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TESTIMONY BEFORE THE R.I. VEHICLE VALUE COMMISSION

Regarding the methodology for determining the presumptive value of vehicles subject to the excise tax

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For many years, rather than adopt a methodology based on real-world experience for determining the presumptive value of motor vehicles in the state, the Vehicle Value Commission has taken the easy way out, adopting a formula that is as simple to administer as it is unfair to motor vehicle owners. This year's proposal follows that pattern by determining the amount of a car's excise tax in almost-exclusive reliance on National Automobile Dealers Association (NADA) book values. More specifically, the regulations propose relying solely on the NADA's designated "clean retail value" of a car, based on its make and model, for all used cars up to 17 years old. For new cars, the manufacturer's suggested retail price as listed in the NADA book or similar guide would set the value.

Particularly in light of the recent state law change that has significantly increased both the size of the tax that can be imposed and the number of previously-exempt cars that are now subject to the tax, is time for the Commission to adopt a methodology that is fairer to taxpayers, car owners, the spirit of the statute and basic notions of due process. The RI ACLU has a special interest in this matter because, many years ago, we routinely testified at the Commission against the type of methodology it continues to use. In fact, we sued the Commission for failing to follow statutory standards in adopting presumptive motor vehicle values.

As the Commission is aware, the General Assembly last year gave municipalities much greater discretion to collect taxes on motor vehicles, making the Commission's methodology more important than ever. Previously, the state required cities and towns to exempt the first \$6,000 of a vehicle's value when calculating tax bills. Now, however, municipalities need only exempt the first \$500 in vehicle value, and many communities have taken advantage of that opportunity in order to raise much-needed revenue. This, in turn, has understandably created post-sticker shock among many car owners who, in a number of cases, now face significant tax bills on motor vehicles that may not have been subject to any tax at all for years, or were the subject of much lower taxes.

While many of those taxpayers have criticized their City and Town Councils for taking advantage of the law's new discretionary authority in setting a minimum tax exemption, we believe the Commission bears a large portion of the responsibility. In many instances, people are complaining not just about the tax, but about the *unrealistic vehicle valuation* on which the taxes were based. That valuation falls squarely on the Commission's shoulders, and taxpayers are correct to note that it is often totally at odds with the condition of most cars.

The "clean retail value," which the Commission relies on, is the highest car value offered in the NADA book, and it is often much higher than the other listed values that more meaningfully reflect the real world of car buying and selling. The NADA book offers four possible ways of valuing used cars – first, the top-of-the-line "clean retail value," but then a "clean trade-in value," an "average trade in-value" and a "rough trade-in value." While we could understand the Commission summarily rejecting use of the "rough trade-in value" as not accurately reflecting the condition of most cars, it is just as inappropriate and unfair to rely solely on the "clean retail value," especially for cars that have been on the road for seven, ten or fifteen

years or longer. The Commission is setting taxes for all these automobiles based on a presumption that (as the term is defined by the NADA) they have “no mechanical defects,” only “minor surface scratching with a high gloss finish and shine,” an interior that “reflects minimal soiling and wear” and “all equipment in complete working order” – in short, that almost every used car owned by a Rhode Island resident, whether it is one year old or seventeen years old, is almost “like new.” Such a presumption defies reality.

Even more problematic from a civil liberties and due process perspective, this presumption is irrebuttable, and thus no presumption at all. The Commission provides no meaningful appeal process to aggrieved car owners. For as long as we are aware, the Commission’s consideration of appeals has consisted solely of checking the NADA figure to make sure no clerical mistake was made by the local assessor in setting the tax. Thus, adjustments are made only when an incorrect NADA car value was inadvertently imposed, not when the taxpayer challenges the NADA figure itself based on, for example, local selling conditions.

Although the Commission’s proposed methodology may meet the minimal, literal terms of the statute, it is important to emphasize that the statute clearly gives the Commission the authority to do much more. The statute also implies that it *should* do more. For brief periods of time, the Commission in fact *has* done more. A quick review of the statute’s history and variations on these regulations that the Commission has adopted in the past helps provide ideas for suitable revisions to the current proposal.

As presently worded, the statute requires the Commission, in determining the “presumptive value” of motor vehicles, to annually “give due consideration” to:

(i) The average retail price of similar vehicles of the same make, model, type, and year of manufacture as reported by motor vehicle dealers or by official used car guides, such as that of the National Automobile Dealers Association for New

England. Where regional guides are not available, the commission shall use other publications deemed appropriate; and

(ii) Other information concerning the average retail prices for make, model, type, and year of manufacture of motor vehicles as the director and the Rhode Island vehicle value commission may deem appropriate to determine fair values.

Although the Commission is required to “duly consider” “other information concerning average retail prices” as it “deems appropriate,” the agency has, to our knowledge, regularly refused to do so. We believe it can no longer shirk this responsibility.

Initially, the General Assembly was more explicit in requiring the Commission to consider factors beyond the NADA book value. Specifically, the original statute required the Commission to give consideration to:

*(i) The average retail price **in Rhode Island** of similar vehicles of the same make, model, type, and year of manufacture as reported by motor vehicle dealers and by official used car guides, such as that of the national automobile dealers association for New England;*

(ii) Retail sales prices determined for Rhode Island state sales tax purposes;

(iii) Rhode Island retail sales prices as advertised in newspapers; and

(iv) Such other information concerning the average retail prices for make, model, type, and year of manufacture of motor vehicles as the director and the Rhode Island vehicle value commission may deem appropriate to determine fair values.

[NOTE: the highlighted portions were deleted from the statute in 1998]

Even when these more explicit criteria were in the statute, the ACLU found that the Commission was inappropriately looking solely to the NADA book value to set rates. Car owners who sought to rely on such pieces of information as the “Rhode Island retail sales prices as advertised in newspapers” to challenge a valuation were routinely rebuffed. As a result, the RI ACLU was forced to file suit against the Commission for failing to take into account these other statutorily-mandated factors. In 1994, the Commission settled the lawsuit by agreeing to adopt a methodology that comported with the statute’s criteria.

Regrettably, the General Assembly amended the statute a few years later to eliminate sales tax information and newspaper advertisement as explicit criteria. But it still required the Commission to consider “other information” deemed “appropriate to determine fair values.” Further suggesting that the valuation should not be as simplistic as looking at one figure in the NADA book, the statute continues to give the Commission “the power to contract for such professional services as it deems necessary for the development of the methodology for determining presumptive values [and] for calculating presumptive values according to the methodology...” R.I.G.L. 44-34-11(e). Obviously, such a provision would be unnecessary if all the General Assembly expected from the Commission was to pick a number out of a book.

Over the years, at least in partial deference to the earlier version of the statute, the Commission did rely on more than just one NADA number. The 1985 regulations, for example, valued autos 11 to 18 years of age “by using the NADA average retail value added to the average NADA trade-in value divided by 2.” Similarly, in 1988, the vehicle value of cars 8 to 17 years of age was the “N.A.D.A. Average of Wholesale & Retail Values.” In 1994, hewing more closely to the statute as it then existed, the Commission valued cars in the 8-17 year range as follows:

All motor vehicles identified as the 1988 model year up to and including the 1994 model year shall be valued based upon their average retail value as reflected in official used car guides such as that of the National Automobile Dealers Association (NADA) for New England, as compared to actual sales prices in Rhode Island as determined by the Division of Taxation from sales recorded and registered with the Registry of Motor Vehicles in December 1994. A percentage will be determined between the actual sales price and the average retail value as reported by NADA. That percentage will be applied to the average retail value of all 1988 through 1994 model year vehicles.

The next year’s regulations, in response to the ACLU lawsuit, added a provision requiring the Commission to “review current newspaper advertisements regarding the sale of automobiles and [to] give due consideration to the advertised retail sales price.” As we noted,

the General Assembly eliminated that as a statutory requirement three years later and, to our knowledge, it has not reappeared in the regulations since.

The impact of these omissions takes on heightened significance and unreasonableness when considered in light of the *pro forma* appeals process established by the Commission. When the statute required examination of tax records and classified ads, it recognized that vehicle values can differ substantially from state to state. While a guidebook such as the NADA book for New England may serve as one indication of a car's value, local sales prices can often provide a better indication of a car model's actual value in the state. Indeed, the fact that the statute refers to the Commission establishing "presumptive" values means to us that there should be an opportunity at some point in the process to challenge that presumption. Yet the Commission's process does not allow any such challenge. Such cold efficiency, which essentially rewrites the word "presumptive" out of the statute, is a disservice to the taxpayers and to basic principles of due process.

Finally, in addition to these general objections to the Commission's proposed methodology, we wish to raise one specific concern about the wording of one section of the regulations. That is Section 1.03, which covers 1988 through 1994 model year vehicles. As worded, this provision is very confusing. The value of these cars is "based upon 100% of their clean or average retail value as reported by" the NADA "older used car" guide and "classic car" guide. The section then adds: "In the event of a conflict between the two above, the former shall prevail." It is unclear whether the "conflict" refers to a conflict between the clean and average retail value, or a conflict between the two guide books. It is also unclear to us why the regulation would reference "clean or average retail value" as opposed to just one of those values. This ambiguity should be addressed.

In conclusion, we recognize that, in setting a presumptive and uniform value, the Commission is not in a position to take into account every variable factor that one could raise. But as earlier versions of the statute and regulations show, there are ways of taking at least some other factors into account in order to provide for an overall fairer process, and we believe the Commission should do so. For example, the Commission could restore to its methodology the consideration of retail sales prices as determined for state sales tax purposes, and as advertised in newspapers. The Commission could once again break down car models into categories by years so that, at a minimum, something other than, or more than, the NADA “clean retail value” is used as the standard book value for cars more than a few years old. Since we acknowledge no specialized expertise in this area, we leave it to the Commission members and others to suggest alternative methods of establishing a “presumptive value” for motor vehicles; all that we can say is that something more meaningful than the current procedure is essential in order to add some fairness to the methodology. Finally, to promote basic principles of due process, we request that the regulations address and revise the Commission’s appeal procedure in order to allow for meaningful challenges to the presumptive value assigned to a particular make and model of car.

If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of this methodology, incorporating therein your reasons for overruling the suggestions urged by us. Thank you for considering our views.

Submitted by: Steven Brown, Executive Director
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