

OP. NO. 03-114

TAXATION: PERSONAL PROPERTY TAX RELIEF ACT OF 1998.

Display of commercial advertising sign on passenger vehicle for more than 50% of time does not alone disqualify vehicle from relief under Act. Determination is question of fact for local taxing official.

The Honorable George N. Fulk
Commissioner of the Revenue for Accomack County
February 4, 2004

Issue Presented

You inquire whether a passenger vehicle¹ displaying a commercial advertising sign more than fifty percent of the time is entitled to relief under the Personal Property Tax Relief Act of 1998.

Response

It is my opinion that the display of a commercial advertising sign on a passenger vehicle for more than fifty percent of the time does not alone disqualify it from relief under the Personal Property Tax Relief Act. It is further my opinion that whether an advertising display is sufficient to disqualify a vehicle from relief under the Act is a question of fact for the local taxing official to determine.

Background

You relate that you have determined that vehicles displaying advertising signs for more than fifty percent of the time do not qualify for tax relief under the Personal Property Tax Relief Act because they are promoting a product or service. Although the taxpayer does not depreciate the vehicle or claim business mileage on his or her federal tax return, you believe that it actually is a business vehicle because it advertises a business. You further relate that several county taxpayers question your determination. You note that the Internal Revenue Service, pursuant to their regulations, considers such vehicles to be personal, not business, use vehicles. You believe, however, that such consideration by the Internal Revenue Service is applicable only to federal taxation. You note that your determination represents a separate matter under state law.

Applicable Law and Discussion

The 1998 Special Session of the General Assembly enacted the Personal Property Tax Relief Act of 1998, consisting of §§ 58.1-3523 through 58.1-3536,² which contemplates phasing out local personal property tax obligations for "qualifying vehicles" over a period of five years beginning in calendar year 1998.³ For purposes of the Act, § 58.1-3523 defines a "qualifying vehicle" as

any passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, *that is determined by the commissioner of the revenue of the county or city in which the*

vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle. In determining whether a vehicle is a qualifying vehicle, the commissioner of revenue may rely on the registration of such vehicle with the Department [of Motor Vehicles of the Commonwealth] pursuant to Chapter 6 (§ 46.2-600 et seq.) of Title 46.2.^[4] [Emphasis added.]

Section 58.1-3523 defines "privately owned" to mean "owned by a natural person and *used for nonbusiness purposes*." (Emphasis added.) Additionally, § 58.1-3523 defines "leased" to mean "leased by a natural person as lessee and *used for nonbusiness purposes*." (Emphasis added.) Thus, the definition of the term "qualifying vehicle" includes the requirement that the vehicle be used for nonbusiness purposes. Finally, § 58.1-3523 defines the phrase "used for nonbusiness purposes" to mean that

the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than fifty percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of fifty percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

While meeting any of the three tests described above will be "deemed" a disqualification, there may be facts and circumstances short of meeting one of these disqualification tests that would evidence "a preponderance of use" for other than personal purposes. Such a determination is a question of fact for the commissioner of revenue as is any other factual question related to tangible personal property.⁵

Section 58.1-3532 directs the Department of Motor Vehicles to promulgate guidelines for local officials to use in administering the Personal Property Tax Relief Act.⁶ The Department has issued the *Personal Property Tax Relief Guidelines for Direct Compensation Years*⁷ ("*DMV Guidelines*"). The *DMV Guidelines* confirm that the question of whether a vehicle qualifies for tax relief under the Act is a factual determination for the local commissioner of the revenue, using the "preponderance of use test"⁸ to determine if the vehicle in question is being "used for nonbusiness purposes."⁹ The *DMV Guidelines* note that the registration of a car in the name of a business creates a rebuttable presumption¹⁰ that the car is being used for business purposes.¹¹ A commissioner of the revenue, therefore, may presume that a vehicle registered in the name of a business is being used for business purposes and is ineligible for relief under the Act. This presumption, however, is subject to evidence to the contrary as to the actual "preponderance of use," which may be given to the locality. "A rebuttable presumption shifts the burden of producing evidence to the opposing party."¹²

Similarly, where a taxpayer has placed commercial advertising for a business, product or service on the exterior of a vehicle, which remains there for more than fifty percent of the time, it appears to the general public that the vehicle is owned

and used by the commercial endeavor. This is especially true where the owner or driver of the vehicle owns the business or provides the service or product. Accordingly, it becomes the taxpayer's responsibility to provide adequate evidence to overcome that presumption and show that the preponderance of actual use is for nonbusiness purposes. Otherwise, a local taxing official may presume that the taxpayer uses the vehicle for business purposes, which renders it ineligible for tax relief under the Personal Property Tax Relief Act. An advertising display creates a "rebuttable presumption" of business use, which the taxpayer may refute with adequate evidence of the vehicle's actual usage. Therefore, such a display is one of the factors that a commissioner of the revenue should consider in making the factual determination of whether a vehicle is a "qualifying vehicle" within the meaning of the Act.

While the General Assembly has chosen to incorporate "litmus tests" for uses deemed to be for business purposes based on certain limited federal income tax criteria,¹³ it has not specifically chosen to incorporate other federal criteria to establish a "preponderance of use" of any given vehicle. The commissioner of the revenue, using all the facts and circumstances, must make this determination.

Conclusion

Accordingly, it is my opinion that the display of a commercial advertising sign on a passenger vehicle for more than fifty percent of the time does not alone disqualify it from relief under the Personal Property Tax Relief Act. It is further my opinion that whether an advertising display is sufficient to disqualify a vehicle from relief under the Act is a question of fact for the local taxing official to determine.

¹For the purposes of this opinion, I will assume that your question is limited to conventional passenger vehicles, i.e., passenger cars. I further assume that your question is not meant to include "motorcycle[s]" and "pickup or panel truck[s]" as those terms are defined in § 46.2-100. Motorcycles are in a unique category, and the federal income tax regulations provide different criteria for classification of trucks and moving vans, due to their likely use. See Temp. Treas. Reg § 1.274-5T(k)(4), (7) (2003). It, therefore, appears from the facts you present that such vehicles are not at issue. Thus, any use herein of the term "vehicles" shall mean only conventional passenger vehicles, i.e., passenger cars.

²1998 Va. Acts Spec. Sess. I ch. 2, at 48, 53-58.

³See Va. Code Ann. § 58.1-3524 (Michie Repl. Vol. 2000).

⁴Chapter 6 of Title 46.2, §§ 46.2-600 through 46.2-756, governs the titling and registration of motor vehicles.

⁵See 1991 Op. Va. Att'y Gen. 244, 246 n.2 (noting that determination of whether particular item of equipment is motor vehicle qualifying for local personal property taxation, or machinery and tools, is factual determination to be made by commissioner of revenue); see also 1989 Op. Va. Att'y Gen. 339, 341 (noting that commissioner of revenue must determine if certified property is used primarily for pollution abatement purposes).

⁶Section 58.1-3532 further directs that, after July 1, 1998, "the guidelines shall be updated annually."

⁷Dep't Motor Vehicles, Personal Property Tax Relief Guidelines for Direct Compensation Years (Nov. 2002) [hereinafter DMV Guidelines], *available at* <http://www.dmv.state.va.us/webdoc/pdf/pptr9.pdf> (last visited Jan. 29, 2004).

⁸See *id.* at 9-12; see also Dep't Motor Vehicles, Personal Property Tax Relief Act (PPTRA): Information for Taxpayers, *at* www.dmv.state.va.us/webdoc/general/pptr/taxpayers.asp (last visited Jan. 29, 2004).

⁹See DMV Guidelines, *supra* note 7, at 9.

¹⁰The term "rebuttable presumption" means "[a]n inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence." Black's Law Dictionary 1205 (7th ed. 1999). "Rebuttable presumption" is otherwise known as a "disputable presumption." *Id.* at 1204.

¹¹See DMV Guidelines, *supra* note 7, at 9.

¹²Charles E. Friend, The Law of Evidence in Virginia § 10-1(c) (6th ed. 2003) (citation omitted).

¹³See § 58.1-3523 (Michie Repl. Vol. 2000) (defining "used for nonbusiness purposes").

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