

MV 19-01
TAX TYPE: MOTOR VEHICLE USE TAX
**TAX ISSUE: PRIVATE VEHICLE USE TAX – BUSINESS REORGANIZATION/
FAMILY SALE**

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

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC FREIGHT CO. INC.

Taxpayer

Docket # 18-ST-000
Acct ID: XXXXX-XXXXX
Letter ID: CNXXXXXXXXXXXXXXXX
Letter ID: CNXXXXXXXXXXXXXXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Gary L. Smith of Loewenstein & Smith, P.C. for ABC FREIGHT CO. INC.

Synopsis:

On April 27, 2018, the Department of Revenue (“Department”) issued two Notices of Tax Liability (“NTLs”) to ABC FREIGHT CO. INC, (“taxpayer”) for vehicle use tax. The taxpayer timely protested the NTLs. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on their Stipulation of Facts and the attached exhibits. The taxpayer filed a Motion for Summary Judgment and a Memorandum of Law in support of the Motion. The Department did not file a Motion for Summary Judgment or Memorandum of Law. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer and that the taxpayer’s Motion for Summary Judgment be granted.

FINDINGS OF FACT:

1. On March 25, 1996, the taxpayer purchased two trailers from a dealer located in Wisconsin. The transaction was a “sale at retail” as that term is defined in the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), and the transaction involved a transfer of ownership to the taxpayer. (Stip. #6, 11, 14; Ex. F, G)
2. The purchase price for each trailer was \$55,840. (Stip. #6; Ex. F, G)
3. When the taxpayer purchased the trailers the dealer arranged the financing, and the purchase was financed through US Bancorp Financial, Inc. (“US Bancorp”). The financing was called a lease, but the terms of the financing were, in fact, a loan with interest charges and equal monthly payments for 4 years. (Stip. #6, 11)
4. The financing was immediately assigned to First Midwest Bank. (Stip. #11)
5. Due to the passage of time (over 20 years), the taxpayer no longer has the financing papers for the purchase of the two trailers. (Stip. #12)
6. The Certificates of Title for both vehicles show the owners as “US Bancorp Financial, Inc. and [the taxpayer].” The Certificates of Title also show the first lienholder as First Midwest Bank. (Stip. #7; Ex. J, K)
7. In March 1996, the taxpayer brought the vehicles into Illinois. (Stip. #8)
8. On March 28, 1996, the taxpayer filed a Form RUT-25, Motor Vehicle Use Tax Return, for each vehicle that showed the vehicles exempt from tax because they qualified for the rolling stock exemption. On the same day the taxpayer filed a Rolling Stock Affidavit for the vehicles. (Stip. #10; Ex. N, O, P)
9. At all times since purchasing the two trailers, the taxpayer has been engaged in the for-hire interstate transportation of goods. (Stip. #22)

10. From April 1996 through February 2000, the taxpayer paid monthly financing payments to First Midwest Bank. Each invoice reflects an 8.5% interest rate and a declining principal balance. (Stip. #15, 16; Group Ex. Q)
11. On December 28, 2001, First Midwest Bank signed a Release of Lien on both titles. (Stip. #17; Ex. J, K)
12. In February 2018, the taxpayer applied for replacement plates because the plates on both trailers were so faded they were difficult to read. At that time the taxpayer was told that there was a “red flag” on the titles and was requested to produce the titles. (Stip. 18)
13. The taxpayer gave the titles to the Illinois Secretary of State, and the Secretary of State requested that the taxpayer file a corrected title application to remove US Bancorp from the titles. (Stip. #19)
14. On February 27, 2018, US Bank Equipment Finance, which is the successor to US Bancorp, sent a letter to the taxpayer in which US Bank Equipment Finance released, transferred and assigned all its right, title, and interest in the two trailers to the taxpayer for no consideration. (Stip. #20; Ex. R)
15. On March 3, 2018, the taxpayer paid \$6 per trailer to obtain replacement plates, and the Secretary of State filed a Form RUT-25 for each trailer listing US Bancorp Financial, Inc. as the “seller.” The RUT-25s are not signed by the taxpayer. Each RUT-25 has a stamp at the bottom that says “TAX PD WO 12.”¹ (Stip. #21; Ex. U, V)
16. On April 27, 2018, the Department issued two Notices of Tax Liability to the taxpayer that assessed tax, penalties, and interest for Vehicle Use Tax on the purchase of the two trailers. Each Notice of Tax Liability shows the date that the taxpayer brought the trailers into Illinois as December 28, 2001. (Stip. #2, 3; Ex. B, C)

¹ The parties did not explain what “TAX PD WO 12” means.

17. On April 27, 2018, the Department issued a Return Correction Notice for Form RUT-25 for each trailer. Each Return Correction Notice shows a purchase price of \$18,500 and the date brought into Illinois as December 28, 2001. (Stip. #5; Ex. D, E)

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. 625 ILCS 5/3-1001. The Department assessed the vehicle use tax in this case when US Bancorp was removed from the title in March of 2018, and the Secretary of State completed RUT-25s showing US Bancorp as the “seller.”

The taxpayer argues that the facts clearly show that the taxpayer financed the purchase of the trailers originally through US Bancorp, and then US Bancorp assigned its interest in the financing to First Midwest Bank. The taxpayer notes that it has provided a copy of all the documents showing monthly installment payments over a 4 year period. The taxpayer contends that US Bancorp was never an equity owner and was merely the original financing arm. The taxpayer states that it was the true owner of the trailers despite the erroneous title. The taxpayer argues that US Bancorp’s name on the title was nothing more than a security interest, and because there was no transfer from US Bancorp, no tax is due.

The taxpayer also argues that no tax is due because the original RUT-25s and the Rolling Stock Affidavit show that the taxpayer properly claimed the rolling stock exemption in 1996. The taxpayer notes that the Department has stipulated that since the taxpayer purchased the two trailers, the taxpayer has been engaged in the for-hire interstate transportation of goods. The taxpayer also notes that the 3 year statute of limitations on a use tax assessment has expired since

the filing of the original RUT-25s. See 35 ILCS 105/12. The taxpayer claims that the Department cannot assess use tax on the trailers after the statute of limitations has lapsed.

Whether US Bancorp only had a security interest in the trailers depends on the facts in the case. In Whittemore v. Fisher, 132 Ill. 243 (1890), the court held that a bill of sale that was intended by the parties to be security is a chattel mortgage. The court found that the true character of the document may be shown by clear proof that the intention of the parties was that it should be a mortgage. *Id.* at 259-260; see also Southern Surety Co. v. People's State Bank of Astoria, 332 Ill. 362 (1928) (“A bill of sale with a contemporaneous agreement to reconvey upon payment is a chattel mortgage”).

In the present case, the use tax assessments should be dismissed because the stipulated facts and supporting documents clearly show that US Bancorp's only interest in the trailers was as security for the debt. The parties stipulated that when the taxpayer purchased the trailers, the dealer arranged the financing. The purchase was financed through US Bancorp, and the financing was immediately assigned to First Midwest Bank. The taxpayer provided a letter from the successor to US Bancorp in which the successor assigned all of its right, title, and interest in the trailers to the taxpayer without the payment of consideration. The evidence is clear that US Bancorp's only interest was as security for the debt, and the parties to the transaction did not intend to have US Bancorp be a co-owner of the trailers.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's Motion for Summary Judgment be granted and the Notices of Tax Liability be dismissed.

Linda Olivero
Administrative Law Judge

Enter: March 8, 2019

