transfer has occurred, the auditor may devise a reasonable procedure to accomplish the task.

. . . statutory direction to perform official duties, unaccompanied by definite directions as to how the power is to be exercised, implies the right and duty on the part of individual officials to employ the means and methods necessary to comply with statutory requirements. . . .

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63A Am.Jur.2d, Public Officers and Employees, Section 303.

How extensive the evidence of the transfer of title must be in order to establish that title has transferred is a matter of judgment to be exercised by the auditor, and is a decision that must be determined on a case by case basis. For example, conclusive evidence that title has been transferred can be established by presenting to the auditor a certification from the Motor Vehicle Division of the Department of Revenue that a new Certificate of Title has been issued either in South Carolina or some other state. Additionally, retention of a copy of the Certificate of Title showing the required signature of transfer on the Certificate of Title, in the absence of fraud or collusion, is compelling evidence that title has transferred to another party.

Other evidence should also be considered. In instances where the vehicle has been sold, significant evidence of a transfer of title may be established by the presentation to the auditor of a copy of the bill of sale showing the sale of the vehicle in question. Further, the transfer of title on a vehicle owned by a decedent or the decedent's estate may be evidenced by copies of documents which have been filed with the probate court showing the distribution of the vehicle to a beneficiary or heir of the estate. For a vehicle that is destroyed and for which the terms of the statute are otherwise met, evidence of a transfer of title to an insurance company may be shown by the presentation to the auditor of a statement from the insurance company identifying the vehicle transferred to the insurance company.

CONCLUSION:

While it is not possible to identify all circumstances that may evidence a transfer of title under Section 12-37-2725, conclusive evidence is established when the auditor is presented with a certification from the Motor Vehicle Division of the Department of Revenue that a new Certificate of Title has been issued to a subsequent owner. Other evidence, such as presentation of a retained copy of the Certificate of Title showing the required signature of transfer, in the absence of fraud or collusion, is compelling evidence that title has transferred to another party. Other evidence may be examined, and it is the auditor's duty to establish reasonable means to determine that the vehicle has in fact been transferred to a subsequent owner.

RNS:wcg