

15-498

TAX TYPE: MISCELLANEOUS TAX

TAX YEAR: 2015

DATE SIGNED: 4-18-2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

---

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>DIVISION OF MOTOR VEHICLES OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 15-498</p> <p>Tax Type: Miscellaneous/Title Tax Year: 2015</p> <p>Judge: Marshall</p>
--	--

**Presiding:**

Robert Pero, Commissioner

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT-1, Miscellaneous Services Supervisor, Division of Motor  
Vehicles

RESPONDENT-2, Account Supervisor, Division of Motor Vehicles

RESPONDENT-3, Administration, Division of Motor Vehicles

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 3, 2016, in accordance with Utah Code Ann. §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the Respondent's ("Division") denial to issue a new VIN or salvage/reconstructed title for a MAKE, YEAR and MODLE OF VEHICLE.
2. On or about December 4, 2014, Petitioner purchased the VEHICLE from DEALERSHIP for \$\$\$\$\$. (Exhibit R-1, pp. 16-18).
3. Petitioner signed a Motor Vehicle Contract Of Sale with the following disclosure (Exhibit R-1, pp. 16-17):

**BUYER UNDERSTANDS THIS CAR HAS NO TITLE + IS SOLD WITH  
BILL OF SALE – PARTS ONLY & CAN NOT BE TITLED OR LICENSED &  
REGISTERED**

4. The Petitioner signed a form TC-814 Notice of Salvage Certificate or Branded Title on December 4, 2014. The words “Salvage Certificate or Branded Title” were crossed out and “Bill of Sale – Parts Only” was written in their place. (Exhibit R-1, p. 18).
5. The seller of the VEHICLE acquired it from AUCTION in STATE-1 on October 15, 2013. AUCTION issued a “Bill of Sale – Parts Only” to DEALERSHIP. (Exhibit R-1, p. 15).
6. On or about January 28, 2015, the Petitioner filed a Vehicle Application for Utah Title. (Exhibit R-1, p. 12).
7. Petitioner submitted an Ownership Statement with the Vehicle Application for Utah Title, on which he explained that the VEHICLE was a “parts only” car from STATE-1, and the State of STATE-1 does not issue a title on a “parts only” vehicle. He further explained that he had “combined the good parts of this car with other parts purchased from parts houses.” (Exhibit R-1, p. 13).
8. The Petitioner provided a Certificate of Inspection, verifying the VIN for the VEHICLE; a certificate showing the VEHICLE had passed both safety and emissions inspections; several receipts for repairs and parts; and photographs of the vehicle. (Exhibit R-1, p. 14 and pp. 19-32).
9. The Petitioner testified that the VEHICLE had hail damage, but because of STATE-1 laws, it could not have a salvage or branded title. He argued that the VEHICLE was incorrectly branded as “parts only” by STATE-1.
10. Petitioner testified that a former Assistant Director for the Division told him that he would be able to get a new VIN for the vehicle, and that the VIN was the only “part” that could not be used for a salvage/rebuilt title.
11. Petitioner testified that the former Assistant Director told him that a “special inspector” would inspect the vehicle and allow him to get a new title. He had an officer from the Motor Vehicle Enforcement Division (“MVED”) inspect the vehicle, and provided a Certificate of Inspection. (Exhibit R-1, p. 33).
12. The Certificate of Inspection signed by the MVED officer only verified the VIN of the VEHICLE. (Exhibit R-1, p. 33).
13. It is the Petitioner’s position that the Non-Repairable title was erroneous, and the Division should issue either a “salvage” title or a new VIN for the vehicle. He argued that failing to do so is a violation of his Constitutional rights, specifically Article I, Sections 19 and 23.

14. It is the Division's position that the "parts only" bill of sale from STATE-1 is the equivalent of an "non-repairable" title in the State of Utah. The Division issued a Non-Repairable title for the VEHICLE on or about February 24, 2015. (Exhibit R-1, p. 2).
15. RESPONDENT-1 testified that the title status of the vehicle in STATE-1 was "junk" with a "parts-only" designation.
16. RESPONDENT-1 issued a letter to the Petitioner on March 10, 2015 explaining why the Division would not issue a new VIN for the VEHICLE. (Exhibit R-1, p. 2).
17. RESPONDENT-1 testified that various parts of a vehicle deemed "parts only" could be used to rebuild a damaged vehicle, but that a "parts only" vehicle could not be put on the road again.
18. RESPONDENT-1 testified that the Division does not know why a certain vehicle is deemed parts only, but that the Division honors the classification from other states to prevent "title washing."

#### APPLICABLE LAW

Utah Code Ann. §41-1a-501 requires a certificate of title, as follows:

Unless exempted, each owner of a motor vehicle, vessel, outboard motor, trailer, semitrailer, manufactured home, mobile home, or off-highway vehicle shall apply to the division for a certificate of title on forms furnished by the division as evidence of ownership.

The following definitions, set forth in Utah Code Ann. §41-1a-1001, are relevant to these proceedings:

- (4) "Nonrepairable certificate" means a certificate of ownership issued for a nonrepairable vehicle.
- (5) "Nonrepairable vehicle" means a vehicle of a type otherwise subject to registration that:
  - (a) has no resale value except as a source of parts or scrap metal or that the owner irreversibly designates as a source of parts or scrap metal for destruction;
  - (b) (i) has little or no resale value other than its worth as a source of a vehicle identification number that could be used illegally; and  
(ii) (A) has been substantially stripped as a result of theft; or  
(B) is missing all of the bolt-on sheet metal body panels, all of the doors and hatches, substantially all of the interior components, and substantially all of the grill and light assemblies ; or
  - (c) is a substantially burned vehicle that:
    - (i) has burned to the extent that there are no more usable or repairable body or interior components, tires and wheels, or drive train components; or
    - (ii) the owner irreversibly designates for destruction or as having little or no resale value other than its worth as a source of scrap metal or as a source of a vehicle identification number that could be used illegally.
- (7) (a) "Salvage certificate" means a certificate of ownership issued for a salvage vehicle before a new certificate of title is issued for the vehicle.  
(b) A salvage certificate is not valid for registration purposes.
- (8) "Salvage vehicle" means any vehicle:
  - (a) damaged by collision, flood, or other occurrence to the extent that the cost of

- repairing the vehicle for safe operation exceeds its fair market value; or
- (b) that has been declared a salvage vehicle by an insurer or other state or jurisdiction, but is not precluded from further registration and titling.

A certificate of title may be issued for a salvage vehicle under Utah Code Ann. §41-1a-1004, below, in part:

- (1) If the division is able to ascertain the fact, at the time application is made for initial registration or transfer of ownership of a salvage vehicle, the title shall be branded:
  - (a) rebuilt and restored to operation;
  - (b) in a flood and restored to operation; or
  - (c) not restored to operation.
- (2) (a) (i) Except as provided in Subsection (2)(b), before the sale of a vehicle for which a salvage certificate or branded title has been issued, the seller shall provide the prospective purchaser with written notification that a salvage certificate or a branded title has been issued for the vehicle...

Administrative Rule R873-22M-22 provides guidance on salvage certificates and branded title, as follows, in part:

- A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.
- B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:
  - 1. salvage vehicle;
  - 2. dismantled vehicle;
  - 3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;
  - 4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and
  - 5. manufacturer nonconforming vehicle.

Administrative Rule R873-22M-25 provides additional guidance on salvage certificates, below in pertinent part:

- A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

Utah Code Ann. §41-1a-1005.5 addresses vehicles which have been declared "nonrepairable" by an insurance company, as follows, in pertinent part:

- (1) (a) (i) Except as provided in Subsection (1)(a)(iii) or (iv), if an insurance company declares a vehicle as a nonrepairable vehicle and takes possession of the vehicle for disposal, the insurance company shall, within 10 days from the receipt of the title with any lien release, surrender to the division the outstanding certificate of title, properly endorsed, or other evidence of ownership acceptable to the division.

- (ii) The division shall then issue a nonrepairable certificate in the insurance company's name...
- (2) Any person, insurance company, or dealer licensed under Chapter 3, Part 2, Licensing, who fails to obtain a nonrepairable certificate as required in this section or who sells a nonrepairable vehicle without first obtaining a nonrepairable certificate from the division or a branded title or non-repairable vehicle certificate from another jurisdiction is guilty of a class B misdemeanor.
- (3) This section does not apply to a vehicle that has an undamaged, wholesale value of \$2,000 or less.
- (4) Upon sale or disposal of a nonrepairable vehicle, the seller shall deliver to the purchaser the properly endorsed nonrepairable certificate within 48 hours as required in Section 41-1a-1310...
- (6) It is unlawful for a person to repair, reconstruct, or restore a nonrepairable vehicle.
- (7) A non-repairable vehicle may be sold to a crusher or as provided in Subsection 41-3-201(3).

The Division can issue a state assigned identification number ("VIN") under Utah Code Ann. §41-1a-801, as follows, in part:

- (1) The owner of a vehicle required to be registered under this chapter, the identification number of which has been altered, removed, defaced, or has not been placed on it shall make application in the form prescribed by the division for a state assigned identification number,
- (2) The owner shall furnish information that will satisfy the division that he is the owner of the vehicle and furnish information to identify the vehicle with the registration of the vehicle for the current year, at which time the division shall assign a state identification number for the vehicle.

Administrative Rule R873-22M-15 provides additional guidance on assigned and replacement vehicle identification numbers, set forth below, in relevant part:

- A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.
- B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2 to determine ownership.
- C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.
  - 1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.
  - 2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN....

#### CONCLUSIONS OF LAW

- A. The VEHICLE was not eligible for a Salvage Certificate in the State of Utah. A Certificate of Title for a salvage vehicle may be issued under Utah Code Ann. §41-1a-1004. Administrative

Rule R873-22M-25 provides that the Division shall brand a vehicle title if “evidence exists that the vehicle is a salvage vehicle.” The Petitioner has not provided evidence that the VEHICLE is a salvage vehicle. Utah Code Ann. §41-1a-1001(8) defines “salvage vehicle” as a vehicle that has been damaged to the extent that the cost of repairing the vehicle for safe operation exceeds the fair market value, or has been declared a salvage vehicle by an insurer or other state or jurisdiction. Further, Rule R873-22M-22 provides that if a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued. The VEHICLE did not have an out-of-state title, it was sold only with a bill of sale designating the vehicle as “parts only.” Presumably, this designation was made by the insurer and/or the State of STATE-1. The equivalent designation in Utah is “nonrepairable,” defined in Utah Code Ann. §41-1a-1001(5). Petitioner was aware when he purchased the vehicle that it was “parts only” and could not be titled. The Petitioner has not referenced, nor is the Commission aware of, a statutory basis to grant the Petitioner a salvage title for the VEHICLE under the circumstances presented.

- B. The VEHICLE is not eligible for a new VIN. Under Utah Code Ann. §41-1a-801, the Division can issue a new VIN if the identification number of a vehicle has been “altered, removed, defaced, or has not been placed on it [the vehicle].” The statute also provides that the owner should make application for a new VIN on the form provided by the division. There is nothing in the record indicating that the Petitioner has filed Form TC-162, Application for Utah Motor Vehicle Identification Number. Further, there is nothing in the record that would indicate the VIN of the VEHICLE has been altered, removed, defaced, or not placed on the vehicle. In fact, the Petitioner submitted two different Certificates of Inspection verifying the VIN for the VEHICLE. Form TC-162 includes “reconstructed vehicle” as a reason for requesting a new VIN. This may have been the method by which the Petitioner claims a former Assistant Director of the Division told him he would be able to title and register the VEHICLE. Utah Code Ann. §41-1a-102(47) defines “reconstructed vehicle” as a vehicle that is “materially altered from its original construction by the removal, addition, or substitution of essential parts...” The VEHICLE was not been “materially altered,” based on the Petitioner’s testimony. Further, because the VEHICLE is nonrepairable, it is unlawful to repair, reconstruct, or restore it under Utah Code Ann. §41-1a-1005.5(6).
- C. The Commission does not have jurisdiction to address the Petitioner’s constitutional arguments. The Petitioner argued that failure to issue a salvage title or a new VIN for the VEHICLE was a violation of his Constitutional rights. The Court in *State Tax Comm’n v. Wright*, 596 P.2d 634 (Utah 1979) wrote, “[a]lthough the Tax Commission must of necessity interpret the taxing statutes and make determinations as to their applicability, it has been stated that ‘it is not for the

tax commission to determine questions of legality or constitutionality of legislative enactments,”  
citing *Shea v. State Tax Comm'n*, 120 P.2d 274, 275 (1941).

Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer’s request for a new VIN, or in the alternative, the issuance of a branded title for the VEHICLE. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.