

**ST 09-11**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

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

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

v.

**JOHN DOE,**

**Taxpayer.**

) **No.: 08-ST-0000**

) **IBT: 0000-0000**

) **NTL No.:**

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) **Julie-April Montgomery**

) **Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** George Foster, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*.

**SYNOPSIS:**

The Department of Revenue (“Department”) issued both a “Notice of Tax Liability for Form RUT-50” (“Notice”) and a “LTR-201 Request for Abatement” (“Request”) to John Doe (“Taxpayer”). The Notice alleged Taxpayer underpaid Illinois Vehicle Use Tax for a motor vehicle. The Request affirmed the Department’s determination made by the Notice and denied Taxpayer’s entitlement to the “\$15.00 exception for transactions between family members.” Taxpayer timely protested the Notice and Request. A hearing was held on May 15, 2009 where Taxpayer presented testimony and the Department presented documentary evidence. 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. In support thereof, are made the following findings of fact and conclusions of law:

**FINDINGS OF FACT:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission of the Notice of Tax Liability and Request for Abatement, under the certificate of the Director. Department Gr. Ex. No. 1.
2. Taxpayer's wife rejected her father's gifting of the vehicle in favor of her husband, Taxpayer. Tr. pp. 14-16.
3. Taxpayer filed a Use Tax Transaction Return ("Return") which identified "Herbert XXXXX/Elisa" as sellers and Taxpayer as purchaser/owner. Department Gr. Ex. No. 1 ("RUT-50: Vehicle Use Transaction Return").

**CONCLUSIONS OF LAW:**

The Illinois Vehicle Use Tax ("VUT") is codified as part of the Illinois Vehicle Code ("Code") and imposes a tax on "the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of the Code acquired by gift, transfer, or purchase." 625 ILCS 5/3-1001. The tax, which is based upon the vehicle's selling price, is detailed in a schedule set forth in Section 3-1001 of the Code.

There exists a family exception to the VUT's scheduled tax rates that is also set forth in Section 3-1001 of the Code, which provides that "the tax rate shall be \$15 for each motor vehicle acquired...when the transferee or purchaser is the spouse, mother, father, bXXXXXer, sister or child of the transferor." 625 ILCS 5/3-1001(i). Moreover, such a claim for taxation at the rate of \$15 for the family exception must be supported by "proof of family relationship as provided by rules of the Department." *Id.* The Department's regulations provide that such proof is to 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 Sec. 151.105(e). Thus, the books and records necessary to prove the VUT's family exception relationship must consist of documents that conform to this Department regulation.

The Illinois legislature has granted the Department power to administer and enforce provisions of the VUT, including the power "to collect all taxes, penalties and interest." 625 ILCS 5/3-1003. The Department and persons subject to the VUT are granted:

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 Use Tax Act (35 ILCS 105/1 *et seq.*) incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*) which provides that the Department's determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 105/12; 120/5. Once the Department establishes its *prima facie* case, the burden of proof shifts to the Taxpayer to prove, by sufficient documentary evidence, that the tax assessed, including penalty and interest, is correct. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978). In order to overcome the Department's *prima facie* case, the Taxpayer must present more than testimony denying the accuracy of the Department's assessment. A. R. Barnes & Co. v. Department of Revenue, 173 Ill. App.

3d 826, 833-34 (1st Dist. 1988). Taxpayer must present evidence that is consistent, probable, and identified with books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 333, A. R. Barnes at 833-34.

The Department's *prima facie* case was established when certified copies of the Notice and Request were admitted into evidence. Once these documents were admitted into evidence, the Department's position is legally presumed to be correct.

In response to the Department, Taxpayer argues that two separate and distinct transactions occurred that were both subject to the family exception. Tr. pp. 7, 34-35. The first was the transfer of the car from Taxpayer's father-in-law to Taxpayer's wife, or stated another way, transfer of the car from father to daughter. Tr. pp. 14, 16, 24. This transfer was then followed by a second transaction in which Taxpayer's wife transferred the vehicle to her husband, the Taxpayer. Tr. pp. 15-16, 24.

Taxpayer's wife testified that her father offered her the car and had even placed her name on what might have been the car's title document. Tr. pp. 14, 17-18. The wife also testified that she immediately rejected the vehicle and suggested that it be given instead to her husband, Taxpayer. Tr. p. 14. Taxpayer's wife further testified that she did not register the car in her name. Tr. pp. 15-16. The record reflects that there was no production of any title document for the vehicle that evidenced the transfer of the car from father to daughter. Furthermore, the alleged tax documents, referenced by Taxpayer in his protest letter of September 8, 2008, which would support the claim that the vehicle was a gift from his father-in-law to his wife, were not proffered or presented as evidence at the hearing. In fact, the testimony presented by Taxpayer's wife that she rejected the gifting of the car in favor of her husband, did not title the car in her own name and

believed that her husband's name was placed on the car's title document belies the existence of a transfer between father and daughter. Tr. pp. 14-17, 19. Hence, the record in this matter does not support Taxpayer's allegation that there was an initial transfer of the car from his father-in-law to his wife.

The record does however evidence a transfer of the car from Taxpayer's father-in-law to Taxpayer. Taxpayer, not his wife, was the name alleged to have been placed on the car title document meant to show a transfer had occurred. Tr. pp. 17, 19. Taxpayer filed the Return with the Department which listed the transferor(s) as his in-law(s) and himself, not his wife, as the transferee. The record reflects this transaction as the only transfer of the vehicle to have occurred. Such transfer between a father-in-law and son-in-law is not among the family relationships stated in the statute as subject to the family exception. Thus, Taxpayer cannot be found entitled to such exception.

Entitlement to the family exception requires a taxpayer file a certificate of family relationship with their return. No certification of the family relationship for either of the two transfers alleged to have occurred among family members that would have qualified for the family exception was presented at hearing or when the Return was filed. Taxpayer failed to produce any witnesses to establish that the certification that the Department requires for one seeking the family exception was ever undertaken. Thus, Taxpayer has not shown that he is entitled to the family exception.

Taxpayer also asserts that the Department "stipulated" that the car was acquired by Taxpayer "as a spousal gift." Department Gr. Ex. No. 1 ("October 17, 2008 letter"); Tr. p. 35. Taxpayer further asserts that the Department acknowledged the car was transferred from father to daughter. *Id.* Both of these assertions are incorrect. The

Department's Request merely restates what Taxpayer wrote in his September 8, 2008 letter. In that letter Taxpayer stated that the car was a "gift from XXXX to Jane Doe, his daughter." Department Gr. Ex. No. 1 ("September 8, 2008 letter"). The Department merely referenced this statement as follows: "Your letter states that this vehicle was given as a gift to Jane Doe, wife of John Doe, from her father, XXXX." Department Gr. Ex. No. 1 ("Request"). No stipulation or agreement as to the truth of Taxpayer's assertion of a transfer between father and daughter as a transaction between family members eligible for the family exception can be said to exist. The Department, contrary to Taxpayer's assertion, clearly stated its rejection of Taxpayer's assertion that there was a transfer between family members which qualified for the family exception. The Department's Request stated that because its "records indicate[d]...that this vehicle was titled in the name of Mr. Doe, not his wife Jane, and because Mr. Doe is not the biological son of Mr. XXXXX, the transaction does not qualify for the exception." *Id.* It is clear the Department did not stipulate to or acknowledge a transfer or gift between family members that would have qualified for the exception.

Taxpayer cites 625 ILCS 5/3-502 of the VUT which mandates that the new owner of a car register the vehicle prior to such car's operation on a highway. Taxpayer asserts that because his wife never intended to "operate the vehicle...there was no need for her to secure a registration." Tr. p. 10. Taxpayer's wife's testimony confirms that she did not register the vehicle in her name. Tr. pp. 15-16. But whether or not the wife intended to operate the car or whether she found a reason for registering the car in her name does not assist Taxpayer in his plight. The wife's testimony of her intent to neither operate nor register the vehicle in her name does not establish that a transfer occurred. In fact, such

testimony supports the Department's position that there was no transfer between father and daughter or wife and husband.

Taxpayer argues his belief that the statute at issue does not require "a biological relationship" exist but a "family relationship" in order for the family exception to apply. Tr. p. 32. Taxpayer's belief is both contrary to the law and the plain wording of the statute. The statute states the limited and specific family relationships that qualify for the exception and a transfer between in-laws is not among them.

In light of the above, no purchase or transfer between family members can be said to have occurred and the acquisition of the vehicle represented a taxable transaction under the VUT that was not subject to the family exception.

Lastly, Taxpayer admits that he remitted the tax late and concedes that he is subject to the late penalty that was assessed by the Department. Tr. p. 7.

**RECOMMENDATION:**

For the reasons stated above and because Taxpayer did not present sufficient evidence to overcome the Department's *prima facie* case, it is recommended that the Notice of Tax Liability for Form RUT-50 and the LTR-201 Request for Abatement be upheld in total.

Enter: June 9, 2009

Julie-April Montgomery  
Administrative Law Judge