

MV 19-02

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.	XXXX-XXXX
v.)	NTL No.	XXXXXXXXXX
<i>JANE DOE</i> ,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: *JANE DOE* appeared *pro se*; Tina Tsatsoulis, 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 *JANE DOE* (Taxpayer). The NTL assessed Illinois Vehicle Use Tax (VUT), a late payment penalty, and interest, which the Department determined were due after reviewing the VUT return Taxpayer filed when transferring title to a motor vehicle which had been part of a property settlement agreement made part of a judgment of dissolution of marriage between Taxpayer and the prior title-holder of the vehicle. The issue is which tax rate applies to Taxpayer’s acquisition of the Vehicle — the rate set by one of the Illinois Vehicle Code’s (IVC’s) two statutory schedules, or the rate set for a family transfer, pursuant to 625 ILCS 5/3-1001.

The hearing was held at the Department's offices in Chicago. Taxpayer offered documents into evidence, and she testified. After considering the documentary evidence and testimony offered at hearing, I conclude that Taxpayer has clearly and convincingly rebutted the Department's determination that she owes VUT in the amount stated on the NTL.

Findings of Fact:

1. On or about September 9, 2017, Taxpayer filed a form RUT-50 when applying for an Illinois certificate of title for a Toyota 4-runner, bearing a VIN of XXXXXXXXX (hereafter, the Vehicle). *See* Department Ex. 1 (copy of NTL, reflecting that it was issued after reviewing Taxpayer's filed RUT 50).
2. When Taxpayer filed that return, she paid VUT in the amount of \$XX.00. Department Ex. 1.
3. The Vehicle was identified in the Marital Settlement Agreement (Settlement Agreement), dated July 6, 2017, that was made part of the order dissolving the marriage of Taxpayer and the individual who was the title holder of the Vehicle during their marriage. Taxpayer Ex. 1 (copy of Judgement for Dissolution of Marriage). The pertinent part of that Settlement Agreement provides:

JANE's Toyota 4-runner. JANE shall retain the 4-Runner automobile. JANE shall have sole and exclusive ownership of and possession of the vehicle and shall indemnify and hold JOHN harmless from any and all costs thereon or liability arising therefrom. JOHN waives any and all rights to said automobile and shall execute upon demand by JANE, any and all documents necessary to effectively release and claims or interest he may have to the vehicle. Each party shall cooperate to effectuate sole ownership of the respective vehicles, including but not limited to the transfer of title.

Taxpayer Ex. 1, p. 10 (¶ 8.13).

4. Taxpayer's Judgment for Dissolution of Marriage was approved on July 17, 2017. Taxpayer Ex. 1. Prior to transferring title to the Vehicle to herself, Taxpayer arranged legally to resume use of her maiden name, for example, on forms of identification. Taxpayer Ex. 1, p. 4 (§ H of the Judgment of Dissolution of Marriage order provides, "Respondent is granted leave to resume use of the name 'DOE'"); Transcript (Tr.).¹
5. After reviewing the RUT-50 return Taxpayer filed regarding the Vehicle, the Department issued an NTL to Taxpayer, which assessed VUT in the amount of \$XXXX (and crediting Taxpayer's prior payment of \$XX.00), a late-payment penalty in the amount of \$XX.00, plus statutory interest. Department Ex. 1.
6. At hearing, Taxpayer acknowledged that, if, after hearing, the Department determines that the family transfer rate applied to her acquisition of the Vehicle, she was waiving any right to claim a refund of the excess tax she paid when she filed the RUT-50. Tr.

Conclusions of Law:

Illinois' Vehicle Use Tax Act (VUTA) is codified as part of the IVC, 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

¹ The hearing was recorded using a digital sound recorder, and, as of this writing, no page numbers are available.

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 an aircraft, motor vehicle, or watercraft, for use in Illinois, every time such items are transferred from one owner to another, unless one of the express statutory exceptions or exemptions apply.

The VUTA's statutory scheme sets different, scheduled tax rates, depending on whether the market value of the vehicle is either under or over \$15,000 on the date acquired, and based on the age of the vehicle. 625 ILCS 5/3-1001; Greenwalt, 198 Ill. App. 3d at 131-3, 555 N.E.2d at 776-77. Here, Taxpayer's return reported tax based on her determination that the value of the Vehicle when acquired was under \$15,000. The NTL reflects the Department's determination that the Vehicle's value was over \$15,000.

The VUTA also imposes a lesser tax rate for transactions between certain persons, and certain vehicles, as described in the following text:

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

- (i) when the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor;
- (ii) when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is not a surviving spouse;
- (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.

A claim that the transaction is taxable under subparagraph (i) shall be supported by such proof of family relationship as provided by rules of the Department.

For a transaction in which a motorcycle, motor driven cycle or moped is acquired the tax rate shall be \$25.

625 ILCS 5/3-1001.

Sections 151.105(d) and (e) of the Department's VUTA regulations provide, in pertinent part:

d) Effective January 1, 1988, the tax rate shall be \$15 for each motor vehicle acquired in the following transactions:

3) When the transferee or purchaser is the spouse, mother, father, brother, sister or child of the transferor. Section 3-1001 of the Illinois Vehicle Title & Registration Law.

(e) A claim that a transaction is taxable under subsection (d)(3) of this Section must be supported by a certification of family relationship. The certificate must be executed by the transferee and submitted at the time of filing the return. The certification must include the transferor's name and address, the transferee's name and address and a statement that describes the family relationship between them.

86 Ill. Admin. Code § 151.105(d)-(e).

Notwithstanding the text of § 151.105(e), the Instructions to a form RUT-50 (revised July 2015) neither refer to, nor notify a filer of, the regulatory requirement to submit such a certification at the time the return is filed. <https://www2.illinois.gov/rev/forms/sales/Documents/vehicleusetax/rut-50-instr.pdf> (a copy of the most recent RUT-50 Instructions, which were in effect when Taxpayer filed the return giving rise to this dispute, is available to view at the Department's web site) (last viewed on March 14, 2019). At hearing, neither party offered into evidence a copy of the RUT-50 return Taxpayer filed regarding the Vehicle, so this record does not contain evidence of whether the return form, itself, includes the required certification.

Since the Department expressly referred to VUTA § 3-1001 and VUT rule § 150.105 during its opening argument, Department counsel was asked whether the Department's position was that, if a Taxpayer did not make a certification of family

relationship at the time a return was filed, that omission prohibits the Taxpayer from filing a protest to a later issued NTL on the basis that the transfer was between family members. Counsel declined to advance that position, and instead argued that, in this case, no family relationship existed at the time title to the Vehicle was transferred.

Section 1-1003 of the VUTA provide, in pertinent part, as follows:

Sec. 3-1003. The Department shall have full power to administer and enforce this Article; to collect all taxes, penalties and interest due hereunder; to dispose of taxes, penalties and interest so collected in the manner hereinafter provided, and to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax penalty or interest hereunder. In the administration of, and compliance with, this Article, the Department and persons who are subject to this Article shall have the same rights, remedies, privileges, immunities, powers and duties, and 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 IVC, 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 issued in this matter reflects the Department's determination that Taxpayer acquired the Vehicle on the date she applied to transfer title to the Vehicle from Taxpayer's former husband to herself. Department Ex. 1 (showing Vehicle received on September 9, 2017); Tr. (Department's opening statement). On that date, Department counsel stressed, no family relation existed between Taxpayer and the transferor. On this last, factual point, the Department is undeniably correct. But, for the following reasons, I cannot recommend that the Director finalize the Department's *legal* determination that, in this case, Taxpayer acquired ownership of the Vehicle only on the date title to the Vehicle was transferred from her former husband to herself. *See* Miller Brewing Co. v.

Korshak, 35 Ill. 2d 86, 91, 219 N.E.2d 494,497 (1966) (“... the allegation as to the passage of title is unmistakably a conclusion of law rather than an allegation of fact.”).

Illinois law is clear that title to an item of tangible personal property is presumptive evidence of ownership, but that the presumption may be overcome by other evidence. In re Estate of Holmgren, 237 Ill. App. 3d 839, 842, 604 N.E.2d 1092, 1095 (3rd Dist. 1992) (“Under Illinois law, a *prima facie* presumption of ownership arises from a certificate of title; however, this presumption may be rebutted by competent evidence of actual ownership.”); Dan Pilson Auto Center, Inc. v. DeMarco, 156 Ill. App. 3d 617, 620-21, 509 N.E.2d 159, 161 (4th Dist. 1987) (“although the Illinois Vehicle Code requires a transfer of certificate of title to effectuate the sale of a vehicle [all citations omitted], it is not necessarily determinative of the passage of ownership. It is the intent of the parties involved, and not such statutory prerequisites which determine ownership. ... Consequently, it is possible that one can own an automobile even though the certificate of title is in the name of another.”).

At hearing, Taxpayer cited to and quoted from the decision in Dan Pilson Auto Center, Inc., to which the Department responded that that case involved a replevin action, and not a tax case. But questions about when ownership of or title to tangible property passes from one person to another are certainly recurring issues in Illinois ROT and UT cases. *E.g.*, Sprague v. Johnson, 195 Ill. App. 3d 798, 552 N.E.2d 436 (4th Dist. 1990); United Technical Corp. v. Department of Revenue, 107 Ill. App. 3d 1062, 438 N.E.2d 535 (1st Dist. 1982). As the court in United Technical Corp. noted:

“In some situations, title to goods may pass upon the execution of a contract (*see Butler Mfg. Co. v. Department of Finance* (1943), 383 Ill. 220, 49 N.E.2d 31). There may be circumstances under which

ownership may pass to the buyer even where title remains in the seller. (See *Miller Brewing Co. v. Korshak* (1966), 35 Ill.2d 86, 90, 219 N.E.2d 494.)”)

United Technical Corp., 107 Ill. App. 3d at 1065, 438 N.E.2d at 538.

The principle that one can own an item of tangible personal property even though title remains with another has been applied in many contexts, besides one, single replevin case. Moreover, United Technical Corp., Butler Manufacturing Co., and Miller Brewing Co. were all tax cases, involving one of the two complementary tax acts that, together, are commonly referred to as Illinois sales tax. Nor should it be forgotten that motor vehicles may be, and often are, sold and acquired in transactions where the owner/transferor does not possess a certificate of title. 625 ILCS 5/3-114 (Transfer by operation of law). By its express terms, the VUTA applies to such acquisitions. The VUTA also applies not only to the acquisitions of vehicles via sales, but also to donative transfers of vehicles, as is the case here.

Further, in a recently published, administrative hearing decision, the Department has, itself, cited to the Estate of Holmgren and Dan Pilson Auto Center, Inc. cases for the proposition that a person can own an item of tangible personal property even though title remains with another, in a case which upheld an assessment of watercraft use tax (WUT). <https://www2.illinois.gov/rev/research/legalinformation/hearings/ut/Documents/ut15-02.pdf>. In that case, a private (i.e., a non-retailer) seller was given a watercraft as partial payment for a different watercraft he sold to a private purchaser. Title to the partial payment watercraft, however, was never transferred from the private purchaser to the private seller. Instead, the title trail to the partial payment watercraft went from the private purchaser to the person to whom the private seller later sold the watercraft. At

hearing, the private seller/taxpayer argued that he could not have been the owner of the partial payment watercraft because he never appeared in its chain of title. The Director, in that case, upheld the Department's determination that the evidence showed that the private seller acquired ownership of the partial payment watercraft, even though he never held title to it, and owed WUT regarding his use of that watercraft in Illinois.

When referring to that administrative decision here, I acknowledge that the Department's hearing decisions have no precedential value. The decisions in Estate of Holmgren and Dan Pilson Auto Center, Inc., however, do. Given the general applicability of the proposition for which the Estate of Holmgren and Dan Pilson Auto Center, Inc. cases stand, I am not persuaded by the Department's mere argument that the holdings, or persuasive dicta, which Taxpayer quoted from them, do not apply to this VUT case. As a final note, and in response to Taxpayer's citation to case law on this issue, the Department did not cite to any case law advancing a contrary proposition, that ownership of a vehicle may be established only by reference to its certificate of title.

Again, Illinois law is clear that "a *prima facie* presumption of ownership arises from a certificate of title; however, this presumption may be rebutted by competent evidence of actual ownership." In re Estate of Holmgren, 237 Ill. App. 3d at 842, 604 N.E.2d at 1095. Because the VUTA incorporates "the same modes of procedure, as are prescribed in the Use Tax Act," it is Taxpayer who bears the burden to rebut the presumption that she owned the Vehicle only once she obtained title to it. 625 ILCS 5/3-1003; 35 ILCS 105/12 (incorporating sections of the ROTA, including § 7); 35 ILCS 120/7 ("*** the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such

transaction is taxable.”); In re Estate of Holmgren, 237 Ill. App. 3d at 842, 604 N.E.2d at 1095.

Regarding that burden, after the NTL was issued in this case, Taxpayer provided the Department with a copy of the Judgment of Dissolution of Marriage, with the associated Settlement Agreement. Taxpayer Ex. 1. The Department, that is, obtained more information than it had when it reviewed Taxpayer’s filed RUT-50, and issued the NTL. Under the procedures expressly incorporated into the UTA, which are incorporated into the VUTA, the Department has a statutory duty to correct a taxpayer’s filed return “according to its best judgment and information” 35 ILCS 120/4; 35 ILCS 105/12; 625 ILCS 5/3-1003. The Settlement Agreement constitutes better information than was immediately available to the Department, and, I respectfully submit, it would be improper to ignore it.

Thereafter, at hearing, Taxpayer offered into evidence a copy of the executed, written Settlement Agreement, between herself and her then-spouse, who was the person from whom Taxpayer acquired ownership of the Vehicle. Taxpayer Ex. 1. That Settlement Agreement was executed prior to the initiation of any tax dispute regarding the ownership of the Vehicle. In that agreement, both parties — the transferor and Taxpayer — acknowledge Taxpayer’s ownership of the Vehicle, on and prior to the date the agreement was executed and became effective. Taxpayer Ex. 1, p. 10. During their marriage, title to that Vehicle was held only in the name of Taxpayer’s then-spouse, yet that same spouse agreed, in writing, that Taxpayer was its owner. *Id.* Given Illinois law, I am unwilling to recommend that the Director ignore such plain and clear written evidence of the parties’ documented agreement and intent regarding the Vehicle’s

ownership. Dan Pilson Auto Center, Inc., 156 Ill. App. 3d at 620-21, 509 N.E.2d at 161 (“It is the intent of the parties involved, and not such statutory prerequisites which determine ownership.”).

The documentary evidence Taxpayer admitted is precisely the type of “books and records” evidence a reasonable and prudent person would keep, and make available to others, if called upon to prove ownership of property acquired as part of a divorce agreement. Indeed, it’s the type of records the UTA and the Department requires taxpayers to keep. 35 ILCS 105/12; 35 ILCS 120/7; 86 Ill. Admin. Code § 150.1301(b) (“If the user is obligated to pay the Use Tax directly to the Department, he must have adequate records ... to support his claim (if any) that certain purchases for use are not subject to the Use Tax.”).

As Department counsel noted at hearing, a property settlement agreement which is made part of a judgment for dissolution of marriage becomes effective upon approval by the court approving the dissolution. Tr.; In re Marriage of Frank, 2015 IL App (3d) 140292, § 11, 40 N.E.3d 740, 743 (2015). Further,

In Illinois, a property settlement between spouses whose marriage is being dissolved, which has been approved by the court and incorporated in the judgment of dissolution, becomes merged in the judgment and the rights of the parties thereafter rest on the judgment. [all citations omitted] In interpreting such an agreement, normal rules for construction of contracts apply [] so as to give effect to the apparent intent of the court and the intention of the parties. [] When no ambiguity exists on the face of the judgment, the intent of the parties will be determined only from the language of the instrument itself. []

In re Marriage of Oldham, 222 Ill. App. 3d 744, 750, 584 N.E.2d 385, 389-90 (1st Dist. 1991).

Taxpayer’s property settlement agreement provides, in pertinent part:

JANE's Toyota 4-runner. JANE shall retain the 4-Runner automobile. JANE shall have sole and exclusive ownership of and possession of the vehicle and shall indemnify and hold JOHN harmless from any and all costs thereon or liability arising therefrom. JOHN waives any and all rights to said automobile and shall execute upon demand by JANE, any and all documents necessary to effectively release and claims or interest he may have to the vehicle. Each party shall cooperate to effectuate sole ownership of the respective vehicles, including but not limited to the transfer of title.

Taxpayer Ex. 1, p. 10 (¶ 8.13).

“[A]n undefined term in a contract will be given its plain and ordinary meaning, which is found in its standard dictionary definition.” Laport v. MB Financial Bank, N.A., 2012 IL App (1st) 113384, ¶ 15, 983 N.E.2d 1055, 1059 (1st Dist. 2012). Here, the text, “*JANE shall retain the ... [Vehicle,]*” reflects the parties’ understanding and agreement that, on the date the Settlement Agreement was written, *JANE* already owned the Vehicle. Taxpayer Ex. 1, p. 10 (¶ 8.13); Webster’s Encyclopedic Unabridged Dictionary 1643 (definition of “retain” includes: “3. To continue to hold or have”) (Random House Value Publishing, 1996). The subsequent text, “*JANE shall have sole and exclusive ownership of and possession of the vehicle ... [,]*” reflects the parties’ express intent regarding what “shall” occur as a result, or upon the effective date, of their agreement. The plain text of this contract manifests the parties’ agreement that *JANE* was the owner of the Vehicle either prior to or on the date the judge approved their dissolution. Taxpayer Ex. 1, p. 10. On that date, Taxpayer and the transferor were both married (before judicial approval of their dissolution), and divorced (after approval). Regardless whether their agreement reflects the parties’ understanding of the Vehicle’s ownership on the date the Settlement Agreement was written, or on the date it became effective, Taxpayer was the transferor’s spouse on the date she acquired ownership of the Vehicle.

The documentary evidence Taxpayer presented at hearing clearly and convincingly rebuts the Department's legal determination that Taxpayer obtained ownership of the Vehicle only on the date title to the Vehicle was transferred to her name. Taxpayer has also, thereby, rebutted the Department's determination that the tax rate for this transaction is set by one of the VUTA's schedules, and established that the VUTA's family transfer rate applied, instead.

Once a taxpayer offers documentary evidence that overcomes the Department's prima facie case, the burden shifts to the Department to prove its case by a preponderance of the competent evidence. Miller v. Department of Revenue, 408 Ill 574, 581-82, 97 N.E.2d 788, 792 (1951). Here, the Department neither had nor offered any such competent evidence.

Conclusion:

I respectfully recommend that the Director cancel the additional tax, penalties and interest set forth in the NTL, and finalize it as so revised.

Date: May 8, 2019

John E. White, Administrative Law Judge