

BECKER BROS. TRUCKING, INC. (TRU) (2017)**Topic Code: V037 Vehicle Transfer****Document Reference: 17300009**

April 25, 2017

Gregory Penning
Jim Gage & Co. C.P.A.s
119 E Call St
Algona, IA 50511

RE: Becker Bros Trucking Inc
Docket No. 2012-340-1-0039
Vehicle Use Tax Protest
Department Number 2012073700670

Dear Mr. Penning:

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 March 31, 2010. In your client's protest you stated that you disagreed with the assessment for the use tax on vehicles licensed to Becker Bros Trucking, Inc. (Corporation). You did also indicate that the sole proprietorship ownership of each individual truck and trailer did not equal the final ownership of the Corporation, but you disagreed with the assessment as this was a combination of a transfer to a Corporation under Exemption #3 and a transfer without consideration under Exemption #1. You stated that all parties involved in the transfer were related parties as defined by IRS Section 267(b) and Section 707(b) in that each were parent or sibling relationships. You stated that no consideration was given for any vehicle listed in the assessment between any related party. You also stated that the Corporation was formed to carry on the same business as the previous sole proprietors. In support of your arguments you referenced Iowa Code § 321.105A2.

In your most recent correspondence you stated that the sole proprietorships for Franklin Becker, Brad Becker, and Brandon Becker conducted business activities of farming and trucking. You did also indicate that subsequent to the transfer of the vehicles to the Corporation that each of the sole proprietorships still exist. Each of them continue to farm. However, the trucking income on their sole proprietorships did cease to exist subsequent to the vehicle transfer to the Corporation. You did also indicate that the activities of the Corporation consist of hauling grain. You stated that the three sole proprietorships were owned separately by Franklin Becker, Brad Becker, and Brandon Becker and the owners of the Corporation are Franklin Becker, Brad Becker, and Brandon Becker, as evidenced with a

copy of the 2009 minutes listing the names of the members of the Corporation. You also indicated that there was no debt owed on any of the vehicles transferred into the Corporation. In closing you stated that the vehicles were transferred from the sole proprietorships to the Corporation because the Corporation was created to provide the business activity of grain hauling only and for liability purposes of the business activity. The sole proprietorships were no longer providing the business activity of grain hauling. Therefore, the sole proprietorships no longer needed the vehicles as a part of their business.

In my research I did find that the Corporation was created with the effective date of January 29, 2009, as evidenced by the Iowa Secretary of State. I did also see that the vehicles transferred from the sole proprietorships to the Corporation on June 2, 2009. The transfer did take place within two years of the creation of the new Corporation. The Department agrees that the transfer of the vehicles took place within the timeframe prescribed in Iowa Code § 321.105A2c(3).

Your statement that there was no consideration given for said vehicles implies that you believe that the transfer from the sole proprietorships to the Corporation was a gift. However, in a review of the 2009 corporate minutes it states that each Franklin L. Becker, Brad L. Becker, and Brandon F. Becker did convey to the Corporation his assets and liabilities, consisting of various semi-tractors and grain trailers, together with related equipment and cash, if any. In exchange for this transfer each would receive 4,000 common voting shares of capital stock of the Corporation.

Iowa Code § 423.1 (40) provides: “Purchase” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration. “Consideration” is, basically, anything which one party to a contract for sale offers to another which is of benefit or advantage to that second party. See Black’s Law Dictionary (4th Ed.) p.p. 378-80. This is a basic explanation of a fairly sophisticated concept. As provided in 17 C.J.S. Contracts § 70, p. 747 (1963) “benefit” as thus employed, means that the promisor has, in return for his promise, acquired some legal rights to which he would not otherwise have been entitled.

In this case, each of the incorporators received capital stock of the Corporation in return for the transfer of the semi-tractors and trailers. Therefore, there is consideration.

Conditions under which vehicle use tax would be exempt are found in Iowa Code § 321.105A2c(3), as implemented by Iowa Rule 701—34.5(9)a(2). In this rule it states “the new corporation must have been formed for the purpose of continuing the business of the sole proprietorship or partnership. The activities of the new corporation must, therefore, be the same as the sole proprietorship or the partnership.” This rule also states “the new corporation must be owned 100 percent by the sole proprietor, the sole proprietor’s spouse or all the partners, in the case of a partnership, which is transferring the vehicle.” This means that all ownership in the old entity and the new entity must be the same. In your correspondence you indicated that the business activities of each of the sole proprietorships, prior to the vehicle transfer, consisted of farming and grain hauling. In that same correspondence you also indicated the Corporation was created to provide the business activity of grain hauling only. Once the transfer was completed, each of the sole proprietorships continued with farming only. The Corporation was not in the business of farming. Clearly, the business activities of the sole proprietorships and the Corporation are not the same. Then we also look at the ownership of the sole proprietorships to the ownership of the new Corporation. As you indicated in the original protest, you realize that the sole proprietorship ownership of each individual truck and trailer did not equal the final ownership of the Corporation. Therefore, the ownership of each of the sole proprietorships differed

from the ownership of the Corporation. With that being said, Becker Bros. Trucking, Inc. does not qualify for the exemption from vehicle use tax. Therefore, the protest must be denied.

In August 2012, Becker Bros Trucking Inc. remitted a payment for \$6,973.18. This payment paid the Notice of Assessment in full. There is no outstanding amount due. Please respond in writing by May 25, 2017 whether you agree with the Review Unit's position. If you agree, or choose not to pursue the protest, your letter will serve as authority for the Review Unit to request the Director to close the protest.

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 25, 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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