BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTESTS OF
DEREK V. LARSON TO 2/28/2002 AND 2/10/2003 DENIALS OF CLAIMS FOR REFUND OF MOTOR VEHICLE EXCISE TAXES **05-09**

DECISION AND ORDER

A formal hearing on the above-referenced protests was held on April 27, 2005, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bruce J. Fort, Special Assistant Attorney General. Derek V. Larson ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

2002 Corvette

1. In October 2001, the Taxpayer purchased a 2002 Corvette in Georgia and drove it back to New Mexico, which is the Taxpayer's state of residence.

2. The Taxpayer paid no Georgia sales tax, but did pay a $479.88 federal luxury tax.

3. Upon applying for a certificate of title and registering the Corvette in New Mexico, the Taxpayer was required to pay New Mexico's motor vehicle excise tax in the amount of $1,499.91.

4. On February 19, 2002, the Taxpayer submitted a request for refund of the full amount of the excise tax paid on the Corvette.

5. On February 28, 2002, the Department denied the Taxpayer's refund request.

6. On March 19, 2002, the Taxpayer filed a written protest to the denial.

Travel Trailer

7. In August 2002, the Taxpayer purchased a "Weekend Warrior" travel trailer in California and towed the trailer back to New Mexico.

8. The Taxpayer paid no California sales tax.

9. Upon applying for a certificate of title and registering the travel trailer in New Mexico, the Taxpayer was required to pay New Mexico's motor vehicle excise tax in the amount of $822.63.

10. On November 5, 2002, the Taxpayer submitted a request for refund of the full amount of the excise tax paid on the travel trailer.

11. On February 10, 2003, the Department denied the Taxpayer's refund request.

12. On April 7, 2003, the Taxpayer filed a written protest to the denial.

DISCUSSION

The issue to be addressed is whether a person who purchases a vehicle outside New Mexico but applies for a certificate of title and registers the vehicle in this state is liable for payment of the motor vehicle excise tax. NMSA 1978, § 7-14-3 reads as follows:

> **7-14-3. Imposition of motor vehicle excise tax.**
>
> An excise tax, subject to the credit provided by Section 7-14-7.1, is imposed upon the sale in this state of every vehicle, except as otherwise provided in Section 7-14-7.1 NMSA 1978 and manufactured homes, required under the Motor Vehicle Code to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the possession of the

> applicant as a voluntary transfer without consideration or as a transfer by operation of law. The excise tax imposed by this section shall be known as the "motor vehicle excise tax."

The Taxpayer relies on language in the opening sentence that an excise tax "is imposed upon the sale in this state of every vehicle.…" to argue that no tax is due on the sale of vehicles outside the state, even when those vehicles are subsequently titled and registered in New Mexico. The Department relies on the statutory presumption that "the issuance of every original and subsequent certificate of title…constitutes a sale for tax purposes" to support its position that all vehicles titled and registered in New Mexico are subject to tax.

It is a fundamental rule of statutory construction that all provisions of a statute, together with other statutes *in pari materia*, must be read together to ascertain legislative intent. *Roth v. Thompson*, 113 N.M. 331, 334, 825 P.2d 1241, 1244 (1992). "The rule that statutes *in pari materia* should be construed together has the greatest probative force in the case of statutes relating to the same subject matter passed at the same session of the Legislature." *State v. Davis*, 2003 NMSC 022, ¶ 12, 134 N.M. 172, 74 P.3d 1064. *See also, Team Specialty Products v. New Mexico Taxation & Revenue Department*, 2005 NMCA 20, ¶ 9, 107 P.3d 4.

Reading the Motor Vehicle Excise Tax Act as a whole, it becomes clear that the legislature intended the excise tax to be paid whenever the purchaser of a motor vehicle applies for a New Mexico certificate of title, regardless of whether the vehicle is purchased within or without the state. For example, NMSA 1978, § 7-14-6 sets out several exemptions from the motor vehicle excise tax, the first of which reads as follows:

> A. Persons who acquire a vehicle out of state thirty or more days before establishing a domicile in this state are exempt from the tax if the vehicle was acquired for personal use.

If the excise tax applied only to vehicles sold within New Mexico, the exemption provided in § 7-14-6(A) would be meaningless. The same is true for the credit allowed in § 7-14-7:

> **7-14-7. Credit against tax**.
>
> If a vehicle has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the tax due this state on the same vehicle.

The credit is limited to taxes paid on vehicles "acquired through an out-of-state transaction." Again, this provision of the Motor Vehicle Excise Tax Act would be meaningless if vehicles acquired outside the state were not subject to tax.

Although the Taxpayer insists that the plain language of the first sentence of § 7-14-3 limits imposition of the tax to vehicles sold in New Mexico, the other provisions of the Act indicate otherwise. In *State ex rel. Helman v. Gallegos*, 117 N.M. 346, 353, 871 P.2d 1352, 1359 (1994), the New Mexico Supreme Court noted that courts "must exercise caution in applying the plain meaning rule," explaining that:

> Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning. In such a case, it can rarely be said that the legislation is indeed free from all ambiguity and is crystal clear in its meaning. While—as in this case—one part of the statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history and background of the legislation, or in an apparent conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish. In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute.

In *State v. Rivera*, 2004 NMSC 1, ¶ 13, 134 N.M. 769, 82 P.3d 939, the court held that "a statutory subsection may not be considered in a vacuum, but must be considered in reference to

the statute as a whole and in reference to statutes dealing with the same general subject matter," quoting from 2A Norman J. Singer, *Statutes and Statutory Construction* § 46:05, at 165 (6th ed., rev. 2000). *See also*, *In re Portal*, 2002 NMSC 11, ¶ 5, 132 N.M. 171, 45 P.3d 891 (an interpretation of statutes must be consistent with legislative intent, and must not render a statute's application absurd, unreasonable, or unjust).

These rules of statutory construction require a reading of the Motor Vehicle Excise Tax Act that gives effect to each of its provisions and does not render application of the statutory exemptions and credits provided by the legislature meaningless or absurd. Such a reading can be achieved by applying the presumption in § 7-14-3 that "the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes…." The only circumstances in which the presumption does not apply is when the applicant qualifies for one of the exemptions in § 7-14-6 or establishes that the vehicle was transferred to the applicant without consideration or by operation of law. This interpretation is consistent with the other provisions of the Motor Vehicle Excise Tax Act, including § 7-14-5, which places the incidence of the tax on "the applicant for the certificate of title at the time of application for issuance of the certificate."

This interpretation is also consistent with the requirements of the commerce clause of the federal constitution. The taxable event is not the out-of-state sale of the vehicle, but the owner's subsequent application for a New Mexico certificate of title, which can only occur within this state. If the owner paid a similar tax to another state at the time the vehicle was purchased, that amount would be credited against the New Mexico tax. This taxing scheme insures that someone who

purchases a vehicle outside New Mexico pays exactly the same amount of tax as someone who purchases a vehicle within the state.

Accepting the Taxpayer's argument that no excise tax is due on vehicles purchased outside New Mexico would cause the purchaser to lose the exemption provided in NMSA 1978, § 7-9-23 of the Gross Receipts and Compensating Tax Act, which states: "Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act has been paid…." Under this scenario, the purchaser of an out-of-state vehicle who applied for a New Mexico certificate of title would be subject to compensating tax at a rate two percent higher than the three percent motor vehicle excise tax imposed on the purchaser of an in-state vehicle. *See*, NMSA 1978, § 7-9-7 (imposing a five percent excise tax for the privilege of using tangible personal property in New Mexico).[1] Such a result would more likely violate the commerce clause than the imposition of a uniform three percent tax on all owners seeking to title their vehicles in New Mexico.

CONCLUSIONS OF LAW

A. The Taxpayer filed timely, written protests to the Department's denials of the Taxpayer's claims for refund of motor vehicle excise taxes, and jurisdiction lies over the parties and the subject matter of this protest.

B. Except for specifically stated exemptions, the Motor Vehicle Excise Tax Act imposes on every applicant for a New Mexico certificate of title an excise tax equal to three percent of the price paid for the vehicle, including vehicles purchased outside the state.

[1] The assertion in the Taxpayer's brief (at page 2) that the legislature has not levied a compensatory tax on the use of vehicles purchased outside the state is incorrect. Unless an exemption or deduction applies, someone who purchases a vehicle outside the state for use in New Mexico is subject to the compensating tax.

C. The Taxpayer was liable for the motor vehicle excise tax at the time he applied for New Mexico certificates of title for the Corvette he purchased in Georgia and the travel trailer he purchased in California.

For the foregoing reasons, the Taxpayer's protests ARE DENIED.

DATED April 29, 2005.