

Date Issued: May 10, 2017
Georgia Letter Ruling: LR MV TAVT-2017-01
Topic: TAVT and So-called “Bailment Agreements”

This letter is in response to your request for written guidance as to whether title ad valorem tax (“TAVT”) is due if the sale of a motor vehicle is rescinded, or otherwise not consummated, as a result of the purchaser’s default under a “properly executed bailment agreement” between a motor vehicle dealer and said purchaser, particularly if the rescission occurs within the “30-day period specified by O.C.G.A. § 40-3-33, or any applicable extensions thereof.”

Facts as Provided by Taxpayer

[Redacted] (“Taxpayer”) is a used motor vehicle dealer that often, if not always, finances its sales itself rather than using a third party for customer financing. [Redacted] and [Redacted] (collectively, “Purchaser”) wished to purchase a used vehicle (the “Vehicle”) from Taxpayer.

Conforming with Taxpayer’s regular business practices, Purchaser signed a “bailment agreement,” a retail installment contract, a pick-up note, and a Georgia Form MV-1, DOR – Motor Vehicle Title/Tag Application. Purchaser paid \$528 to take possession of the Vehicle and agreed to pay an additional down payment of \$5000 by five days later. The bailment agreement provided that

in the event [Purchaser] is unable to obtain Permanent Financing for the vehicle or if all the conditions of the contract, expressly including, but not limited to, the full and complete payment of the down-payment and all other consideration, cannot be met, [Taxpayer], at its sole discretion may rescind the sale contract and declare said contract null and void.

The bailment agreement also stated that “full legal and equitable title to said vehicle is retained by [Taxpayer] until all the conditions of the sale contract in this contract have been met and said contracts are final.” The pick-up note provided that “[a]ny payments not made on time as agreed will result in immediate repossession and forfeiture of all money paid to date.” Purchaser failed to pay the additional \$5000 payment by the fifth day, and, on the seventh day, Taxpayer repossessed the Vehicle. Taxpayer did not submit a certificate of title application in connection with this transaction.

Issue

Is TAVT due if the sale of a motor vehicle is rescinded as a result of the purchaser’s default under a so-called “properly executed bailment agreement” between a motor vehicle dealer and said purchaser if the rescission occurs within 30 days of the date of purchase?

Analysis

The Georgia Code provides that, subject to certain exceptions that do not appear to apply here,

any motor vehicle for which a title is issued in this state on or after March 1, 2013, . . . 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 [TAVT] as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.¹

The TAVT must be paid at the time the application for a certificate of title is submitted or, in the case of an electronic title transaction, at the time when the electronic title transaction is finalized.²

Taxpayer characterizes one of the agreements into which it entered with Purchaser as a “bailment agreement,” and the agreement was entitled “Sales Bailment Agreement.” Regardless of what the agreement was called, the resulting interest that Taxpayer retained in the Vehicle was a security interest. Code section 40-3-2(13) defines “security

¹ O.C.G.A. § 48-5C-1(b)(1)(A).

² *Id.* § 48-5C-1(b)(1)(C).

interest” as an interest in a vehicle reserved or created by agreement which secures the payment or performance of an obligation, such as a conditional sales contract, chattel mortgage, bill of sale to secure debt, deed of trust, and the like. This term includes the interest of a lessor under a lease intended as security.³ Here, Taxpayer held a security interest in the Vehicle because Taxpayer’s interest was reserved by the agreement securing additional payments by Purchaser.

The Department of Revenue views the date of purchase in this case as the date on which the temporary operating permit was created and the Vehicle was transferred to Purchaser. From such date, a dealer typically has 30 days to apply for a certificate of title.⁴ However, if any conditions of the agreement fail and the contract is rescinded during that 30-day period and before the certificate of title application is submitted, the obligation to pay TAVT is not triggered, and no TAVT is due.

Here, Purchaser failed to pay the additional payment by the fifth day following the date of purchase. Because the conditions of the agreement failed, Taxpayer rescinded the sale and repossessed the Vehicle. This all occurred within the 30-day period following the purchase. Moreover, Taxpayer did not submit a certificate of title application. Under these circumstances, no TAVT is due.

Ruling

No TAVT is due if the sale of a motor vehicle is rescinded as a result of the purchaser’s default under a conditional agreement between purchaser and a motor vehicle dealer if the rescission occurs within 30 days of the date of purchase and before the certificate of title application is submitted. However, if the rescission occurs more than 30 days after the date of purchase, or after the certificate of title application is submitted, TAVT is due.⁵

Conclusion

The opinions expressed in this ruling are based upon the information contained in Taxpayer’s request and are limited to the specific transaction and Taxpayer in question. Should the circumstances regarding the transaction 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.

³ *Id.* § 40-3-2(13).

⁴ *Id.* § 40-3-33 (“the dealer shall submit a properly completed certificate of title application and proper supporting documents to the commissioner or to the appropriate authorized county tag agent so that the application and supporting documents shall be submitted to the commissioner or the appropriate authorized county tag agent within 30 days from the date of the transfer of the vehicle”); *see also id.* § 40-3-51 (30-day deadline also applies to security interest holder).

⁵ The Department of Revenue intends this ruling to be limited in scope to facts substantially similar to those in this letter.