

MV 18-03
Tax Type: Motor Vehicle Use Tax
Tax Issue: Non-resident exemption

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC, INC.

Taxpayer

Docket # XX-XX-XXX
Acct ID: XXXXX-XXXXX
Letter ID: CNXXXXXXXXXXXXXXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, *pro se*, for ABC, Inc.

Synopsis:

ABC, Inc. (“taxpayer”), which is located in Indiana, purchased a truck from a dealership located in Illinois. The Department of Revenue (“Department”) audited the transaction and issued a Notice of Tax Liability (“NTL”) to the taxpayer for use tax on the purchase. The taxpayer timely protested the NTL, and an evidentiary hearing was held during which the taxpayer participated by telephone and argued that the tax should not be imposed because the dealership delivered the truck to the taxpayer in Indiana and the taxpayer was never in Illinois. The vehicle was registered and titled in Indiana, and

the vehicle qualified for the rolling stock exemption in Indiana. The Department argues that the vehicle should be taxed because Indiana is not a reciprocal state and the vehicle does not qualify for the rolling stock exemption in Illinois. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer is located in Indiana. (Dept. Ex. #1, p. 2)
2. On July 3, 2015, the taxpayer called a dealership in Anywhere, Illinois and purchased a 20XX Chevrolet XXXXXX. A friend of the taxpayer's owner had recently started working at the dealership, and the owner wanted to give him an easy sale. (Dept. Ex. #1; Recording¹)
3. On July 4, 2015, the dealership delivered the vehicle to the taxpayer in Indiana. (Dept. Ex. #1, p. 6)
4. The vehicle was registered and titled in Indiana, and it qualified for a rolling stock exemption in Indiana. (Dept. Ex. #1, pp. 7, 9-11)
5. On December 7, 2017, the Department issued a Notice of Tax Liability to the taxpayer for Motor Vehicle Use Tax that assessed tax in the amount of \$XXXX, plus penalties and interest, on the purchase of the truck. The NTL was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, pp. 1-2)

CONCLUSIONS OF LAW:

Under the Vehicle Code (625 ILCS 5/1-100 *et seq.*), Illinois imposes a tax on the privilege of using in Illinois any motor vehicle acquired by gift, transfer, or purchase.

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

625 ILCS 5/3-1001. In the administration of the vehicle use tax, the Department and the taxpayers “have the same rights, remedies, privileges, immunities, powers and duties, and [are] subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act.”

625 ILCS 5/3-1003. Under the Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3.

In the present case, the use tax does not apply because the vehicle was not delivered to the taxpayer in Illinois. The taxpayer is located in Indiana, and the dealership delivered the truck to the taxpayer in Indiana. The Department does not dispute the fact that the truck was delivered in Indiana. The truck was licensed and titled in Indiana and qualifies for the rolling stock exemption in Indiana. The use tax should not be assessed against the taxpayer.

The Department has argued that use tax was properly assessed because Indiana is not a reciprocal state and even though the vehicle may qualify for the rolling stock exemption in Indiana, it does not qualify for the exemption in Illinois. The Department’s argument appears to be based on subsection h-1 of the multistate exemption section of the Act, which provides, in relevant part, as follows:

Sec. 3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

...

(h) Except as provided in subsection (h-1), the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued

to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. . . .

(h-1) The exemption under subsection (h) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for the use in that state of a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. ... 35 ILCS 105/3-55.

Even though Indiana is not a reciprocal state, this section of the Act is not relevant because the vehicle was delivered to the taxpayer in Indiana. The vehicle was not delivered to the taxpayer in Illinois, so the use tax does not apply.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be dismissed.

Linda Olivero
Administrative Law Judge

Enter: July 13, 2018