

## WILD ROSE LEASING LLC (TRU) (2017)

Topic Code: M201 Motor Vehicle Use

Document Reference: 17300008

April 3, 2017

Kirke Financial Services  
Christina Collins  
5465 Mills Civic Pkwy Ste 400  
West Des Moines, IA 50266

RE: Wild Rose Leasing LLC  
Docket No. 2012-340-1-0243  
Vehicle Use Tax Protest  
Department Number 2012195700365

Dear Ms. Collins:

The Review Unit of the Iowa Department of Revenue has considered your protest. After reviewing the facts and evidence presented and the laws which apply to your protest, the Review Unit denies your protest for the following reasons.

Your protest was originally filed regarding a Notice of Assessment for Iowa Motor Vehicle Use Tax for the period ending December 31, 2008. In the protest and in follow up correspondence you stated that Wild Rose Leasing, LLC (Wild Rose) was created in June of 2008 and is a Single Member LLC owned 100% by Gerald M. Kirke. You go on to say that the entity was created to consolidate the vehicles under one entity to not only continue their business use, but to simplify the record keeping for insurance, financial accounting, taxes, etc.

Vehicles in question were transferred from three different entities into Wild Rose. The three different entities are Fratellos, LLC, K Properties, LLC, and Richards Consulting Group, Inc. When you filed the protest you conceded that the vehicle transferred from Richards Consulting Group, Inc. did not qualify for exemption as Richards Consulting Group, Inc. was not owned 100% by Mr. Kirke. Records also show that you included a payment of \$1,096.17 to cover the Vehicle Use Tax on the vehicle transferred from Richards Consulting Group, Inc. This payment has been applied to the original assessment in question. For purposes of the current case we will no longer reference the vehicle transferred from Richards Consulting Group, Inc. as the protester concedes that this vehicle did not qualify for the exemption.

In your correspondence you indicated that Fratellos, LLC, was formed July 6, 1999 and operated a restaurant in West Des Moines from inception until 2010 when the restaurant closed and the entity was dissolved. You also indicated that Fratellos, LLC, was a single member LLC, owned 100% by Gerald M. Kirke from formation to dissolution. In the same correspondence you stated that K Properties, LLC,

was formed August 1, 2005, and is a farming/land management company which cash rents farm land and warehouse space. You also indicated that although some land has been sold since formation, operations remain the same to date. K Properties, LLC is a Single Member LLC which has been owned 100% by Gerald M. Kirke since inception.

Iowa Code § 321.105A2 provides, “in addition to the annual registration fee required under section 321.105, a “fee for new registration” is imposed in the amount of five percent of the purchase price for each vehicle subject to registration. The fee for new registration shall be paid by the owner of the vehicle to the county treasurer at the time application is made for a new registration and certificate of title, if applicable. A new registration receipt shall not be issued until the fee has been paid.” Purchase price means the same as sales price and sales price means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

Iowa Code § 321.105A2(3)(a) provides an exemption for “vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company to a corporation formed by the sole proprietorship, partnership, or limited liability company *for the purpose of continuing the business* when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor’s spouse, by all the partners in the case of a partnership, or by all the members in the case of a limited liability company.” For additional guidance we look to Iowa Rule 701—34.5(9)a(1) which provides that the vehicle must be transferred to a “new” entity. For purposes of the current case a “new” entity is one that has been created, at the time of transfer for two years or less. We also look to Iowa Rule 701—34.5(9)a(2) which provides, “the new entity must have been formed for the purpose of *continuing the business of the prior entity*. *The activities of the new entity must, therefore, be the same as the prior entity*.”

The Department does not argue that Wild Rose was a “new” entity at the time of transfer and the Department also agrees that the ownership of Wild Rose was the same as Fratellos, LLC and K Properties, LLC.

However, we must also look at the business activities of the transferring entities as compared to the business activities of the “new” entity. First, we will look at the business activities of Fratellos, LLC (Fratellos). Fratellos functioned as a restaurant since its inception in July 1999. Subsequent to the vehicle transfer, Fratellos continued to function as a restaurant until it closed in 2010. Fratellos was administratively dissolved by the Iowa Secretary of State effective August 9, 2011. Wild Rose was created to consolidate all vehicles owned by Gerald M. Kirke through his 100% owned LLCs not only to continue the business use of the vehicles, but to simplify the record keeping for insurance, financial accounting, taxes, etc. Clearly, the business activities of Fratellos and the business activities of Wild Rose were not the same. Therefore, vehicles transferred from Fratellos to Wild Rose do not qualify for the exemption.

Now we must look at the business activities of K Properties, LLC (K Properties). K Properties is a farming/land management company which cash rents farm land and warehouse space. K Properties has conducted these activities since its inception in August 2005 and continues to do so today. As with Fratellos, the business activities of K Properties and the business activities of Wild Rose are not the

same. Therefore, the vehicles transferred from K Properties to Wild Rose do not qualify for the exemption. Therefore, your protest must be denied, and the Notice of Assessment must be affirmed.

Please respond in writing by May 1, 2017 whether you agree with the Review Unit's position. If you agree, or choose not to pursue the protest, your letter and payment of the amount due, which is \$18,964.46, with interest computed through April 30, 2017, will serve as authority for the Review Unit to request the Director to close the protest. Please note that interest accrues at the rate of \$52.48 per month.

If you disagree with the Review Unit's position in this matter, the Review Unit requests that you identify those areas of disagreement and provide documentation to support your position. Upon receipt of your letter, the Review Unit may file an Answer, which will initiate the process for an administrative hearing on your protest. A departmental attorney will be assigned to your protest at that time.

If no response is received by May 1, 2017, the Review Unit will construe this inaction as failure to pursue the protest and will request dismissal of the protest pursuant to departmental rule 701 IAC 7.11(2).

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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