



COMMONWEALTH of VIRGINIA

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Attorney General

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The Honorable Gregory D. Habeeb
Member, House of Delegates
Post Office Box 882
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The Honorable Richard D. Holcomb
Commissioner, Department of Motor Vehicles
2300 West Broad Street
Richmond, Virginia 23269

The Honorable Johnny S. Joannou
Member, House of Delegates
709 Court Street
Portsmouth, Virginia 23704

Mr. Bruce Gold
Executive Director, Motor Vehicle Dealer Board
2201 West Broad Street
Richmond, Virginia 23220

Dear Delegates Habeeb and Joannou, Commissioner Holcomb, and Mr. Gold:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding the implementation of the increase, from 3% to 4%, in the motor vehicle sales and use tax rate that was enacted by the 2013 Session of the General Assembly and that is scheduled to become effective on July 1, 2013.¹ Specifically, you ask which tax rate, 3% or 4%, should be imposed when a motor vehicle is purchased prior to July 1, 2013 but titled by the Virginia Department of Motor Vehicles ("DMV") subsequent to that date. Your inquiry states that a similar question previously was addressed by an official opinion of this Office,² and you have asked that the conclusion in that opinion be re-visited in light of changes in the motor vehicle industry and procedures at DMV since that time.

Response

It is my opinion that the proper tax rate to impose on a vehicle sale transaction in Virginia is the tax rate in effect at the time of the sale, when ownership or possession of the vehicle is transferred, whichever of these events of sale occurs first. After the tax is imposed on the sales transaction, the tax is then owed and is paid and collected when the vehicle is titled by the DMV.

¹ 2013 Va. Acts ch. 776.

² See 1986-87 Op. Va. Att'y Gen. 336.

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Background

In an official opinion to former State Senator Virgil Goode,³ former Attorney General Mary Sue Terry responded to an inquiry asking which motor vehicle sales and use tax, raised from 2% to 3% effective January 1, 1987, would apply to a vehicle purchased in North Carolina prior to January 1, 1987, but not titled in Virginia until after January 1, 1987. At the time, the opinion noted that North Carolina imposed its tax at the time the vehicle was sold and the North Carolina tax was collected by the motor vehicle dealer.⁴ In contrast to North Carolina and unlike the Virginia retail sales and use tax, §§ 58.1-600, *et seq.*, the Virginia motor vehicle sales and use tax is collected from the purchaser or user of the vehicle and not from the motor vehicle dealer. The opinion cited Virginia Code § 38.1-2404, which states that the sales and use tax “shall be paid by the purchaser or user...and collected by the [DMV] Commissioner at the time the owner applies...and obtains, a certificate of title....” Therefore, the opinion concluded that in the case inquired about, the use “tax should be imposed at the rate in effect at that time [of titling] and not at the rate in effect when the vehicle was actually purchased.”

I understand, based on information set forth in your inquiry, that the manner in which motor vehicles are sold and titled in Virginia has changed significantly in the last twenty-five to thirty years. The case where a purchaser pays the dealer for a vehicle and then the purchaser goes personally to DMV to title and register that vehicle is rare. Now, in a majority of sales, you state (1) that most vehicles are financed or leased and the dealer must collect the tax to complete the titling; (2) dealers are required by the Virginia Code to complete their titling and registration transactions with DMV electronically, so they must collect the sales tax from the customer to do so; and (3) the DMV Dealer Manual instructs dealers when they must collect the tax and notes that they have 30 days to remit the tax to DMV. You suggest that these changes in the industry and DMV procedures necessitate a change in the conclusion of the official opinion to Senator Goode, at least with respect to vehicles sold in Virginia. While it is undoubtedly true that many significant changes have occurred in the last twenty-five to thirty years, the answer to your question regarding a vehicle sale occurring in Virginia is found from the plain meaning of the relevant statute.

Applicable Law and Discussion

Section 58.1-2402 provides that “There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale . . . of motor vehicles in Virginia,” with exceptions not here relevant. Section 58.1-2401 defines “sale” to include “any transfer of ownership or possession.” “When . . . a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature’s intent from the plain meaning of the language used.”⁵ The corollary to this is that effect will be given to defined terms.

Based upon the plain meaning of the defined term “sale,” it is clear that the sales tax is imposed at the rate in effect at the time of the sale, when ownership or possession of the vehicle is transferred, whichever of these events of sale occurs first. After the sales transaction, pursuant to § 58.1-2404, the tax is “collected by the [DMV] Commissioner at the time the *owner* applies . . . and obtains, a certificate of title....” (emphasis added).

³ *Id.*

⁴ N.C. Gen. Stat. § 105-164.4 (1985).

⁵ *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 497 S.E.2d 335, 338 (1998).

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This conclusion flows from the recognition that the time a tax is collected does not equate to the time that a tax is determined or imposed. To the extent that the prior opinion may be read to equate these two distinct events, it would be in error. Nevertheless, I note that the prior opinion dealt with a factual scenario very different from the one you present. Specifically, you ask about taxation related to the purchase of a vehicle in Virginia, while the prior opinion addressed the imposition of a Virginia tax on a "motor vehicle purchased in North Carolina . . . but [subsequently] titled in Virginia" ⁶ The purchase of a vehicle in North Carolina cannot, without more, give rise to Virginia's imposing a tax because there is no nexus between Virginia and the North Carolina transaction. ⁷ Thus, for transactions such as the North Carolina motor vehicle purchase referenced in the 1987 opinion, it is not until there is a Virginia nexus, such as the application for a Virginia title, that a Virginia tax may be imposed. Therefore, the prior opinion does not address the specific question you pose.

Conclusion

Accordingly, it is my opinion that the proper tax rate to impose on a vehicle sale transaction in Virginia is the tax rate in effect at the time of the sale, when ownership or possession of the vehicle is transferred, whichever of these events of sale occurs first. After the tax is imposed on the sales transaction, the tax is then owed and is paid and collected when the vehicle is titled by the DMV. Consequently, it is my opinion that a vehicle sales and use tax rate of 3% should be imposed when a vehicle is sold in Virginia prior to July 1, 2013, but titled by the DMV subsequent to that date.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁶ 1986-87 Op. Va. Att'y Gen. at 336.

⁷ See, e.g., *Ryder Truck Rental v. Cnty. of Chesterfield*, 248 Va. 575, 578, 449 S.E.2d 813, 815 (1994) (citations omitted) ("A prerequisite of a jurisdiction's authority to tax . . . is the existence of a substantial nexus between the taxable instrumentality and the taxing jurisdiction.").