



Serving Georgia's Franchised Motor Vehicle Dealers

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Casual Sales Tax on Motor Vehicles

The Special Council on Tax Fairness for Georgians was established by HB 1405 to conduct a thorough study of the state's current revenue structure. In order to assist the Special Council with its deliberations, the Georgia Automobile Dealers Association would like to provide the following information concerning the current sales tax exemption applicable to the casual sales of motor vehicles.

The casual sales tax exemption is motivated by administrative concerns. These concerns are explicitly referenced in the Georgia Department of Revenue regulation establishing the exemption:

"Invoking the rule of de minimis and because of the difficulties in administration and enforcement, no sales or use tax liability will be enforced against either the seller or the purchaser in a casual sale transaction as herein defined..." Ga Reg 560-12-1-.07.

Although many states recognize some form of casual sales tax exemption based on administrative concerns, the overwhelming majority of states impose sales tax on the casual sales of motor vehicles. Currently, 44 states impose sales tax on the casual sales of motor vehicles. Among the six states that do not tax casual sales of motor vehicles, three of those states (New Hampshire, Oregon, and Delaware) do not levy state sales tax at all. The three states that do NOT tax casual sales are Georgia, Nevada, and Arizona. Georgia is the only southeastern state that allows its casual sales tax exemption to extend to motor vehicles.

States can impose sales tax on the casual sales of motor vehicles because collection of sales tax in such transactions does NOT create an administrative burden. Because motor vehicles must be registered, there are no administrative difficulties in collecting sales tax on casual sales of motor vehicles. If the tax has not been collected at the point of sale, the purchaser is required to pay the tax upon registration of the vehicle. This method of collection is currently utilized by the Georgia Department of Revenue in out of state sales and could easily be implemented to facilitate the collection of sales tax in casual sales.

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In fact, the Georgia Code clearly contemplates a process for the collection of casual sales tax on motor vehicles. Section 40-2-23(b) of the Code states as follows:

The state revenue commissioner is authorized to further designate each such tag agent as a sales tax agent for the purpose of collection sales and use tax with respect to the casual sale or casual use of a motor vehicle. For purposes of this Code section, "casual sale" or "casual use" means the sale of a motor vehicle by a person who is not regularly or systematically engaged in making retail sales of motor vehicles and the first use, consumption, distribution or storage for use or consumption of such motor vehicle purchased through a casual sale. [Emphasis added].

In addition to the absence of an administrative burden in the collection of the tax, there is nothing "de minimis" about sales tax on motor vehicles. A tax exemption on the casual sales of other goods may make sense considering that an insignificant amount of revenue might be generated compared to the costs associated with collection of the tax. However, this rationale does not apply in the context of motor vehicle sales as the tax revenue generated from such transactions would be significant. According to information available during 2009-2010 legislative session regarding HB 480, hundreds of millions of dollars of tax revenue could be generated if a tax was applicable to casual sales of motor vehicles.

Consistent with the fact that collection of tax on the casual sale of motor vehicles is already referred to in the Georgia code, it is important to point out that the casual sales tax exemption is not based on any specific statute or legislative authority. Instead, the exemption is the result of judicial interpretation and administrative action by the Georgia Department of Revenue 45 years ago.

The history of the casual sales tax exemption is instructive. The Georgia sales tax code, as first enacted in 1951, imposed a "privilege or license tax upon every person who engages in the business of selling tangible property personal property at retail." This language was construed by the courts to exempt casual sales because the tax was imposed only on those who engaged in the "business" of selling.

In 1960, the General Assembly amended the sales tax code to make it clear that the tax was imposed on the purchaser rather than the business. Although the very language that the courts relied on to initially create a casual sales exemption had been removed from the code, the Department of Revenue, in 1965, adopted an administrative rule exempting casual sales from tax. Since that time, despite there being no specific statutory language



creating a tax exemption for casual sales, the Georgia courts have upheld the exemption. As stated by the Georgia Court of Appeals

[t]he Act does not define or even mention "casual sales." The term comes from case law and Revenue Regulations. We believe that the Act, as amended, still excludes these transactions, although the new wording narrows the field which fit the category. Newscopters Inc. v. Blackmon, 125 Ga. App. 130, 186 S.E.2d 759 (1971)

As a consequence of judicial interpretation and administrative rule, the casual sales exemption has applied to motor vehicles essentially by default.

In addition to lack of administrative concerns, the casual sales tax exemption is fundamentally unfair. Georgia's current sales tax structure puts licensed car dealers at a competitive disadvantage. Dealers that sell used cars must compete with those who are able to sell cars "tax free" in a casual sale transaction. The additional six or seven percent cost of purchasing a car through a dealer rather than in a casual sale can be substantial. In addition, the ability to avoid collection of tax in casual sales likely promotes tax evasion by making it advantageous to structure title transfer documents to appear as a casual sale when in fact, the transaction is not a casual sale.

Similar to this Special Council, in 1978, the General Assembly created a Georgia Tax Reform Commission to review Georgia's tax structure and to report to the General Assembly its findings. At that time, the Tax Reform Commission found that,

One segment of such [exempt] transactions, the casual sales of automobiles, boats and airplanes, is enforceable. Proof of sales tax payments can be required before the automobile title or the boat registration is approved. Taxation of this category of casual sales would improve upon an inequity in the current sales tax structure.

To summarize, the casual sales tax exemption as it applies to motor vehicles should be eliminated. The principal justification for exempting casual sales from sales tax is that enforcement would be difficult and the costs of administration might well exceed the resulting tax revenues. This reasoning does not apply to the casual sale of motor vehicles. Collection of the tax could be made part of the registration process and the sales tax generated by such transactions can hardly be characterized as "de minimis." Moreover, consistent with the goals of the Special Council, eliminating the casual sales exemption for motor vehicles would make the tax structure more equitable by equalizing the tax treatment of motor vehicle sales whether sold by a dealer or by an individual.