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LEGAL MEMORANDUM

Ref: DRT 09-0007

TO: Director, Department of Revenue and Taxation

FROM: Attorney General *ALG*

SUBJECT: **The Vehicle Transfer Tax and Use of ITINS for Driver's Licenses**

By letter dated January 26, 2009, you have sought guidance on two issues:

- (1) Whether the term "transfer" as used in 16 GCA § 25101(b)(2) includes a bank when it repossesses a vehicle, thus subjecting it to the transfer tax; and
- (2) Whether it is in the Director's authority to have an Individual Taxpayer Identification Number (ITIN) be accepted in place of a social security number as a requirement for a customer applying for a Guam Driver's License.

1. Vehicle Transfer Tax Issue.

The first issue you have inquired about involves a bank repossessing a vehicle and wanting to become the newly registered owner. Specifically, you have asked whether the bank is exempt from the transfer tax 16 GCA § 25102 in light of 16 GCA § 25101(b)(2).

In general, 16 GCA § 25101(a) provides for a transfer tax on every transfer of a motor vehicle by other than a licensed dealer.

16 GCA § 25101(b)(2) provides that the word *transfer* does not include:

- (2) The repossession of a motor vehicle in the exercise of a right or power reserved by or granted to a seller and described in the instrument defining the security interest reserved by such seller.

As provided in § 25101(c)(4), the Director is permitted to charge a registration fee in the amount of \$10 for a change in ownership arising from repossession.

Under 16 GCA § 25101(b)(2), in order for a bank to be exempt from the transfer tax there must be a written agreement between the bank and the car "owner" that grants the bank the power to

repossess or which reserves to the bank such power. Additionally, the instrument creating the security interest must describe this right.

If these two elements are not present in the agreement, the bank will not be exempt from the transfer tax and will instead be subject to the tax found in 16 GCA § 25101(c)(4).

2. Use of Individual Tax Identification Numbers on Drivers Licenses.

You have also enclosed a Memorandum from a Former Director of Revenue and Taxation which authorizes individuals who do not have and are not eligible to get a social security number to use an Individual Taxpayer Identification Number to fulfill the requirement of having a social security number.

In 2003 and 2004, the Internal Revenue Service limited the use of ITINs and provided they are to only be used for the purpose of complying with the US Tax laws. I also enclose a copy of a memorandum issued by the IRS with respect to this issue. It may be found at http://www.irs.gov/pub/irs-utl/itin_dmv_info.pdf.

This memorandum provides in part:

The Internal Revenue Service issues ITINs for the sole purpose of enabling individuals who do not qualify for Social Security numbers to meet their tax filing responsibilities. Therefore, we do not subject ITIN applicants to the same rigorous documentation verifications as Social Security number or visa/passport applicants.

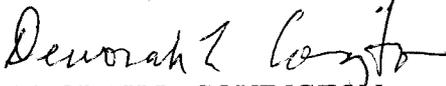
The memorandum further provides:

If your state currently accepts ITINs as proof of identity for driver's licenses, please alert your staffs that IRS issues ITINs for tax purposes only. Please do not direct driver's license applicants to us for ITINs; we do not issue the numbers for non-tax reasons.

Additionally, the IRS issued Notice 2004-1, 2004-2 I.R.B. 268, 2004-1 C.B. 268 on January 12, 2004. The IRS again reiterated that "ITIN's were not intended to be used as proof of identity for nontax purposes (e.g., to obtain a driver's license, to claim legal residency, to seek employment in the United States, or to apply for welfare and health benefits) and may not be reliable proof of an individual's identity for those purposes." *See also*, Treas. Reg. § 301.6109-1(a)(ii)(B).

The appropriate manner by which to address this issue is by using the numbers from the Guam Identification Cards. *See* Amended Governor's Circular No. 2009-0029 (April 2, 2009). In accordance with 10 GCA § 57102, any non-United States citizen applying for any service of the government of Guam must possess and present a Guam Identification Card as a condition of eligibility. A copy of the Amended Circular as well as the Certification of Identification statute is enclosed for your review.

In sum, the Director is not authorized to use ITINs as proof of identity for driver's licenses. I enclose a copy of Notice 2004-1 as well as a copy of the Information Memorandum for State Departments of Motor Vehicles.


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