

MV 95-4

Tax Type: MOTOR VEHICLE USE TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

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

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DEPARTMENT OF REVENUE      )
OF THE STATE OF ILLINOIS  )
                           ) Docket #   XXXXX
                           ) IBT #     XXXXX
                           )
v.                           )
                           )
XXXXXXXX                     ) William J. Hogan
                           ) Administrative Law Judge
Taxpayer                    )
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX

SYNOPSIS: This matter comes on for hearing pursuant to the Taxpayer's timely protest of Notice of Tax Liability XXXXX issued by the Department of Revenue on September 7, 1993, for Use Tax on the purchase of a 1990 Chevrolet Astro Van. At issue are the questions whether: 1) the liability established herein has been discharged under the bankruptcy laws of the United States, and 2) whether the purchase of the vehicle qualifies for the "rolling stock" exemption as provided under the terms of 35 ILCS 120/3-60. Following submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a tax liability due and owing in the amount of \$1,002.00. (Dept. Exhibit #5)

2. The Taxpayer was assessed on the purchase of a 1990 Chevrolet Astro Van on September 7, 1993, said purchase having been made on June 8,

1990. (Dept. Ex. Nos. 6; 9)

3. XXXXX filed for personal bankruptcy under the provisions of 11 U.S.C. Chapter 7, on or about June 20, 1991 in the United States Bankruptcy Court For the Central District of Illinois. (Taxpayer Ex. No. 1) Although taxpayer professes that the Department could have filed a claim during the bankruptcy period, the fact that they may not have done so (there is no proof one way or the other) does not preclude the issuance of an assessment following discharge.

4. Notwithstanding, the assessment in question was made subsequent to a discharge of the Taxpayer from a petition commencing under Title 11 of the United States Code and therefore is not subject to any discharge by the bankruptcy court. (Department Exhibit #11, Discharge of Debtor, U.S. Bankruptcy Court, Central District of Illinois.)

5. Although taxpayer was certified by the Illinois Commerce Commission as an interstate carrier, (Dept. Ex. No. 2), XXXXX proffered no documentary evidence which showed or tended to show that the vehicle in question was actually engaging in interstate usage or had travelled across state lines during any period of time. Instead, the record contains only the testimony of XXXXXXXXXXXX in purported verification of interstate travel.

6. By admission of the taxpayer, use of the van, to the extent that it is claimed to have travelled interstate, was limited to the transport of employees of XXXXX and documents and materials which were the property of his business. (See Department Exhibit #7, Taxpayer's answers to Questionnaire by Department, Office Programs Division - Rolling Stock Project.)

CONCLUSIONS OF LAW: The Illinois Retailers' Occupation Tax Act provides an exemption for sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. The term "rolling stock" does not contemplate that vehicles used to

transport company personnel or personalty are for hire. (See 35 ILCS 120/3-60; See specifically 86 Ill. Adm. Code 130.340 subsection b)

"The term "Rolling Stock" includes the transportation vehicles of any kind of interstate transportation company for hire (railroad, bus line, air line, trucking company, etc.), but not vehicles which are being used by a person to transport its officers, employed, customers or others not for hire (even if they cross State lines) or to transport property which such person owns or is selling and delivering to customers (even if such transportation crosses State lines). Railroad "rolling stock" includes all railroad cars, passenger and freight, and locomotives (including switching locomotives) or mobile power units of every nature for moving such cars, operating on railroad tracks, and includes all property purchased for the purpose of being attached to such cars or locomotives as a part thereof. The exemption includes some equipment (such as containers called trailers) which are used by interstate carriers for hire, loaded on railroad cars, to transport property, but which do not operate under their own power and are not actually attached to the railroad cars. The exemption does not apply to fuel nor to jacks or flares or other items that are used by interstate carriers for hiring servicing the transportation vehicles, but that do not become a part of such vehicles, and that do not participate directly in some way in the transportation process. The exemption does not include property of an interstate carrier for hire used in the company's office, such as furniture, typewriters, office supplies and the like. (86 Ill Adm. Code 130.340)"

The proof required that the subject van was used for hire in interstate commerce must come from books and records or other documentary evidence of which the taxpayer is required to keep as part of its business operations. See *Copilevitz v. Department of Revenue* (1968), 41 Ill. 2d 154. Testimony alone is not sufficient to overcome the Department's prima facie case. *Masini v. Department of Revenue* (1978), 60 Ill App. 3d 11. Since no evidence was produced of record which demonstrated interstate travel on the part of this particular van, taxpayer has failed to sustain his burden of proof.

Secondarily, on examination of the record established, this taxpayer has failed to demonstrate that the subject vehicle was used in interstate travel on a "for hire" basis. Indeed, the available evidence tends to show just the contrary. Assuming, arguendo, the minimal amount of time the van

was purported to venture across state lines (5% or less), its use was limited to carrying persons and property of the taxpayer. This is not a "for hire" use and consequently cannot qualify under the rolling stock provisions of the law or regulation.

RECOMMENDATION: It is my recommendation that Notice of Tax Liability No. XXXXX be finalized as issued, plus all accrued interest applicable by law, and that this matter is closed.

William J. Hogan  
Administrative Law Judge