

MV 18-01

Tax Type: Motor Vehicle Use Tax

Tax Issue: Private Vehicle Use Tax Business Reorg/Family Sale

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.	XX-ST-XXX
OF THE STATE OF ILLINOIS)	Account No.	XXXXX-XXXXX
v.)	NTL No.	
JOE SMITH,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: JOE SMITH appeared *pro se*; Seth Schrifman, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves the Illinois Department of Revenue's (Department) issuance of a Notice of Tax Liability (NTL) to JOE SMITH (SMITH or Taxpayer), regarding his acquisition of a motor vehicle in 2013 from a person who was not a retailer. The issue involves the correct amount of Illinois vehicle use tax (VUT) due on that transaction, pursuant to 625 ILCS 5/3-1001.

The hearing was held at the Department's offices in Chicago. Taxpayer offered documents into evidence, and he testified. After considering the documentary evidence and testimony offered at hearing, I conclude that Taxpayer has not rebutted the Department's determination that he owes VUT in the amount stated on the NTL.

Findings of Fact:

1. On or about June 8, 2011, a form bearing the letterhead of SELLER (SELLER), and titled, Cash Retail Buyers Order and Invoice (Invoice), was prepared regarding SELLER'S retail sale of a used 2007 Mercedes-Benz motor vehicle, with a vehicle identification number (VIN) of XXXXXXXXXXXXXXXXXXXX (hereafter Vehicle). Taxpayer Ex. 1, p. 4 (copy of invoice).
2. On the form, the Vehicle's buyer was identified as MARY JONES (JONES), of Deerfield, IL. Taxpayer Ex. 1, p. 4.
3. On or about Aug 2, 2011, a form RUT-25, Vehicle Use Tax Transaction Return, was signed and filed with the Department to report JONES's purchase of the Vehicle from SELLER for use in Illinois. Taxpayer Ex. 1, p. 9 (copy of JONES's return). JONES paid Illinois use tax in the amount of \$X,XXX.00 when that return was filed. *Id.*, pp. 9-10. JONES was the only owner identified on that return. *Id.*, p. 9.
4. On or about the date JONES filed the form RUT-25 with the Department, she also signed, and filed with the Illinois Secretary of State, an application for a Certificate of Title for the Vehicle. Department Ex. 1, p. 9 (copy of JONES's title application). JONES was the only owner identified on that application, and no lienholder of the Vehicle was identified. *Id.*
5. The Illinois Secretary of State thereafter issued a Certificate of Title to the Vehicle to JONES (JONES Title). Department Ex. 1, p. 8 (copy of front of JONES Title).
6. On or about December 29, 2013, JONES signed and dated the bottom front of the JONES Title, in the section bearing the heading, Assignment of Title, to acknowledge that she had transferred title to the Vehicle to Taxpayer on that date.

7. On December 30, 2013, Taxpayer prepared, signed and filed a form RUT-50 regarding his acquisition of the Vehicle from JONES. Department Ex. 1, p. 6 (copy of Taxpayer's return).
8. When Taxpayer filed that return, he paid VUT in the amount of \$XX.00. Department Ex. 1, p. 6.
9. At or about the date Taxpayer filed the form RUT-25 with the Department, he also prepared, signed, and filed with the Illinois Secretary of State, an application for a Certificate of Title for the Vehicle. Department Ex. 1, p. 7 (copy of Taxpayer's title application). On that application, Taxpayer identified JONES as the seller of the Vehicle. *Id.*
10. After reviewing Taxpayer's return, the Department issued an NTL to Taxpayer to assess VUT in the amount of \$X,XXX (and crediting Taxpayer's prior payment of \$XX.00), a late-payment penalty in the amount of \$XXX.00, plus statutory interest. Department Ex. 1, p. 2 (copy of NTL).

Conclusions of Law:

Illinois' Vehicle Use Tax Act (VUTA) is codified as part of the Illinois Vehicle Code (the Code) and it imposes a tax on "... the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase" 625 ILCS 5/3-1001. The VUTA is the first of three tax statutes the General Assembly enacted to impose a tax on the privilege of using, in Illinois, certain types of tangible personal property that are acquired in transactions that would not constitute a sale at retail, as that phrase is defined within the Retailers' Occupation Tax Act (ROTA)

and the Use Tax Act (UTA). *Id.*; 35 ILCS 105/2; 35 ILCS 120/1; *see also* Greenwalt v. Department of Revenue, 198 Ill. App. 3d 129, 555 N.E.2d 775 (2d Dist. 1990) (VUTA upheld as constitutional). The other two tax acts are the Watercraft Use Tax Act (WUTA) and the Aircraft Use Tax Act (AUTA). 35 ILCS 157/10-1 *et seq.* (AUTA effective June 20, 2003) *and* 35 ILCS 158/15-1 *et seq.* (WUTA effective July 30, 2004). Each of these Acts is designed to impose a tax upon each person who acquires title to or ownership of aircraft, motor vehicles, and watercraft, for use in Illinois, each and every time such items are transferred from one owner or titleholder to another, unless one of the expressed statutory exceptions or exemptions applied.

The Illinois legislature granted the Department the power to administer and enforce the provisions of the VUTA. 625 ILCS 5/3-1003. It also granted to the Department, and to persons subject to the VUTA:

... the same rights, remedies, privileges, immunities, powers and duties, and [they shall] be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act, as now or hereafter amended, which are not inconsistent with this Article, as fully as if provisions contained in those Sections of the Use Tax Act were set forth in this Article.

625 ILCS 5/3-1003.

Section 12 of the UTA incorporates several sections of the complementary ROTA, including ROTA § 4. 35 ILCS 105/12. Section 4 of the ROTA provides, among other things,

As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information. *** In the event that the return is corrected for any reason other than a mathematical error, any return so corrected by the Department shall be prima facie correct

and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.

35 ILCS 120/4.

At hearing, the Department offered into evidence a copy of the NTL it issued to Taxpayer, under the certificate of the Director. Department Ex. 1. Pursuant to § 12 of the UTA, and § 3-1003 of the Code, that NTL constitutes prima facie evidence of the correctness of the Department's determination of tax due. 35 ILCS 105/12; 35 ILCS 120/4; 625 ILCS 5/3-1003. The Department's prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968). A taxpayer cannot overcome the presumption with testimony alone, or by merely denying the accuracy of the Department's assessment. *Id.*; PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002) (agreeing that "[taxpayer] had the burden of overcoming [the Department's] ... prima facie case through documentary evidence, meaning books and records, and not mere testimony."). Instead, a taxpayer must present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Copilevitz, 41 Ill. 2d at 157, 242 N.E.2d at 207; PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48.

The NTL shows that the Department assessed tax in the amount of \$X,XXX.00, and gave credit to Taxpayer for the \$XX.00 he paid when he filed the RUT-50. Department Ex. 1, p. 2. That tax amount was based on the schedule set forth in the VUTA, which provides as follows:

Except as hereinafter provided, beginning January 1, 1988, the rate of tax shall be as follows for transactions in which the selling price of the motor vehicle is \$15,000 or more:

Selling Price	Applicable Tax
\$15,000 - \$19,999	\$ 750
\$20,000 - \$24,999	\$1,000
\$25,000 - \$29,999	\$1,250
\$30,000 and over	\$1,500

625 ILCS 5/3-1001.

Taxpayer, however, claims that the Department’s use of the schedule quoted above, to determine his VUT liability, was improper. Instead, Taxpayer argues that the correct amount of tax due should be \$15.00, pursuant to the following section of the VUTA:

For the following transactions, the tax rate shall be \$15 for each motor vehicle acquired in such transaction:

(iii) when a motor vehicle which has once been subjected to the Illinois retailers' occupation tax or use tax is transferred in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business wherein the beneficial ownership is not changed.

625 ILCS 5/3-1001. Taxpayer argues that JONES’s transfer of the Vehicle to him was a transfer in connection with the liquidation of an unincorporated business regarding which he maintained beneficial ownership. Tr. pp. 21-22.

The text of the statutory exception Taxpayer relies on provides one of four statutory exceptions to the two schedules which are generally required to be used when measuring the tax due on the privilege of using, in Illinois, “any motor vehicle ... acquired by gift, transfer, or purchase” 625 ILCS 5/3-1001. Of the three exceptions set forth in romanettes, each provides for a reduced amount of tax for a particular type of

transfer of the ownership of a motor vehicle. The last exception sets a rate of \$25.00 for any transfer of ownership of “a motorcycle, motor driven cycle or moped.” *Id.* Since the exceptions to the VUTA’s more generally applicable tax schedules provide for reduced tax rates to the transfers described, they are appropriately treated as exemptions, regarding which a taxpayer claiming entitlement bears the burdens of production and persuasion. *E.g. Balla v. Department of Revenue*, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981) (“... when a taxpayer claims that he is exempt from a particular tax, or where he seeks to take advantage of deductions or credits allowed by statute, the burden of proof is on the taxpayer.”).

The plain text of the exception at issue here has three parts. First, it applies when a vehicle “which has once been subjected to the Illinois retailers' occupation tax or use tax is transferred” *Id.* Second, the exception applies where such a vehicle is “transferred in connection with the organization, reorganization, dissolution or partial liquidation of an incorporated or unincorporated business” Finally, the exception applies to vehicles transferred by “an incorporated or unincorporated business” to another person “wherein the beneficial ownership is not changed.” Regarding this last part, the link between the phrases “beneficial ownership” and “is not changed” refers, I respectfully submit, to the beneficial ownership of both the incorporated or unincorporated business which initially owned the vehicle, and which had previously paid Illinois tax regarding its use of the vehicle in Illinois, and to the beneficial ownership of the person which next takes title to the transferred vehicle.

Regarding the first part of this statutory exception, Illinois law is clear that the only persons who are subject to Illinois use tax are persons who exercise rights and/or

powers over tangible personal property purchased, at retail, for use in Illinois, incident to their ownership of such property. Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305, 309-10, 347 N.E.2d 729, 731 (1976) (“only the owner of property can be a user within the meaning of the Act.”). Thus, for purposes of this exception, if an incorporated or unincorporated business was not the owner of a vehicle purchased, at retail, for use in Illinois, such a business would not have been subjected to Illinois use tax regarding that vehicle. In a nutshell, for this exception to apply, an incorporated or unincorporated business must have been the person which initially owned the vehicle, and which paid Illinois tax regarding its use of the vehicle, before the transfer occurs. 625 ILCS 5/3-1001.

After considering the plain text of the statutory exception, I now address the evidence Taxpayer offered to support his argument that JONES’ transfer of the Vehicle to him constituted a transfer covered by the pertinent exception. The evidence consists primarily of his own testimony, and the affidavit of MIKE SMITH (MIKE), whom Taxpayer identified, at hearing, as his son. Tr. p. 14. I start with the affidavit, which provides as follows:

I, the undersigned am and was at all times described below was, a resident of the State of Illinois. I have personal knowledge of the facts indicated below, and, if called as a witness, could testify competently thereto:

1. On or about June 16, 011, I travelled to Carrolton, Texas, for the purpose of purchasing an automobile, namely a 2007 Mercedes-Benz, Serial number XXXXXXXXXXXXXXXXXXXX (the “Mercedes”).
2. On or about June 16, 2011, I caused a bill of sale for such automobile to be issued in the name MARY JONES, ... Deerfield Illinois 60015.
3. With the permission of MARY JONES, I signed her name to such bill of sale.
4. To my knowledge and belief, attached is a true and correct copy of

such bill of sale, captioned as “Cash Retail Buyer’s Order and Invoice.”

5. Notwithstanding the foregoing, all the funds used to purchase the Mercedes were provided by JOE SMITH.
6. The Mercedes was purchased in this manner because (a) the car was to be taken by me to Poland for resale, (b) by having ownership in the name of MARY JONES, a citizen of Poland, it was believed that a resale would not be subject to vehicle tax in Poland, thereby making it easier to resale. (*sic*)
7. I transported the Mercedes to Poland, used it in Poland, and offered [it] for sale in Poland.
8. Because I was unable to sell the Mercedes in Poland, I brought it back to the United States in 2013.

Under penalties of perjury as provided under Illinois law, the undersigned certifies that the statements set forth in this instrument are true and correct.

Taxpayer Ex. 1, p. 6.

In addition to this affidavit, Taxpayer was asked about the evidence he had to show that, when JONES took title to the Vehicle, she was actually conducting a business regarding which Taxpayer held a beneficial interest. *See* Tr. p. 19. Taxpayer responded that he and JONES had an arrangement to try to make money on the Vehicle through the exemption JONES had from Polish tax, and that if it didn’t work out he would get the car back. Tr. p. 21. He said that JONES held title to the Vehicle as a nominee, and that he did not know why that arrangement could not be treated the same as any other unincorporated business, under the statute. *Id.* Taxpayer also noted that the statute did not define the word business. Tr. p. 21. He reasoned that he did not think he had to have a name for the joint venture he said he and JONES had. *Id.* He also referred to the definition of a partnership, which he said was any venture conducted for profit, and said that that was the business he and JONES conducted. *Id.*

As I understood Taxpayer’s testimony, the unincorporated business venture

Taxpayer said he and JONES carried out was predicated upon their agreement to have JONES misrepresent, to the Illinois Secretary of State, the identity of the true owner of the Vehicle on the application for the title certificate for the Vehicle. Thereafter, Ira's affidavit suggests that he repeated JONES's original misrepresentation or concealment of the Vehicle's true owner, to the United States Department of Homeland Security, Customs And Border Protection,¹ when the Vehicle was exported from the United States, and then again, to the nation of Poland, upon the Vehicle's importation there. Taxpayer Ex. 1, p. 6; Tr. p. 22 ("this was a business arrangement where we titled the car in Mrs. JONES's name and I don't understand, to me that's a business."). Based on both Taxpayer's testimony and MIKE's affidavit, the profit sought to be derived by the unnamed, unincorporated business was to permit MIKE to avoid a tax, imposed by Poland on sales of vehicles imported by an owner who is not a citizen of Poland, when MIKE attempted to sell the Vehicle while he was in Poland. Taxpayer Ex. 1, p. 6; Tr. p. 21.

On the question of who owned the Vehicle from the date SELLER sold it to the date JONES assigned the Vehicle's title to Taxpayer, I give no weight to Taxpayer's testimony that the Vehicle's real owner was an unnamed, unincorporated business being conducted by him and JONES. "A certificate of title issued by the Secretary of State is prima facie evidence of the facts appearing on it." 625 ILCS 5/3-107(c). I note that, in Hall v. Country Casualty Ins. Co., 204 Ill. App. 3d 765, 780, 562 N.E.2d 640, 650 (2d Dist. 1990), the court held that, "[a] certificate of title is evidence of title, but it is not

¹ I take note that exportation of used motor vehicles from the United States requires, among other things, the exporters' timely tender, to the Customs port of exportation office, of certified copies of the vehicle title, for vehicles titled within the United States. 19 U.S.C. § 1646c;

conclusive and one can own an automobile though the certificate of title is in the name of another.” In Dan Pilson Auto Center, Inc. v. DeMarco, 156 Ill. App. 3d 617, 509 N.E.2d 159 (4th Dist. 1987), moreover, the court noted that, “it is possible that one can own an automobile even though the certificate of title is in the name of another.”

But here, Taxpayer offered no documentary evidence which persuaded me that it was more likely than not that a particular, unincorporated business even existed at the time JONES filed an application for an Illinois title for the Vehicle, let alone that such a business was the true owner of the Vehicle. Taxpayer concedes, moreover, that the joint venture he says existed between him and JONES had no name. Thus, even if I were inclined to believe Taxpayer’s testimony — and I am not so inclined — there is not even a name for me to attach to the business Taxpayer wants me to conclude was the real owner of the Vehicle, instead of its actual title holder.

The best evidence of the Vehicle’s owner from June 2011 through December 29, 2013 consists of the documents of title to that Vehicle. “Illinois law defines a vehicle ‘owner’ as ‘a person who holds legal documents of ownership of a vehicle.’ ” Nudi Auto RV & Boat Sales, Inc. v. John Deere Ins. Co., 328 Ill. App. 3d 523, 535, 765 N.E.2d 1163, 1172 (1st Dist., 2002) (*quoting* 625 ILCS 5/3-100). On the title application JONES signed and filed with the Illinois Secretary of State, she did not report that she was holding, or intended to hold, title to the Vehicle as a nominee — of Taxpayer, or of any unincorporated business. *Compare* Department Ex. 1, p. 9 *with* Tr. p. 21. She did not notify the Secretary of State that an unincorporated or incorporated business owned the Vehicle. Department Ex. 1, p. 9. She identified herself, and only herself, as the Vehicle’s

19 CFR 192.2(a)-(b)(1)(i); *see also* <https://www.cbp.gov/trade/basic-import-export/export-docs/motor-vehicle>. (Customs and Border Protection’s website) (last viewed August 8, 2017).

owner. *Id.*

Moreover, Taxpayer, himself, signed and filed an application for a certificate of title with the Illinois Secretary of State, on which he identified JONES as the seller of the Vehicle. Department Ex. 1, p. 7. He did not make any representation, on that sworn application, that the real seller of the Vehicle was an unincorporated business or partnership that he and JONES conducted. *Id.* Generally, any statement made by a party or on his behalf which is inconsistent with his position in litigation may be introduced into evidence against him. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379, 519 N.E.2d 1010, 1014 (1st Dist. 1988) *aff'd* 131 Ill. 2d 541 (1989). Here, Taxpayer's own sworn statements, on the application for title and on the RUT-50, are inconsistent with his claim, at hearing, that the Vehicle was transferred to him by a person other than JONES. Department Ex. 1, pp. 6-7. On the question of the Vehicle's ownership, prior to December 29, 2013, Taxpayer's own prior, sworn statements constitute substantive evidence that JONES was the Vehicle's owner.

The last reason why I give no weight to Taxpayer's testimony that, prior to December 29, 2013, the Vehicle's real owner was an unnamed, unincorporated business being conducted by him and JONES, is that the business Taxpayer described was premised upon a tacit agreement that one of the two joint venturers would make knowing, material misstatements of fact on an application for an Illinois certificate of title, regarding the actual owner of the Vehicle. 625 ILCS 5/4-105(a)(5). That is not a valid business purpose under Illinois law; it is a felony. 625 ILCS 5/4-105(a)-(b).

Section 4-105 of the IVC, provides, in pertinent part:

- Sec. 4-105. Offenses relating to disposition of titles and registration.
(a) It is a violation of this Chapter for:

5. a person to use a false or fictitious name or address ..., or make a material false statement, or fail to disclose a security interest, or conceal any other material fact on any application for any ... certificate of title, ... registration card, license plate, temporary registration permit, or registration sticker;

(b) Sentence: A person convicted of a violation of this Section shall be guilty of a Class 2 felony.

625 ILCS 5/4-105(a)(5); People v. Delay, 70 Ill. App. 3d 712, 714, 388 N.E.2d 1316, 1318 (1979) (“The sole issue on appeal is whether criminal intent or some other mental state is a requisite element of the offense of using a false name on a vehicle registration or title application. *** “We conclude ... that section 4-105 of the Vehicle Code does indicate a clear legislative intent to impose absolute liability.”); *see also* 47 A.L.R. 1103 (“As construed by the courts, the registration statutes requiring all cars operating upon the highways of the state to be registered in the name of ‘the owner’ are for the purpose of identification in order that travelers upon the highway may, in case of accident, be able to fix responsibility therefor, although there may also be a secondary purpose of raising revenue.”)

By referring to Illinois law, and secondary authority, on this point, a reader should not understand me as concluding that Taxpayer and JONES actually entered into a joint venture to try to profit from JONES’s concealment of the Vehicle’s true owner from the Illinois Secretary of State, and from others. To the contrary, what I mean to communicate is that I found Taxpayer’s testimony that some unnamed, unincorporated business venture even existed, let alone actually owned the Vehicle, to be incredible, and unworthy of belief. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958).

Taxpayer has not presented credible, documentary evidence to show that, prior to

December 29, 2013, an unincorporated business owned the Vehicle, and that JONES, the Vehicle's title-holder, did not. Instead, the credible, documentary evidence shows that Taxpayer acquired the Vehicle from JONES, an individual owner. Therefore, Taxpayer has not supported his claim that the correct tax rate for his acquisition of the Vehicle is to be found in the pertinent statutory exception, instead of in the VUTA's general schedule for vehicles whose fair market value was \$15,000 or more. The documentary evidence admitted at hearing, including Taxpayer's own, prior, sworn, written statements, fully support the Department's determination that the correct amount of VUT due on Taxpayer's purchase or acquisition of the Vehicle from JONES was \$X,XXXX.00

Conclusion:

I recommend that the Director finalize the NTL as issued, with penalties and interest to accrue pursuant to statute.



August 10, 2017
Date

John E. White, Administrative Law Judge