

MV 95-6

Tax Type: MOTOR VEHICLE USE TAX

Issue: Private Vehicle Use Tax, Trade-Ins Not Deductible

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: Mr. XXXXX, Taxpayer.

SYNOPSIS: This matter comes on for hearing pursuant to the Taxpayer's timely protest of Notice of Tax Liability No. XXXXX, issued by the Department of Revenue on November 23, 1994, for Use Tax due on the purchase of a 1992 Cadillac Deville. At issue is the amount of tax due on the acquisition of the automobile. The Taxpayer remitted \$290.00 based on the model year of the car; the Department assessed an additional \$460.00 in tax due to its fair market value. It is recommended that this matter, which arises under the statutory provisions of the Vehicle Use Tax Act, be resolved in favor of the Taxpayer.

FINDINGS OF FACT:

1. The Taxpayer traded in a 1992 Cadillac Deville for a 1992 Cadillac Deville of similar kind and quality. (Taxpayer Exhibit #1, Bill of Sale between XXXXX and Taxpayer.)
2. Through a remitter, XXXXX, the Taxpayer paid \$290.00 in tax on the vehicle. (See Tr. at p.10; Dept. Ex. No. 5, Vehicle Use Tax Return.)
3. The Department determined additional tax of \$460.00 was due on the vehicle because the fair market value exceeded the statutory tax for

model year motor vehicles of 2 years or less of \$290.00 and the Taxpayer had not submitted a Bill of Sale to prove otherwise. (See Dept. Ex. No. 3, Letter of Lori Peters, Department's Exception Processing Division.)

4. At the hearing the Taxpayer proffered a bill of sale that proved that the transaction was not a sale, but only involved a trade of two cars with no monetary consideration flowing from the Taxpayer. (See Taxpayer Ex. #1.)

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, the Taxpayer has established that the correct measurement of tax was the \$290.00 he remitted pursuant to the statutory provisions regarding the year of the vehicle. The Department's reliance that additional tax was due based on the selling price of the car has been overcome by the Taxpayer's exhibit and testimony.

Under subsection (vii) of the above-cited statute, tax was due on the

model year of the motor vehicle.

RECOMMENDATION: Pursuant to my findings of fact and conclusions of law I recommend that Notice of Tax Liability No. XXXXX be rescinded in its entirety.

William J. Hogan
Administrative Law Judge