

MV 18-04

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
SPRINGFIELD, ILLINOIS**

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

LARRY DOE

Taxpayer

Docket # []
Acct ID: XXXX-XXX
Letter ID: CNXXXXXXXXXXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; LARRY DOE, *pro se*

Synopsis:

On July 31, 2017, the Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to LARRY DOE (“taxpayer”) for vehicle use tax relating to the June 6, 2017 transfer of title on a motor vehicle. The taxpayer timely protested the NTL. An evidentiary hearing was held during which the taxpayer argued that the tax should be reduced to the preferential rate of \$15 because the transfer was from his wife. The taxpayer and his wife purchased the vehicle in 2009, and the vehicle was a marital asset. The taxpayer received ownership of the vehicle pursuant to the Property Settlement

Agreement that was entered on March 10, 2016 when their marriage was dissolved. During the marriage, the title of the vehicle was in the name of the taxpayer's wife. On June 6, 2017, title was transferred to the taxpayer. The Department argued that the taxpayer owes the full amount of the tax because the title was not transferred until more than a year after the divorce, and the preferential tax rate of \$15 does not apply to ex-spouses. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 30, 2006, the taxpayer was married to his wife, MARY DOE. (Dept. Ex. #1, p. 5)
2. On December 12, 2009, the taxpayer and his wife purchased a 2010 Jeep Wrangler. Due to job duties, the taxpayer was unable to be present at the time of the purchase, and the vehicle was titled in the name of his wife, MARY DOE. (Recording¹)
3. The taxpayer did not foresee his marriage ending and did not add his name to the title during the marriage. (Recording)
4. On March 10, 2016, the taxpayer's marriage was dissolved. On the same day, a Property Settlement Agreement was entered that included the following: "HUSBAND shall receive exclusive title, control and possession of the 2010 Jeep Wrangler." (Dept. Ex. #1, pp. 6-16)

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

5. On June 6, 2017, title to the vehicle was transferred from MARY DOE to the taxpayer. At the time of the transfer, the taxpayer paid \$80 for the vehicle use tax. (Dept. Ex. #1, p. 2; Recording)
6. On July 31, 2017, the Department issued a Notice of Tax Liability to the taxpayer that assessed vehicle use tax in the amount of \$750.00, plus a late-payment penalty and interest, on the transfer of title on June 6, 2017. The NTL was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, pp. 1-2)
7. On August 17, 2017, the taxpayer filed a Return Correction Notice for the vehicle use tax that showed the corrected tax to be \$15. (Dept. Ex. #1, p. 4)

CONCLUSIONS OF LAW:

Under the Vehicle Code (625 ILCS 5/1-100 *et seq.*), Illinois imposes a tax on the privilege of using in Illinois any motor vehicle acquired by gift, transfer, or purchase. 625 ILCS 5/3-1001. In the administration of the vehicle use tax, the Department and the taxpayers “have the same rights, remedies, privileges, immunities, powers and duties, and [are] 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.” 625 ILCS 5/3-1003.

Section 12 of the Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*) incorporates by reference section 5 of the Retailers' Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the Department’s determination of the amount of tax due is *prima facie* correct and is *prima facie* proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/5. Once the Department has

established its *prima facie* case by submitting the certified copy of the Department's determination into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove his case, a taxpayer must present more than his testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support his claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

The taxpayer argues that the vehicle was owned jointly until the marriage was dissolved on March 10, 2016, and at that time the sole possession of the vehicle was transferred to the taxpayer. He did not transfer title until the following year because 2016 was a very difficult time for him, and he was not quite prepared to finalize everything. He purchased a renewal sticker at that time, but was unaware of the title issue.

The taxpayer states that under the Illinois Marriage and Dissolution of Marriage Act, the 2010 Jeep Wrangler is considered to be marital property. 750 ILCS 5/503(b)(1). The taxpayer said that the initial titling of the vehicle was unfortunate because his job duties made him unavailable at the time of purchase, but he was the primary user. At the time of the divorce, they each agreed to keep their own vehicle.

The taxpayer admitted that he violated section 3-112(b) of the Illinois Vehicle Code, which requires the transferee of the vehicle to "promptly and within 20 days after delivery to him of the vehicle and the assigned title, execute the application for a new certificate of title..." 625 ILCS 5/3-112(b). The taxpayer contends, however, that this section should not supersede the fact that he owned the vehicle during 6 of his 9 years of marriage. He believes that based on the Property Settlement Agreement, the vehicle was

transferred to his name on March 10, 2016. The taxpayer asserts that the vehicle was jointly owned throughout the duration of the marriage, and payments were made from their joint accounts. He states that he should not be accountable for a second taxation on the vehicle simply because he did not transfer the title within the 20 days allowed by the statute. Under the Vehicle Code, the vehicle use tax rate is \$15 “when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor.” 625 ILCS 5/3-1001. The taxpayer claims that the vehicle was transferred to him from his spouse, and the tax should only be \$15.

The Department argues that the preferential tax rate of \$15 for spouses only applies if the transfer occurs prior to the divorce, and the preferential tax rate does not apply to ex-spouses even if the transfer is pursuant to a court order via a property settlement agreement. When the vehicle was purchased, the name MARY DOE was put on the title, and it was kept in her name during the marriage. The Department contends that the title was not transferred until June of 2017 when the taxpayer was the ex-spouse of MARY DOE. The Department, therefore, claims that the full amount of the tax is owed on the transfer.

Notwithstanding the taxpayer’s averments, the transfer of title on June 6, 2017 triggered the tax. The tax is imposed on the privilege of using a motor vehicle in Illinois that was acquired by gift, transfer or purchase. 625 ILCS 5/3-1001. On June 6, 2017, there was a non-retail transfer of ownership that resulted in a new title. On that date, the title was transferred from MARY DOE to the taxpayer, and the tax is imposed on that transfer. See ST 06-0090-GIL (4/24/06) (vehicle use tax imposed on new title-holder). Although the taxpayer had the beneficial use of the vehicle both before and after the title

change, this does not affect the tax liability. The tax is triggered by the transfer of title, and even though the taxpayer previously had an ownership interest in the vehicle due to the fact that it was marital property, the ownership changed from co-ownership to sole ownership, which was why the taxpayer acquired the new title.

The preferential tax rate of \$15 would apply if the transferee is the spouse of the transferor, but at the time of the transfer, the transferee (taxpayer) was the ex-spouse of the transferor. The preferential tax rate does not apply to an ex-spouse. See *e.g.* ST 12-0061-GIL (12/07/12) (preferential tax rate does not apply to step children of transferor). The taxpayer has not disputed the value of the vehicle, and the vehicle use tax was properly assessed.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be finalized as issued.

Linda Olivero
Administrative Law Judge

Enter: October 31, 2018