

MV 95-7

Tax Type: MOTOR VEHICLE USE TAX

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

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE      )
OF THE STATE OF ILLINOIS      )
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                               )
v.                               )      Docket # XXXXX
                               )
XXXXXXXX                         )      Account # XXXXX
                               )
Taxpayer                        )
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX

SYNOPSIS: This matter came on for hearing pursuant to the Taxpayer's timely protest of Notice of Tax Liability No. XXXXX issued by the Department on June 5, 1992 and his timely protest to the Department's Tentative Determination of Claim issued on June 4, 1992. Both the assessment, and the claim attempted to be recovered, were for Use Tax on the transfer of a 1990 Lexus automobile. At issue here are whether the claim should be approved and the assessment be rescinded based on whether the transfer of the Lexus from Corporation XXXXX to XXXXX and his wife XXXXX, qualifies for a \$15.00 tax applicable to corporate transfers wherein the beneficial ownership is not changed as provided under the terms of 625 ILCS 5/3-1001. Following the submission of all evidence and a review of the record it is recommended that the denial of the claim was proper and the additional assessment was due under the applicable statutory provisions. It is recommended that these matters be resolved in favor of the Department.

FINDINGS OF FACT:

1. Corporation XXXXX had one shareholder, XXXXX. (Dept. Ex. #5,

1991 Illinois Schedule B Shareholder's information for IL-1120-ST).

2. On December 28, 1991, Corporation XXXXX transferred a 1990 Lexus automobile to XXXXX and XXXXX and paid a \$15.00 tax asserting the vehicle was transferred in a business reorganization (Dept. Ex. #7, RUT-50 Vehicle Use Tax Return).

3. On January 1992, XXXXX was informed by the Department that the vehicle title and registration indicated a change in ownership. The assertion that the \$15.00 statutory tax for business reorganization was applicable was rejected by the Department. Under the statute, the model year of the car measured \$275.00 in tax; and with penalty, \$278.44 was due. (625 ILCS 6/3-1001) (See Taxp. Ex. #2, deficiency notice).

4. The Taxpayer paid the tax, filed a claim for credit in the amount of \$278.44 to recover the tax, and received a denial of the claim from the Department.

5. The Taxpayer timely protested the denial (Dept. Ex. #3, Notice of Department's Tentative Determination of Claim; Dept. Exh. #8 June 9, 1992 Taxpayer's letter of protest).

6. In January of 1992 an additional assessment was issued on the vehicle. Since the vehicle was worth over \$15,000.00 additional tax and penalty of \$960.00 and \$96.00 was assessed respectively. (See Tax. Ex. 5, NTL No. 53-708841). Under the Vehicle Use Tax Act vehicles in excess of \$15,000.00 have taxes measured by a set statutory scheme and not by model year of the vehicle (See 625 ILCS 6/3-1001).

7. The Taxpayer timely protested the denial of the Notice of Tax Liability.

CONCLUSIONS OF LAW: The Vehicle Use Tax provides in pertinent part:

"5/3-1001. Imposition of tax-Exceptions

3-1001. A tax is hereby imposed on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by purchase, and having a year model designation

preceding the year of application for title by 5 or fewer years prior to October 1, 1985 and 10 or fewer years on and after October 1, 1985 and prior to January 1, 1988. On and after January 1, 1988, the tax shall apply to all motor vehicles without regard to model year. Except that the tax shall not apply

- (i) if the use of the motor vehicle is otherwise taxed under the Use Tax Act;
- (ii) if the motor vehicle is bought and used by a governmental agency or a society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes;
- (iii) if the use of the motor vehicle is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), (e) or (f) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation;
- (iv) to implements of husbandry;
- (v) when a junking certificate is issued pursuant to Section 3-117(a) of this Code;
- (vi) when a vehicle is subject to the replacement vehicle tax imposed by Section 3-2001 of this Act;
- (vii) when the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse.

Prior to January 1, 1988, the rate of tax shall be 5% of the selling price for each purchase of a motor vehicle covered by Section 3-1001 of this Code. 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 less than \$15,000:

Number of Years Transpired After Model Year of Motor Vehicle	Applicable Tax
1 or less	\$390
2	290
3	215
4	165
5	115
6	90
7	80
8	65
9	50
10	40
over 10	25

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-\$27,999	\$1,250
\$30,000 and over	\$1,500

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. (625 ILCS 6/3-1001)"

On examination of the record established, this Taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or arguments, evidence to overcome the Department's denial of the subject claim and the Department's prima facie case for additional tax liability under the claim and assessment in question.

Under subsection (iii) of the above-cited statute, beneficial ownership has changed, namely from Corporate XXXXX wherein XXXXX was the exclusive shareholder to XXXXX and his wife XXXXX as co-title holders on the vehicle.

Accordingly the denial of the claim was correct as the Department assessed the car tax measured on the model year of the car. The additional assessment issued when the car was discovered to be over \$15,000.00 is also a proper statutory tax for assessment imposed by the Vehicle Use Tax Act and these liabilities must stand as a matter of law.

RECOMMENDATION: Pursuant to my findings of fact and conclusions of law I recommend that the subject denied claim be upheld and Notice of Tax Liability No. XXXXX be finalized in its entirety.

William J. Hogan
Administrative Law Judge