



State of Georgia

Douglas J. MacSinnittie
Commissioner

Department of Revenue
Administrative Division – Office of Tax Policy
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Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

October 1, 2013

Re: – Request for Letter Ruling

Dear Mr. :

This letter is in response to your request for guidance on the application of Georgia State and Local Title Ad Valorem Tax Fee (“TAVT”) to loaner vehicles used by your client, (“ ”).

Be advised: The following ruling requires changes to the Georgia Registration and Title Information System. The Department will provide you with a notice of the official effective date when those changes have been made. Until such time, you will not be able to process exempt transactions under this ruling at the county tag office.

Facts

is a licensed dealer of motor vehicles. As part of its business, also provides motor vehicle repair services. In many circumstances, customers are provided a loaner vehicle while repairs are made by

For the purpose of this letter ruling, the vehicles in the subject loaner fleet can be broken into three subgroups. The first subgroup consists of vehicles for which the customer does not bear the cost of use, but which is reimbursed by a third-party. The second subgroup consists of vehicles for which the customer is provided the vehicle at no cost and no third-party reimbursement is made to the dealer. The third subgroup is rentals, paid for by the customer. Within the first subgroup, the third-party sources of reimbursement are (1) manufacturer’s warranties/recalls, (2) extended warranties, and (3) insurance providers.

Instead of holding title to loaner vehicles, _____ has historically utilized a leasing structure. Under this leasing structure, legal title to the vehicles is transferred from the vehicle manufacturer to the manufacturer's owned and controlled financing arm. The financing arm acts as lessor and _____ as lessee. Under Georgia law, _____ is the registered owner of the vehicle.¹ From this fleet of vehicles, _____ provides loaner vehicles as described above. When the lease period ends or is otherwise terminated, _____ always purchases the vehicles to be placed in its used vehicle inventory for sale.

Issues

- 1. Whether utilizing a lease structure in lieu of a purchase structure is a permissible way of operating a loaner fleet for tax purposes under O.C.G.A. § 48-5C-1(a)(3)?²**
- 2. Whether providing a customer with a loaner vehicle free of charge qualifies as a permissible use of an exempt loaner vehicle where the dealer is reimbursed by a manufacturer's warranty, extended warranty, or insurance policy?³**
- 3. Whether _____ may occasionally rent a loaner vehicle for a fee to a customer?⁴**
- 4. Whether _____ must continue to accrue use tax on the fair market daily rental value of a loaner vehicle pursuant to Ga. Comp. R. & Reg. § 560-12-2-.09(3)(a)?**

Analysis

I.

As a general rule, any motor vehicle for which a title is issued in the State of Georgia is subject to TAVT.⁵ The motor vehicle owner is required to apply for certificate of title.⁶ For the purpose of the Certificate of Title Act, the term "owner" is defined to mean the titled owner.⁷

There is an exemption from the TAVT in the context of courtesy loaner vehicles utilized by dealerships.⁸ Under this rule, a dealer may remove a vehicle temporarily from inventory and

¹ O.C.G.A. § 40-2-21(a)(2).

² This is Question 6 in the original letter ruling request.

³ Questions 1 through 4 in the original letter ruling request have been consolidated as the source of the third-party reimbursement is immaterial for purposes of the questions at hand.

⁴ Questions 5 and 7 from the original letter ruling request will be addressed together under the Department's response to this issue.

⁵ O.C.G.A. § 48-5C-1(b)(1)(A).

⁶ O.C.G.A. § 40-3-21(a).

⁷ O.C.G.A. § 40-1-1(39) ("...having the property in or title to a vehicle...but excludes a lessee").

⁸ O.C.G.A. § 48-5C-1(d)(12).

offer it for short-term use to customers whose cars are being repaired.⁹ The loaner vehicle business model utilized by _____ parallels the loaner vehicle exemption structure set forth in O.C.G.A. § 48-5C-1(a)(3) but with _____ being a registered owner instead of a titled owner. Specifically, instead of titling a vehicle in their name and then removing it from resale inventory, _____ leases vehicles from a third party to be used as loaner vehicles by _____. However, once the 366 day loaner period expires, the vehicle follows the same course as described in the code. The question therefore becomes whether a dealer may lease loaner vehicles instead of titling those vehicles in their name and still qualify for the loaner vehicle exemption.

Much of the uncertainty surrounding this question is not entirely unique to the lease-loaner question, but is akin to many exemptions provided by O.C.G.A. § 48-5C-1 as they pertain to leases. In these cases, the law appears to allow for an exemption to be enjoyed by an individual lessee, but because the tax applies to the titling of a vehicle (and the title is held in the name of the owner-lessor) it is not clear from the law whether the lessee can receive the exemption. Accordingly, the real question here is whether the non-exempt lessor should enjoy the exempt-lessee's exemption by way of imputation.

A more obvious example of the problem may help illuminate the intended result. Georgia code section 48-5C-1(d)(7)(B) provides an exemption to Medal of Honor recipients from TAVT.¹⁰ If the vehicle is purchased by a Medal of Honor recipient and titled in their name, the vehicle is clearly exempt from TAVT.¹¹ But what happens if the exempt lessee enters into a lease with a private financial institution as the lessor? That bank is the party who will be titling the vehicle, and the only way the title transaction will be exempt is if the lessee's exemption is imputed to the bank. If the Department denied the exemption to the lessor, invariably the cost of the TAVT would be passed on to the Medal of Honor recipient as lessee. This result would usurp the intent of the Georgia General Assembly, which was obviously to exempt Medal of Honor recipients from paying TAVT. It is clear to the Department that the Georgia General Assembly intended for a Medal of Honor recipient to bear a reduced tax burden regardless of whether he chose to lease or purchase a vehicle.¹²

Turning back to the issue of the exempt loaner vehicle, the Department finds, on equal grounds, that a lessor in the described transaction may apply for title under the loaner exemption where the vehicle is being titled for the sole purpose of entering the vehicle into otherwise permissible loaner status by the lessee. Finding otherwise would seem to disregard the intent of

⁹ *Id.*; O.C.G.A. § 48-5C-1(a)(3).

¹⁰ "Any motor vehicle which is exempt from ad valorem taxation pursuant to Code section...48-5-478.3 [Tax exemption for veterans awarded Medal of Honor] shall be exempt from state and local title ad valorem tax fee..."

¹¹ O.C.G.A. § 48-5C-1(b)(1)(A).

¹² In the Department of Revenue's *Title Ad Valorem Tax Informational Bulletin – Exemptions for Leases* dated May 31, 2013 the Department formally allowed exemptions designated for certain lessees to be imputed to a lessor. A copy of the bulletin can be found at [no longer available].

the Georgia General Assembly; i.e., to provide preferential tax treatment for a dealership's use of loaner vehicles.

II.

The issue here is simply, whether the reimbursement is fatal to loaner treatment.¹³ To qualify as a loaner, one of the elements is that the loaner be provided "at no charge."¹⁴ It is customary—and has been the case historically—for dealers to submit line item charges to warranty and insurance providers seeking reimbursement for repairs, labor, and reasonable rental use. Because this is an ordinary business practice, we can reasonably assume that the Georgia General Assembly did not intend to change this practice when it drafted this definition without an indication to the contrary. Therefore, the Department finds that this rule refers to charges required of the customer, not a third party provider. Third-party warranty and insurance reimbursements are not fatal to loaner status.

III.

The Georgia General Assembly has provided for special tax treatment of motor vehicles used as rental motor vehicles and those used as loaner vehicles. In so doing, care was taken to define the distinction between the two. The question here is whether a vehicle meeting the definition of loaner can be brought under the umbrella of rental for *de minimus* use within a given period.

The "Loaner vehicle" definition clearly requires "*exclusive* use as a courtesy vehicle."¹⁵ Allowing for *de minimus* rental use could not be allowed without denying the plain language of the statute.

Moreover, the Department believes that the Georgia General Assembly already considered the industry's need for TAVT relief for rental vehicles when it provided a special rate for such vehicles. Rental vehicles, properly certified by the Department, may be titled at a rate of 1.25% for the entire term for which such vehicle is titled to a qualifying owner.¹⁶ Although 1.25% is better than the ordinary rate,¹⁷ it is not as favorable as the tax free treatment afforded loaners. For that reason, anyone having to choose between true rental and a loaner-rental hybrid

¹³ also asks whether a loaner can be provided without charge and without reimbursement. This is clearly permissible.

¹⁴ O.C.G.A. § 48-5C-1(a)(3).

¹⁵ O.C.G.A. § 48-5C-1(a)(3).

¹⁶ O.C.G.A. § 48-5C-1(d)(1)(A).

¹⁷ O.C.G.A. § 48-5C-1(b)(ii), (b)(xiv).

would seek the latter. Accordingly, we feel that such an incentive would be an unreasonable policy, especially in light of the clear statutory language.¹⁸

IV.

The final issue is whether use tax must be accrued by a dealer pursuant to Ga. Comp. R. & Reg. § 560-12-2-.09(3)(a) on the fair market daily use of a loaner. Under the regulation, a dealer must accrue use tax based on the fair market daily use value. There is nothing in the law which would invalidate this longstanding regulation and therefore it remains in full force and effect.

Rulings

1. A lessor may apply for title under the loaner exemption where the vehicle is being titled for the sole purpose of entering the vehicle into otherwise permissible loaner status by the lessee.
2. The use of a loaner vehicle, provided at no charge to the customer, may be reimbursed by a third-party warranty or insurance policy.
3. Dealers may not rent an exempt loaner motor vehicle to a customer for a fee.
4. Dealers must continue to accrue use tax pursuant to Ga. Comp. R. & Reg. § 560-12-2-.09(3)(a) for loaner vehicles.

Conclusion

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this response.

¹⁸ In question 7 of the Letter Ruling Request, it was asked what percentage of rental use would be permissible. That issue was rendered moot by the finding in subpart III and will therefore not be addressed.

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If I can be of further assistance to you regarding this response or any TAVT issue, please feel free to contact me at

Regards,

Office of Tax Policy
Georgia Department of Revenue