

This letter is in response to your request for guidance on whether the transfer of motor vehicle ownership from [Redacted], as an individual, to [Redacted], in her capacity as Trustee of the [Redacted] Revocable Trust, is a taxable event subject to the Title Ad Valorem Tax ("TAVT").

Facts as Provided by Taxpayer

On [Redacted], Ms. [Redacted], as settlor, created The [Redacted] Revocable Trust (the "Trust"), and designated as trustee. Ms. [Redacted] simultaneously transferred ownership of a [Redacted], VIN # [Redacted] (the "Vehicle") by deed of gift from herself in an individual capacity to herself in her capacity as trustee of the Trust. There was no money or other consideration paid for this transfer of the Vehicle.

After the transfer, Ms. [Redacted] signed the reverse side of the certificate of title, and properly executed a Form MV-1. Ms. [Redacted] then presented both documents to the [Redacted] Tax Commissioner's Office, and requested the issuance of a new title in the name of [Redacted], Trustee of the Trust." Ms. [Redacted] was then informed that the transfer described above constituted a taxable event that was subject to a TAVT of \$ [Redacted] under O.C.G.A. § 48-SC-1.

Issues

1. Does the above set of facts constitute a taxable event for TAVT purposes?
2. If this event is exempt from TAVT, how will the Vehicle be taxed in the future?

Analysis

TAVT is applicable to "any motor vehicle for which a title is issued in this state on or after March 1, 2013:"¹ Thus, the imposition of the TAVT is tied to the issuance of a title for a particular vehicle.² The above facts show that a new title was requested by and subsequently issued to Ms. [Redacted] in [Redacted], which ordinarily would constitute a taxable event under O.C.G.A. § 48-5C-1. There are, however, some situations where the issuance of a title does not give rise to TAVT being imposed. Specifically, O.C.G.A. § 48-5C-1(d)(4) provides that TAVT "shall not apply to corrected titles, replacement titles under Code Section 40-3-31, or titles reissued to the same owner pursuant to Code Sections 40-3-50 through 40-3-56." Considering each of these exceptions in turn, the corrected title exception would apply to the title issued to Ms. [Redacted], but the other exceptions would not apply.

The replacement title exception would not be applicable in this case because the cross-referenced code section only pertains to lost, stolen or mutilated certificates of title.³ The exception for titles reissued to the same owner cross-references Code Sections 40-3-50 through 40-3-56 collectively, which provide the guidelines concerning the reissuance of a title to the same owner where there has been a change in security interest or lienholder.⁴ The set of facts do not indicate any change in a security interest or lienholder of the Vehicle.

Thus, the only exception Ms. [Redacted]'s title could fall under is the exception for "corrected titles." Typically, this exception is applied where the title contains a misstatement or misspelling, where the owner has a change of name or address, and in other limited circumstances. For example, suppose a woman changed her last name after getting married and retitled her old vehicle under her married name. This is a title correction because, although a new title has been issued, it is being issued to the same person in a different capacity. Put another way, the title is being "corrected" to reflect the new capacity. Likewise, in the case of Ms. [Redacted], the title to the Vehicle is being issued to the same person in her new capacity as trustee. Therefore, this would be considered a title correction and is exempt from TAVT.

¹ O.C.G.A. § 48-SC-1(b)(1)(A)

² Id. ("Except as otherwise provided in this subsection, any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (95) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of this title. Any such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.")

³ See O.C.G.A. § 40-3-31 (titled "Lost, stolen or mutilated certificates").

⁴ See O.C.G.A. § 40-3-50 through -56.

Although not dispositive of the issue at hand, federal law provides further guidance on the taxation of property held in a revocable trust. For federal income tax purposes, the grantor of property to a revocable trust is treated as though she remains the owner of the trust assets and their income⁵. As long as the grantor reserves the right and power to reconstitute title and the beneficial enjoyment of the trust property in herself, the trust is not recognized as a separate entity for federal income tax purposes, even though it is a separate entity as a matter of trust law.⁶ In these cases, the grantor trust is essentially treated as an alter-ego of the settlor. The main taxation issue is whether the grantor still has control over the property, and if so, the grantor should be treated as though she remains the owner of such property.

It is important to clarify that the Vehicle will remain subject to annual ad valorem tax pursuant to Chapter 5 of Title 48. Stated more generally, any vehicle which is currently subject to annual ad valorem taxes and for which a title is issued pursuant to a section 48-5C-1(d)(4) exception will remain subject to annual ad valorem taxes. Finding otherwise would mean that anyone whose vehicle is currently subject to annual ad valorem taxes could apply for a replacement title and thereby become exempt from both TAVT and annual ad valorem taxes. That is clearly not the intent of the General Assembly.

Rulings

The issuance of a title in the name of a trustee of a revocable trust as described in this letter is exempt from TAVT as a "corrected title" pursuant to O.C.G.A. § 48-5C-1(d)(4). However, the Vehicle remains subject to annual ad valorem taxes pursuant to Chapter 5 of Title 48.

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.

⁵ See 26 U.S.C. § 676 ("The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to reconstitute in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.").

⁶ George T. Bogert, George G. Bogert, and Myron Kove, 15 The Law Of Trusts And Trustees § 264.5 (West 2013).