

ST 99-29

Tax Type: Sales Tax

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

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

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket No. 97-ST-0000
v.	)	IBT # 0000-0000
	)	NTL #SF-97000000000000
“ADIRONDACK TOWING, INC.” f/k/a	)	NTL #SF-1900000000000000
“PETER PIPER” d/b/a	)	NTL #SF-970000000000001
“ADIRONDACK TOWING,	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Jim Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Heidi R. Balsley of Kehart, Shafter & Webber, P.C. for “Adirondack Towing, Inc.”

Synopsis:

The Department of Revenue (“Department”) conducted an office audit concerning five vehicles purchased by “Adirondack Towing, Inc.” f/k/a “Peter Piper” d/b/a “Adirondack Towing” (“taxpayer”). The Department determined that the taxpayer owed use tax on the vehicles and issued three Notices of Tax Liability (NTLs) showing the additional tax owed on the vehicles. The taxpayer timely protested the NTLs and a hearing was held during which the taxpayer raised the following issues: (1) whether the vehicles qualify for the rolling stock exemption to the use tax, and (2) whether the

Department used the proper purchase price for three of the vehicles.<sup>1</sup> After reviewing the record, it is recommended that the vehicles do not qualify for the rolling stock exemption but that the assessment should be reduced to reflect the actual purchase price for three of the vehicles.

FINDINGS OF FACT:

1. On December 20, 1994 the taxpayer purchased a gray 1994 Chevy tow truck for \$41,855.82. (Taxpayer Ex. #8)

2. On December 20, 1994, the taxpayer purchased a black 1994 Chevy tow truck for \$36,997.09. (Taxpayer Ex. #7)

3. On December 26, 1994, the taxpayer purchased a red 1994 Chevy tow truck for \$36,997.09. (Taxpayer Ex. #6)

4. On December 27, 1994, the taxpayer purchased a 1979 GMC tow truck. (Tr. P. 32)

5. In 1996 the taxpayer purchased a 1996 Ford F450 tow truck. (Tr. P. 31)

6. The taxpayer reviewed approximately 54,000 tow receipts for the time period of 1994 to 1999 and prepared a summary of 646 of those receipts. (Taxpayer Ex. #1; Tr. Pp. 34-35)

7. The taxpayer's summary includes two types of trips. The first type is for vehicles that were towed across state lines. The second type is for vehicles that were towed within the state of Illinois but the vehicle displayed an out-of-state license plate. The sole basis for determining whether to include a trip in the second category was the license plate of the vehicle. (Tr. P. 37)

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<sup>1</sup> The hearing was held by Administrative Law Judge (ALJ) Chris Higgerson. Mr. Higgerson is no longer employed as an ALJ; therefore this recommendation was written by ALJ Linda Olivero.

8. According to the summary, 18 tow trips were made after December 20, 1994 that crossed state lines. (Taxpayer Ex. #1)

9. According to the summary, 556 tow trips were made after December 20, 1994 that were for vehicles with out-of-state license plates. (Taxpayer Ex. #1)

10. The remaining 72 trips listed on the summary were for tow trips made prior to December 20, 1994, which was prior to the purchase date of the trucks. (Taxpayer Ex. #1; Tr. P. 33)

11. The taxpayer did not provide a summary of the percentage of interstate miles traveled by the trucks or the percentage of revenues earned from interstate trips. (Tr. Pp. 40-41)

12. The taxpayer did not summarize trips made for the AAA Motor Club because the trip tickets were too difficult to read. (Tr. Pp. 44-45)

13. The Interstate Commerce Commission issued permits to the taxpayer to engage in transportation as a contract carrier by motor vehicle. (Taxpayer Ex. #2, 3)

14. The Department performed an office audit concerning the five vehicles in question and issued three corrected returns for the vehicles. The corrected return for the three Chevys shows a total purchase price of \$150,000. The corrected returns were admitted into evidence under the Director's Certificate. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Use Tax Act (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 12 of the Use Tax Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the corrected return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/4. Once the Department has established its *prima facie* case by submitting the corrected return into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. Id.

It is well-settled that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.

The term "rolling stock" typically refers to vehicles. Midway Airlines v. Department of Revenue, 234 Ill.App.3d 866, 869 (1st Dist. 1992). The rolling stock exemption under the Use Tax Act provides in relevant part as follows:

"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:

\* \* \*

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce \*\*\*\*" (35 ILCS 105/3-55(b)).

Thus, in order to qualify for the exemption the taxpayer must establish that (1) it is an interstate carrier for hire and (2) the vehicles in question moved in interstate commerce.

The Department does not dispute the fact that the taxpayer is an interstate carrier for hire. The Department contends, however, that the trucks in question did not move in interstate commerce. In order to prove that the vehicles moved in interstate commerce, the taxpayer must show that its interstate use of the vehicles was regular and frequent or more than merely incidental. National School Bus Service, Inc. v. Department of Revenue, 302 Ill. App.3rd 820 (1998).

The taxpayer did not present sufficient evidence to show that its use of the vehicles in interstate commerce was regular and frequent. The documentary evidence shows that only 18 of approximately 54,000 trips actually crossed state lines. Even though a taxpayer does not need to prove that the trucks actually left Illinois to qualify for the exemption, it is necessary to show that either the origin or destination of the trip was outside the state of Illinois. The 556 trips for vehicles with out-of-state license plates did not necessarily begin or end outside of Illinois. The bookkeeper who prepared the summary admitted that some of those trips would not necessarily extend beyond the boundaries of Illinois. (Tr. Pp. 38-39) Even if those trips are considered to be interstate, the interstate trips are only approximately 1% of the total trips made by the tow trucks ( $574 \div 54,000$ ). In the National School Bus case, 5% of the total trips were interstate, and this was found to be insufficient evidence of interstate travel. Similarly, the evidence in this case shows that the interstate travel was merely incidental to the regular intrastate travel of the tow trucks.

The taxpayer claims that the tows provided for AAA Motor Club should also be considered interstate because they are tows for vehicles travelling from one state to another through Illinois. The taxpayer did not provide any documentary evidence

concerning these trips. The bookkeeper admitted that trips made for the AAA Motor Club could include Illinois residents travelling within the state of Illinois. (Tr. P. 46) In other words, the origin or destination of these trips would not necessarily extend beyond the borders of Illinois. Because the taxpayer did not present any documentary evidence concerning these trips, they cannot be considered in calculating the amount of interstate travel for the trucks.

Finally, although the taxpayer is not entitled to the exemption, the taxpayer has presented sufficient evidence to show that the purchase price of the three Chevy trucks was less than the amount used by the Department to calculate the tax. The assessment should therefore be reduced accordingly.

Recommendation:

For the foregoing reasons, it is recommended that the five vehicles do not qualify for the rolling stock exemption, but the assessment should be reduced to reflect the actual purchase price of the three Chevy trucks.

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Linda Olivero  
Administrative Law Judge

Enter: 11/3/1999