

MVD Procedural Quick Update

#82rev

RE: Excise Tax – Affidavit of Gift
Effective date: October 26, 2009

Date: October 21, 2009
To: All MVD
From: Mac Lewis, MVD Policy and Procedures Manager

[This is the latest in a series of procedural updates. These updates deal with specific MVD procedures and practices. Managers and Supervisors should consistently distribute the updates to all personnel and integrate them into regular information and training sessions.]

Title applicants who have received a vehicle or vessel by gift are required to submit a notarized Affidavit of Gift of Motor Vehicle or Boat (MVD-10018) affirming under oath that the transfer was a gift.

Effective October 26, 2009, both the donor (prior owner) and the recipient (new owner) must sign form MVD-10018, as revised 10/09, and both signatures must be notarized.

Substantial Motor Vehicle and Boat Excise Tax revenues are lost when vehicle and boat sales are mischaracterized as gifts to avoid payment of any excise tax when the vehicle or boat is titled.

The three percent (3%) motor vehicle excise tax and the five percent (5%) boat excise tax are required to be paid on the sale of a vehicle or boat based on the sale price or (if higher) on the reasonable value of the vehicle or boat at the time of sale. However, if a vehicle or boat is legitimately transferred by gift, there is no sale, and no excise tax is due.

3.11.4.15 NMAC provides (with regard to vehicles and the motor vehicle excise tax) that, "To establish that a voluntary transfer without consideration has occurred, the department may require the parties to complete affidavits under penalty of perjury that a voluntary transfer without consideration has occurred and to submit such other evidence as is appropriate under the circumstances of the transfer."

And Section 66-12-6.1 NMSA 1978 provides in part (with regard to the boat excise tax) that to prevent evasion of the boat excise tax, "it is presumed that the issuance of every original and subsequent certificate of title ... constitutes a sale for tax purposes ... unless there is shown satisfactory proof that the boat for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration"

Accordingly, effective October 26, 2009, any applicant for a vehicle or boat title who claims that the vehicle or boat was received by gift shall be required to submit a notarized Affidavit of Gift of Motor Vehicle or Boat (MVD-10018), with which both parties (donor and recipient) affirm under oath and under penalty of perjury that the vehicle or boat was in fact transferred as a gift.

In the absence of the affidavit, the transfer is to be treated as a sale and the actual sale price or the reasonable value of the vehicle or boat (whichever is higher) at the time of sale is to be applied to determine the excise tax due. Reasonable value is presumed to be the N.A.D.A. average wholesale value for the make, model and year of the vehicle or boat (see PQU#81).

Field office managers and supervisors should refer any comments or questions regarding this Procedural Quick Update to their Bureau Chiefs, with cc to mac.lewis@state.nm.us. Others are encouraged to direct comments or questions directly to Mac Lewis.
