

Date Issued: May 20, 2016
Georgia Letter Ruling: LR MV TAVT-2016-02
Topic: Transfers and Titling Event

This letter is in response to your request for written guidance as to your eligibility for relief from the title ad valorem tax (TAVT) charges associated with the transfer of [a Redacted Number of] motor vehicles (the “Vehicles”).

Facts as Provided by Taxpayer

[Redacted] (“Taxpayer One”) and [Redacted] (“Taxpayer Two”) are separate S corporations, registered in Georgia, and owned by [Redacted] (“Owner”). The businesses performed the same function but in business operations at separate locations. Taxpayer Two owned [a Redacted Number of] vehicles as part of its business operations. The Vehicles are titled in the State of Georgia and received tag renewals in March of 2015.

In 2015, Taxpayer Two ceased doing business and its assets, including the Vehicles, were distributed to Taxpayer One. The titles to the Vehicles were transferred in April, 2015. The Vehicles were not a part of any sale, nor was any other consideration given for the Vehicles. Upon transfer, the Vehicles were assessed a cumulative title ad valorem tax of \$[Redacted Amount] pursuant to O.C.G.A. § 48-5C-1.

Issues

1. Does the transfer of motor vehicle assets from one S Corp. to a separate S Corp. when both corporations are owned by the same individual and both corporations perform substantially similar business functions constitute a taxable event, thereby warranting the levy of TAVT?
2. If this event is exempt from TAVT, how will the Vehicles 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 The imposition of the TAVT is tied to the issuance of a title for a particular vehicle.² Information provided by Owner shows he requested and was provided a new title for each of the vehicles.³ This request constituted a titling event upon which appropriate TAVT was levied pursuant to O.C.G.A. § 48-5C-1(b)(1)(A). However, there are situations where the issuance of a title does not give rise to TAVT being imposed. Specifically, TAVT “shall not apply to corrected

¹ O.C.G.A. § 48-5C-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 Request for Declaratory Ruling, Citizen Petition, Owner, April 29, 2015, Attachment #1

titles, replacement titles under Codes Section 40-3-31, or titles reissued to the same owner pursuant to Code Section 40-3-50 through 40-3-56.”⁴ TAVT exemptions also exist for state and local governments, certain military returns, and certain other types of transactions.⁵

Owner, in his request for letter ruling, referenced a previous Georgia Department of Revenue letter ruling that recognized a TAVT exception in the transfer of motor vehicle ownership from an individual to a trustee of a revocable trust.⁶ The exception which was referenced in that ruling was an exception that “[applies] to corrected titles.”⁷ 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. In the letter ruling on point, the exception was held to apply to the titling event in question because the title was being issued to the same person in a different capacity. Furthermore, the federal government’s practice of not recognizing a revocable trust as a separate entity for federal income tax purposes, although not controlling, bolstered the Department’s decision.⁸

However, the prior letter ruling is not controlling in the case at hand. This transfer of motor vehicles between Taxpayer Two and Taxpayer One is not a title correction but is rather a stand-alone, titling event. The two companies, Taxpayer One and Taxpayer Two, are both wholly-owned S-corporations that are registered in Georgia and perform the same business operation only in different locations. They are both owned by the same individual. Also, the transferring business, Taxpayer Two, has liquidated all of its assets and has ceased doing business, the business for which it was formed.

Although the assets are controlled by the same individual in this case, the assets themselves are not owned by the Owner, but rather are owned by the corporation. This method of ownership is a fundamental tenant of a corporate arrangement so as to provide a legal barrier between an individual’s personal assets and the assets of the formed corporation. This ownership arrangement stands in stark contrast to that of a trust, whose assets are at risk based on the actions of the individual controlling a revocable trust. Although their functions were so similar as to be virtually identical, the transfer of vehicles was between two separate corporate entities. “It is a fundamental rule that...exemptions are construed narrowly against the Taxpayer and in favor of the tax.”⁹ The Department believes interpreting this transfer as qualifying for the title correction exemption risks creating an exception in the law whose limits could encompass much more complicated corporate transfers. Therefore, the transfer of assets between Taxpayer Two and Taxpayer One does not qualify for a title correction exemption as provided in O.C.G.A. § 48-5C-1(d)(4) and is subject to title ad valorem tax.

⁴ O.C.G.A. § 48-5C-1(d)(4)

⁵ O.C.G.A. § 48-5C-1(d)(6), (7) & (15)

⁶ Georgia Dept. of Revenue, TAVT Letter Ruling, Transfer of Motor Vehicle Ownership to Revocable Trust, January 6, 2014

⁷ Id.

⁸ 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 revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.”)

⁹ Athens City Waterworks Co. v. Mayor, etc. of Athens, 74 Ga. 413 (1885)

Ruling

The titling of motor vehicles pursuant to a complete transfer of assets from one company to a different company notwithstanding the same owner and substantially similar business operations does not qualify for the title correction exemption found in O.C.G.A. § 48-5C-1(d)(4).¹⁰

Conclusion

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transaction and Taxpayer in question. Should the circumstances regarding the transaction the Taxpayer describes 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 which is expressed in this response.

¹⁰ Although not applicable to this letter ruling, the Department of Revenue closely examines whether or not the transfer of assets is done in conformity with O.C.G.A. 48-5C-1(d)(8). Furthermore, the Department intends this ruling to be limited in scope to facts substantially similar to those pertaining in this letter.