

UT 16-02

Tax Type: Use Tax

Tax Issue: Private Vehicle Use Tax-Value Exceeds \$15,000

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

THE DEPARTMENT OF REVENUE)	15-ST-038
OF THE STATE OF ILLINOIS)	Vehicle Use Tax
)	
v.)	
)	
JOHN DOE,)	Kelly K. Yi
TAXPAYER)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Daniel Edelstein, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Mr. John Doe appeared *pro se*.

Synopsis:

On August 7, 2014, the Department of Revenue of the State of Illinois (“Department”) issued a Notice of Tax Liability (“NTL”) for Form RUT-50, Private Party Vehicle Use Tax Transaction, to Mr. John Doe (“Taxpayer”) for unpaid vehicle use tax on the transfer of certificate of title to a car. The basis of the assessment was the Department’s determination that Taxpayer had underreported the value of the car. Taxpayer timely protested the Department’s assessment and requested an administrative hearing. On November 5, 2015 a formal administrative hearing was held with Taxpayer testifying. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

Findings of Facts:

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s NTL issued to Taxpayer on August 7, 2014, showing a vehicle use tax liability of \$XXXX plus penalty and interest. Dept. Ex. 1.
2. On June 17, 2014, Taxpayer declared on the Private Party Vehicle Use Tax Transaction return that the value of the Car with mileage XXXX was less than \$XXXX and paid \$XXX in vehicle use tax. Dept. Exs. 2-3.
3. Taxpayer filed a Return Correction Notice on September 9, 2014 and declared the Car’s value as \$XXXX. Dept. Ex. 4.
4. Taxpayer testified that he submitted to the Department the first appraisal valued at \$XXXX but thought it was too high, so he obtained a second appraisal valued at \$XXXX. Tr. 4, 6.
5. Taxpayer entered into evidence the second appraisal valued at \$XXXX, obtained on June 6, 2015 and a recommended repair estimate in excess of \$XXXX, dated June 25, 2015. Taxpayer’s Exs. 1-2.

Conclusions of Law:

The Vehicle Use Tax imposes a tax on the privilege of using in Illinois any motor vehicle acquired by gift, transfer or purchase. 625 ILCS 5/3-1001. The statute sets out the appropriate amount of tax due. According to the statute, the tax for a vehicle use tax for a vehicle less than 5 years old with a selling price of less than \$15,000 is \$115. For the year at issue, the vehicle use tax for vehicles valued or selling price of \$15,000 or more is as follows:

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.

The Department established its *prima facie* case when it introduced Department Exhibit 1, consisting of a copy of the Notice of Tax Liability at issue under the certificate of the Director. That alone establishes *prima facie* correctness that Taxpayer owes Illinois vehicle use tax in the amount determined by the Department. 35 ILCS 120/7; 35 ILCS 105/12; 625 ILCS 5/3-1003. With the Department's *prima facie* case, the burden shifts to the Department to prove its case, only after Taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations were not correct. Copilevitz v. Department of Revenue, 41 Ill.2d 154, 157-158 (1968).

The facts of the case are straightforward. On June 17, 2014, Taxpayer transferred the certificate of title to the Car to his name from Mary Green declaring the value as less than \$XXXX and remitted vehicle use tax of \$XXX. Based on the determination that the value exceeded \$XXXX, the Department issued the NTL to Taxpayer assessing vehicle use tax of \$XXXX. Taxpayer responded by filing the Return Correction Notice stating that the purchase price was \$XXXX. At hearing, Taxpayer explained how he came up with the \$XXXX as the purchase price. He testified that the Car was originally purchased and titled under Mary Green's name but he had been making the payments. When the loan matured in 2014, he could not pay off the \$XXXX balance, so the title was transferred to his name to "move" the loan to his credit union. Tr. 8-9, 18-19. Under the Illinois Vehicle Code, "owner" means a person who holds legal document of ownership of a vehicle, limited to a certificate of origin, certificate of title, salvage certificate, or junking certificate. 625 ILCS 5/3-100. Irrespective of who has made the loan payments, the certificate of title transferred title to the vehicle from Mary Green to

Taxpayer without qualifying exceptions and vehicle use tax based on the selling price or fair market value is due. 625 ILCS 5/3-1003.

As to the fair market value, Taxpayer testified that he initially submitted to the Department an appraisal of \$XXXX but he thought it was too high, so he obtained a second appraisal valued at \$XXXX with the mileage of XXXX, increased by roughly XXXX miles from the mileage reported on the tax return. Tr. 4, 6; Taxpayer's Ex. 1. Taxpayer testified to but did not offer into evidence the first appraisal; thus, I am unable to evaluate that evidence. While Taxpayer's second appraisal and the repair estimate lack foundation and contain hearsay statements, they were admitted without objection. It is well established that when hearsay evidence is admitted without an objection, it is to be considered and given its natural probative effect. Mary Jackson v. The Board of Review of the Department of Labor, 105 Ill.2d 501, 508 (1985). The weight to be given to the evidence and the credibility of the witnesses are within the province of the administrative agency. *Id.* at 514. I have considered and given probative value to Taxpayer's hearsay exhibits. Taxpayer's second appraisal called "Appraisal Voucher" appears to have been obtained through a car dealer's website; it is unsigned and dated nearly a year after the title was transferred; and it lacks details such as bodily or mechanical damage and a certification of inspection to base the appraisal. A computer generated image of the dealer's unsigned check for \$XXXX payable to Taxpayer with "Purchase Voucher" written on the top right corner appears at the bottom of the appraisal. Similarly, the recommended repair estimate raises questions as well. It was obtained from ABC Business more than a year after the title transfer. Several of the recommended repairs are crossed out and no evidence was presented to explain what those represent. Moreover, Taxpayer did not present evidence to show that the conditions prompting the recommended repairs existed at the time of the title transfer. Based on

these findings, I conclude that Taxpayer has failed to overcome the Department's *prima facie* correctness of tax liability assessed in the NTL.

Recommendation:

For the foregoing reasons, I recommend that the Director finalize the Notice of Tax Liability issued to Taxpayer on the transfer of certificate of title to the vehicle at issue.

January 13, 2016

Kelly K. Yi
Administrative Law Judge