

UT 18-02

Tax Type: Use Tax

Tax Issue: Use Tax on out-Of-State purchases Brought Into Illinois

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

JOHN X. DOE,)	Docket No.	XX-ST-000
)	Account ID	XXXXX-XXXXX
)	NTL No.	
v.)	John E. White,	
THE DEPARTMENT OF REVENUE)	Administrative Law Judge	
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: JOHN X. DOE appeared *pro se*; Ashley Forte, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when JOHN X. DOE (Taxpayer) protested the Taxpayer Notice (Denial) the Illinois Department of Revenue (Department) issued to him after reviewing Taxpayer's amended return, which he filed to request a refund of Illinois use tax he claimed to have previously overpaid in error regarding a motor vehicle he purchased, at retail, outside the United States, and which was subsequently titled in his name, in Illinois. The issue is whether Taxpayer was subject to Illinois use tax regarding his use of that vehicle in Illinois.

The hearing was held at the Department's offices in Chicago. Taxpayer offered evidence which consisted of documents, and the testimony of two witnesses, including himself. I have reviewed the evidence, and I am including in this recommendation

findings of fact and conclusions of law. I recommend that the Director finalize the Denial as issued.

Findings of Fact:

1. Taxpayer is an Illinois resident who is an active duty member of the United States (US) Army, assigned to the US Army REDACTED Agency. Taxpayer Ex. 1 (copies of 2 service orders from US Army regarding Taxpayer's assignments/deployments); Tr. p. 9 (Taxpayer).
2. From April 2009 through July 2012, Taxpayer was assigned as a REDACTED for the US Army in Germany. Taxpayer Exs. 1, 5 (copy of service order from US Army regarding Taxpayer's Temporary Change of Station from Germany to Afghanistan for a period not to exceed 365 days); Tr. pp. 12, 14 (Taxpayer).
3. In November 2011, while on active duty service in Germany, Taxpayer purchased, at retail, a Mercedes Benz, model CLS 550 (hereafter, the Vehicle), which was delivered to him at the manufacturer's factory in Stuttgart, Germany. Taxpayer Ex. 2 (copy of Bill of Sale for Vehicle, listing the Buyer as the Canadian Forces Support Unit, for Taxpayer, and the Seller as Mercedes-Benz USA, LLC); Taxpayer Ex. 3 (copy of Bill of Sale for Vehicle, on letterhead of the Automobile and Miscellaneous Sales Transactions Office of the Canadian Forces Support Unit (Europe), listing Taxpayer as the Buyer); Taxpayer Ex. 7 (copy of certificate of origin for the Vehicle); Tr. pp. 12-13 (Taxpayer).
4. Taxpayer paid \$XX,XXX.00 for the Vehicle. Taxpayer Ex. 3.
5. Taxpayer's purchase of the Vehicle was made in compliance with the Status of

Forces Agreement (SOFA) in effect between, among others, the US and Germany. Taxpayer Ex. 3; Tr. pp. 16-17 (Taxpayer).

6. The Vehicle was compliant with US emissions regulations, instead of with those imposed by the European Union. Taxpayer Ex. 7 (certificate provides, in part, “Vehicle Complies With California Emissions Standards”); Tr. pp. 19-20 (Taxpayer).
7. Pursuant to the SOFA, Taxpayer was required to and did register the Vehicle with the US Forces Vehicle Registration. Taxpayer Ex. 4 (copy of US Forces Registration/Title/POL Authorization form AE 190-1A, prepared regarding the Vehicle); Tr. pp. 16-17 (Taxpayer).
8. In January 2012, Taxpayer learned that he was going to be deployed to Afghanistan. Tr. p. 19 (Taxpayer).
9. Taxpayer was deployed to Afghanistan, effective July 2012. Taxpayer Ex. 5.
10. Taxpayer drove and otherwise used the Vehicle while he was in Germany. Tr. p. 18 (Taxpayer); Taxpayer Ex. 6 (copy of shipping invoice for the Vehicle, dated January 16, 2012, showing 2,100 miles on the Vehicle’s odometer).
11. At hearing, Taxpayer and his father, BOB DOE (hereafter, BOB), who is also an Illinois resident, testified that they had agreed that Taxpayer would sell the Vehicle to BOB. Tr. pp. 20 (Taxpayer), 42, 48, 50 (BOB). Taxpayer said that the agreement was made in January 2012. Tr. p. 20 (Taxpayer).
12. Taxpayer and BOB did not make a written contract regarding the sale of the Vehicle. Tr. pp. 20, 29 (Taxpayer).
13. Taxpayer drove the Vehicle to the port at Sindelfingen, Germany, and transferred possession of it to a shipper he hired to transport it to the Port of Baltimore,

Maryland. Taxpayer Ex. 6; Tr. pp. 20-21 (Taxpayer).

14. Notwithstanding the testimony offered regarding Taxpayer's sale of the Vehicle to BOB in January 2012, on or about February 2, 2012, Taxpayer prepared and signed a power of attorney form, which provided, in pertinent part, as follows:

SPECIAL POWER OF ATTORNEY

PREAMBLE This is a military Power of Attorney prepared pursuant to Title 10, United States Code, Section 1044b, and executed by a person authorized to receive legal assistance from the military service. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording that is prescribed for powers of attorney by the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

KNOW ALL PERSONS BY THESE PRESENTS:

That I, **John X. Doe**, of the State of Illinois, a member of the United States Armed Forces, currently at Kaiserslautern, Germany, pursuant to Military Orders, do hereby appoint **Bob Doe**, of [REDACTED], Illinois, my true and lawful attorney-in-fact to do the following in my name and in my behalf

1 To use, operate, insure, title, license, and register, in my name, with any state or governmental agency my 2012 Mercedes CLS 550 4MATIC, Vehicle Identification Number [REDACTED]

2 To sell my 2012 Mercedes CLS 550 4MATIC, Vehicle Identification Number [REDACTED], upon such terms, considerations and conditions as my attorney shall think proper. Further, to execute and deliver to the proper persons and authority all documents, instruments, and papers necessary to effect the sale and transfer of registration and license of the said vehicle. To take possession of, operate, and maintain this automobile and to execute and deliver all necessary forms, papers, statements of ownership, and receipt to carry out the foregoing.

3 To take possession of my 2012 Mercedes CLS 550 4MATIC, Vehicle Identification Number [REDACTED], for the purpose of its removal and shipment from wherever it may be located, and to execute any release, voucher, receipt or any other instrument necessary or convenient for such purpose and to execute and deliver to the proper persons and authority, any and all documents, instruments and papers necessary to effect proper registration, insurance and license, in my name, of this automobile.

4 To take possession of my 2012 Mercedes CLS 550 4MATIC, Vehicle Identification Number [REDACTED], after shipment and delivery to any port, warehouse, depot, dock, or other place of storage or safekeeping, government or private, to execute and deliver any release, voucher, receipt, shipping ticket, certificate or other instrument necessary or convenient for such purpose and to execute and deliver to the proper persons and authority, any and all documents, instruments and papers necessary to register, insure and license, the vehicle in my name, and to transport the vehicle to me or any location which I direct in writing.

5 For my father, **Joe Doe**, to sign, deliver, prepare, receive or execute any and ALL documents as are necessary granted in the powers herein pertaining to the overall maintenance and condition of my 2012 Mercedes CLS 550 4MATIC, VIN [REDACTED]. This includes but not limit to making imperative decisions concerning this matter in my absence.

Giving and granting individually unto said attorney full power and authority to do and perform all and any act, deed, matter and thing whatsoever in and about any of the specified particulars mentioned in the paragraph immediately above, as fully and effectually to all intents and purposes as I might and could do in my own person if personally present, and in addition thereto, I do hereby ratify and confirm each of the acts of my aforesaid attorney lawfully done pursuant to the authority herein above conferred.

Taxpayer Ex. 8 (copy of power of attorney form), p. 1.

15. In paragraph 5 of the power of attorney form, Taxpayer made a scrivener's error by referring, in that paragraph, to his father as JOE DOE. Tr. p. 40 (Taxpayer). Taxpayer explained that this error occurred because he had used a prior power of attorney form as a template, when preparing the power of attorney form later admitted as Taxpayer Exhibit 8. *Id.*
16. While Taxpayer testified that BOB made a bank transfer into his (Taxpayer's) bank account in the amount of the purchase price for the Vehicle — which he said was the same price he paid when he purchased the Vehicle, in Germany, Taxpayer had, and offered, no documentary evidence which corroborated such testimony. Tr. p. 29 (Taxpayer).
17. On or about February 16, 2012, the Vehicle was imported into, and entered, the US at the Port of Baltimore, Maryland. Taxpayer Ex. 9 (copy of CBP Form 7501, Department of Homeland Security, US Customs and Border Protection, Entry Summary form, regarding Vehicle) (hereafter Entry Summary); Tr. pp. 20-24 (Taxpayer), 36 (BOB).
18. When the Vehicle was imported into the US, at the Port of Baltimore, US Customs imposed a duty upon its importation into the US. Taxpayer Ex. 9 (box 37 of Entry Summary); Tr. pp. 23-24 (Taxpayer), 36-37 (BOB).
19. Both Taxpayer and BOB testified that BOB arranged, and paid, to have the Vehicle transported from Baltimore to Illinois. Tr. pp. 23 (Taxpayer), 36 (BOB).
20. BOB took possession of the Vehicle, in Illinois, after it was delivered to a dealership near BOB's Illinois residence. Tr. pp. 36-37 (BOB).
21. When BOB attempted to obtain an Illinois certificate of title for the Vehicle in his

own name, he learned that the Illinois Secretary of State would first require that an Illinois certificate of title be issued in Taxpayer's name, following which BOB could arrange to have that title assigned to him. Tr. pp. 45-46 (BOB); Taxpayer Ex. 8, ¶ 1.

22. Acting pursuant to Taxpayer's power of attorney, BOB applied for and obtained an Illinois certificate of title to the Vehicle, in Taxpayer's name, and then had that title assigned to his name. Tr. pp. 37-39, 41-47 (BOB); Taxpayer Ex. 8, ¶ 1.

23. On November 28, 2011, when applying for an Illinois certificate of title to the Vehicle, in Taxpayer's name, BOB also filed an Illinois form RUT-25, pursuant to which Illinois use tax was reported and paid regarding Taxpayer's retail purchase of the Vehicle, outside Illinois. Pre-Hearing Order (dated October 28, 2015); Department Ex. 1 (copy of Denial); Taxpayer Ex. 8, ¶¶ 1-5.

24. Thereafter, Taxpayer filed an Illinois amended return, to claim a refund of the Illinois use tax he previously caused to have paid on November 28, 2011, and which refund the Department denied. Department Ex. 1; Pre-Hearing Order.

25. At the time of hearing, BOB had sold the Vehicle. Tr. pp. 44-45 (BOB).

Conclusions of Law:

The Illinois Use Tax Act (UTA) imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer" 35 ILCS 105/3. Unless otherwise exempted, use tax applies to the use of "any kind of tangible personal property that is purchased anywhere at retail from a retailer, as 'retailer' is defined in the [UTA]." 86 Ill. Admin. Code § 150.101(a). The UTA applies to goods purchased from a retailer located outside of the United States, and whose owner arranges to have such goods imported into the United States, for use in Illinois. 35 ILCS 105/10; Caterpillar

Tractor Co. v. Department of Revenue, 47 Ill. 2d 278, 282, 265 N.E.2d 675, 678 (1970) (“We see no reason to assume that the General Assembly did not intend that the use tax should serve the same purpose with respect to purchases of imported articles as it was intended to perform toward articles purchased out of State”).

Section 19 of the UTA authorizes the Department to issue credits and refunds to purchasers, under certain conditions, and prescribes procedures purchasers must follow to request such credits and/or refunds. 35 ILCS 105/19; American Airlines, Inc. v. Department of Revenue, 402 Ill. App. 3d 579, 596-99, 931 N.E.2d 666, 681-83 (1st Dist. 2009). Section 20 of the UTA provides:

Sec. 20. As soon as practicable after a claim for credit or refund is filed, the Department shall examine the same and determine the amount of credit or refund to which the claimant or the claimant's legal representative, in the event that the claimant shall have died or become a person under legal disability, is entitled and shall, by its Notice of Tentative Determination of Claim, notify the claimant or his or her legal representative of such determination, which determination shall be prima facie correct. Proof of such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto, in the name of the Department under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the Department's determination, as shown therein. ***

35 ILCS 105/20.

In this case, the Department established its prima facie case when it introduced Department Exhibit 1, consisting of a copy of the Denial, under the certificate of the Director. Department Ex. 1; 35 ILCS 105/20. That exhibit, without more, constitutes prima facie proof that Taxpayer did not overpay Illinois use tax in error. 35 ILCS 105/20; American Airlines, Inc., 402 Ill. App. 3d at 590-91, 931 N.E.2d at 676-77. The

Department's prima facie case is overcome, and the burden shifts to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations were not correct. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

Issues and Arguments

The issue is whether Taxpayer was subject to Illinois use tax regarding the use of the Vehicle, in Illinois. On this issue, Taxpayer argues that he was not properly subject to use tax since, by the time the Vehicle was physically delivered into Illinois, he no longer owned it, because he had already sold it to BOB. Taxpayer's Brief, pp. 2, 4-5. Taxpayer contends that his transfer of ownership of the Vehicle should be deemed to have occurred, at the latest, when the Vehicle was physically delivered into the United States at Baltimore, Maryland, after which BOB arranged and paid to have the Vehicle transported from Baltimore to Illinois. *Id.*, p. 4. Taxpayer asserts that BOB's acts of applying for and obtaining an Illinois certificate of title to the Vehicle, in Taxpayer's name, were acts which were taken after ownership of the Vehicle had already passed from Taxpayer to BOB. *Id.*, pp. 4-5.

The Department argues that, when BOB applied for and obtained an original certificate of title for the Vehicle, BOB was acting, in Illinois, in Taxpayer's name and on Taxpayer's behalf. Department's Brief, pp. 3-4. The Department contends that the acts of applying for and obtaining an Illinois certificate of title for the Vehicle, and then having that title assigned to BOB, were exercises of rights and powers over the Vehicle which

were attributable to Taxpayer, and were sufficient to trigger imposition of use tax. *Id.*, pp. 3-4, 6.

Analysis:

Unless otherwise exempted, use tax applies to the use of “any kind of tangible personal property that is purchased anywhere at retail from a retailer, as ‘retailer’ is defined in the Use Tax Act.” 86 Ill. Admin. Code § 150.101(a). The UTA applies to goods purchased from a retailer located outside of the United States, and whose owner arranges to have such goods imported into the United States, for use in Illinois. 35 ILCS 105/10; Caterpillar Tractor Co. v. Department of Revenue, 47 Ill. 2d 278, 282, 265 N.E.2d 675, 678 (1970) (“We see no reason to assume that the General Assembly did not intend that the use tax should serve the same purpose with respect to purchases of imported articles as it was intended to perform toward articles purchased out of State”).

The UTA defines “use” as “the exercise by any person of any right or power over tangible personal property incident to the ownership of that property” 35 ILCS 105/2; William O’Donell, Inc. v. Bowfund Corp., 114 Ill. App. 2d 107, 110, 252 N.E.2d 53, 55 (1st Dist. 1969) (“The use tax is not a tax which arises out of the use or operation of tangible personal property, but rather it is a tax placed upon the exercise of powers or rights incident to ownership.”). The legislature’s use of the phrase, “by any person,” within the statutory definition, reflects its intent that the person exercising rights or powers over goods physically present in Illinois need not be the owner, it could also be someone who is physically present in Illinois and acting on the owner’s behalf, or with the owner’s permission. 35 ILCS 105/2.

Two cases in which the Illinois Supreme Court acknowledged and upheld this legislative intent are Miller Brewing Co. v. Korshak, 35 Ill. 2d 86, 219 N.E.2d 494, (1966), and Philco Corp. v. Department of Revenue, 40 Ill. 2d 312, 239 N.E.2d 805 (1968). In Miller, the Illinois Supreme Court held that the Miller Brewing Co. was the owner of signs it had arranged to have others manufacture outside Illinois, and which Miller then arranged to have shipped into Illinois to be displayed by liquor distributors, in Illinois, to help sell Miller's products. The Court further held that Miller's knowing arrangement to have others (i.e., the liquor distributors) exercise rights and powers over (i.e., display) the signs, in Illinois, constituted Miller's exercise of rights and powers over the signs, in Illinois, which was incident to Miller's ownership of them. Miller Brewing Co., 35 Ill. 2d at 93, 219 N.E.2d at 498 ("The fact remains, however, that the plaintiff used these signs in Illinois, for its benefit, in the natural way in which signs are used, by causing them to be put up where people could look at them. The power to allow property one owns to be used for one's benefit in this manner is the 'exercise' of 'an incident of ownership' under the act."). In Philco, the Illinois Supreme Court held that an out of state owner/lessor's lease of goods to lessees who would use such goods, in Illinois, constituted the owner/lessor's exercise of rights and powers over goods, in Illinois. Philco Corp., 40 Ill. 2d at 317-18, 239 N.E.2d at 809 ("We hold, therefore, that, as lessors of personal property who leased their machinery for use in Illinois, both Philco and Rental used that machinery in Illinois within the meaning of section 2 of the Use Tax Act.").

I consider the cases cited immediately above to be particularly relevant to this dispute because the record contains inconsistent evidence regarding whether, during the period which began on the date the Vehicle was imported into the US at the Port of

Baltimore, and which ended after BOB was able to first obtain, and then transfer, title to the Vehicle from Taxpayer's name to his own, BOB was acting for himself, or for Taxpayer. On one hand, Taxpayer offered testimony that, in January 2012, he and BOB had agreed that BOB would buy the Vehicle from Taxpayer. Tr. p. 20 (Taxpayer); Taxpayer's Brief, p. 2, 4. Based on that and other testimony, Taxpayer argues that BOB became the owner of the Vehicle once he had arranged to have others take possession of the Vehicle at the Port of Baltimore, and to have it transported to Illinois. Tr. pp. 24-25 (Taxpayer); Taxpayer's Brief, pp. 4-5.

On the other hand, Taxpayer's executed power of attorney form provides Taxpayer's express direction to:

*** appoint BOB ... , my true and lawful attorney to do the following in my name and in my behalf

1. To use, ... title, license, and register [the Vehicle], in my name, with any state or government agency
2. To sell my [Vehicle] upon such terms, considerations and conditions as my attorney shall think proper. ***

4. To take possession of my [Vehicle] after shipment and delivery to any port, ... to execute and deliver any release, ... or other instrument necessary or convenient for such purpose and to execute and deliver to the proper persons and authority, any and all documents, instruments and papers necessary to register, insure and license, the [Vehicle], in my name. and to transport the [Vehicle] to me or any location which I direct in writing

Taxpayer Ex. 8. Taxpayer executed the power of attorney on February 3, 2012, which was after the time he said that he and BOB agreed that BOB would buy the Vehicle from Taxpayer. Taxpayer's Brief, p. 2; Tr. p. 20 (Taxpayer).

Before more directly addressing the content and effect of Taxpayer's power of attorney form, I will briefly summarize Illinois law regarding the process of transferring

ownership of a vehicle. Generally, § 3-201(a) of Illinois' Vehicle Code (IVC) requires owners of motor vehicles which are physically present in Illinois to either have, or apply for, a certificate of title issued by the Illinois Secretary of State. 625 ILCS 5/3-101(a).

More specifically, that section provides, in pertinent part, as follows:

Sec. 3-101. Certificate of title required.

(a) Except as provided in Section 3-102, every owner of a vehicle which is in this State and for which no certificate of title has been issued by the Secretary of State shall make application to the Secretary of State for a certificate of title of the vehicle.

(b) Every owner of a motorcycle or motor driven cycle purchased new on and after January 1, 1980 shall make application to the Secretary of State for a certificate of title. However, if such cycle is not properly manufactured or equipped for general highway use pursuant to the provisions of this Act, it shall not be eligible for license registration, but shall be issued a distinctive certificate of title except as provided in Sections 3-102 and 3-110 of this Act.

(c) The Secretary of State shall not register or renew the registration of a vehicle unless a certificate of title has been issued by the Secretary of State to the owner or an application therefor has been delivered by the owner to the Secretary of State.

625 ILCS 5/3-101.

The process of applying for an Illinois certificate of title for a vehicle is described in § 3-104 of the IVC. 625 ILCS 5/3-104. Section 3-104 includes provisions for obtaining an Illinois certificate of title for vehicles last registered in a foreign country, and for new vehicles for which an applicant is named on a manufacturer's statement of origin. 625 ILCS 5/3-104(c)-(d). Part of the application process includes the Secretary of State's statutory duty to document whether an applicant/owner has paid the amount of Illinois use tax, or Vehicle Use Tax (VUT), which Illinois imposes on an owner's use of a motor vehicle in Illinois, or whether the applicant/owner has claimed that tax is not due. 625 ILCS 5/3-104(f); 625 ILCS 5/3-106(a). After an original certificate of title for a vehicle

has been issued by the Illinois Secretary of State, the procedures for transferring ownership of the vehicle to a new owner are set forth in IVC § 3-112. 625 ILCS 5/3-112.

Notwithstanding the requirement set by § 3-101 of the IVC, in Dan Pilson Auto Center, Inc. v. DeMarco, 156 Ill. App. 3d 617, 509 N.E.2d 159 (4th Dist. 1987), the court noted as follows:

Under established law in Illinois, it is clear that although the Illinois Vehicle Code requires a transfer of certificate of title to effectuate the sale of a vehicle (Ill. Rev. Stat. 1985, ch. 95½, par. 3-112(a)), it is not necessarily determinative of the passage of ownership. (Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037.) It is the intent of the parties involved, and not such statutory prerequisites which determine ownership. (In the Matter of Robinson (7th Cir.1981), 665 F.2d 166; Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037.) Consequently, it is possible that one can own an automobile even though the certificate of title is in the name of another. Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. (1979), 69 Ill. App. 3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037, quoting State Farm Mutual Automobile Insurance Co. v. Lucas (1977), 50 Ill. App. 3d 894, 898, 8 Ill. Dec. 867, 870, 365 N.E.2d 1329, 1332.

Dan Pilson Auto Center, Inc., 156 Ill. App. 3d at 620-21, 509 N.E.2d at 161.

Even though a person not named on a certificate of title for a vehicle may be determined to be the lawful owner of the vehicle (*see* 625 ILCS 5/3-114. Transfer by operation of law), if the vehicle is to be used in Illinois, the newly determined owner must apply for an Illinois certificate of title, pursuant to §§ 3-104, 3-112 and/or 3-114. 625 ILCS 5/3-104; 625 ILCS 5/3-112; 625 ILCS 5/3-114. A fact finder's determination that parties intended to transfer ownership of a vehicle in a way other than through a transfer of title to the vehicle is a question of fact. Libertyville Toyota v. U.S. Bank, 371 Ill. App. 3d 1009, 1013, 864 N.E.2d 850, 854 (1st Dist. 2007).

Both the Libertyville Toyota and Dan Pilsen courts relied, in their respective decisions, on Illinois' Uniform Commercial Code. Libertyville Toyota, *passim*; Dan Pilsen Auto Center, Inc., 156 Ill. App. 3d at 621, 509 N.E.2d at 162. Regarding this matter, I consider two UCC sections to be helpful when guiding my conclusions. The first is § 2-201(1), which provides:

Sec. 2-201. Formal requirements; statute of frauds.

(1) Except as otherwise provided in this Section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

810 ILCS 5/2-201(1).

Next, UCC § 2-401(2) provides as follows:

Sec. 2-401. Passing of title; reservation for security; limited application of this Section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; an

(b) if the contract requires delivery at destination, title passes on tender there.

810 ILCS 5/2-401(2). Illinois courts have construed the phrase, “otherwise explicitly agreed,” as used in UCC § 2-401(2), as referring to the parties’ explicit agreement regarding the time and place where title to goods would pass. Sprague v. Johnson, 195 Ill. App. 3d 798, 802, 552 N.E.2d 436, 438 (4th Dist. 1990) (*citing* Country Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co. 69 Ill. App. 3d 764, 767, 387 N.E.2d 1037, 1039 (1979)).

In this case, Taxpayer wants me, and/or the Director, to conclude that the evidence he offered about the oral agreement between himself and BOB was sufficient to prove that he and BOB intended BOB to become the owner of the Vehicle before BOB applied for and obtained a certificate of title for the Vehicle, in Taxpayer’s name, and then assigned that title to himself. Taxpayer’s Brief, pp. 2, 4-5; Libertyville Toyota, 371 Ill. App. 3d 1009, 1013, 864 N.E.2d 850, 854. However, the actual evidence that Taxpayer offered to show that BOB owned the Vehicle, before BOB was named as the owner on a certificate of title for the Vehicle, was his conclusory testimony that he (Taxpayer), the seller, paid for transporting the Vehicle from Germany to the US, and that BOB, the buyer, paid to have the Vehicle transported from Baltimore to Illinois. Tr. pp. 24-25 (Taxpayer).

And while Taxpayer offered testimony that BOB paid to transport the Vehicle from Baltimore to Illinois, Taxpayer did not offer any documents to corroborate such testimony. Nor did he offer any documentary evidence to corroborate the testimony that BOB transferred funds into Taxpayer’s bank account, in an amount equal to Taxpayer’s retail purchase price, to pay for the Vehicle.

This is a tax refund case, in which credible testimony regarding facts crucial to a

taxpayer's attempt to rebut the Department's prima facie case must be supported by, or consistent with, books and records. PPG Industries, Inc., 328 Ill. App. 3d at 33, 765 N.E.2d at 48 (agreeing that "[taxpayer] had the burden of overcoming [the Department's] ... *prima facie* case through documentary evidence, meaning books and records, and not mere testimony."). Taxpayer's failure to offer documentary evidence which might have corroborated or been consistent with such testimony does not weigh in his favor. Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 246, 777 N.E.2d 700, 709 (1st Dist. 2002) ("We ... consider the absence of evidence in the record regarding reasonable salaries to weigh in the Department's favor because the taxpayer ... has the burden of proof."). The lack of documentary support is especially troubling given the glaring inconsistency between the testimony and the express directions Taxpayer provided to BOB in the power of attorney form — which was, again, written and executed after the oral agreement was purportedly made. Most specifically, if, in January 2012, Taxpayer had already sold, or agreed to sell, the Vehicle to BOB, why did he, thereafter, expressly direct BOB "[t]o sell *my* [Vehicle]" Taxpayer Ex. 8, ¶ 1 (emphasis added).

Taxpayer had the burden of production and persuasion to show that he sold the Vehicle to BOB prior to the date the Vehicle was physically delivered into Illinois, and an original Illinois certificate of title was assigned to BOB. 810 ILCS 5/2-201(1); 810 ILCS 5/2-401(2). But Taxpayer did not have a written agreement regarding the sale of the Vehicle, and Taxpayer admits the Vehicle had a value in excess of \$500.00. Taxpayer Ex. 3; Tr. pp. 20, 25. At a minimum, the oral agreement Taxpayer described would not satisfy the Illinois UCC's statute of frauds, and, given the inconsistency between the testimony

and the power of attorney form, the testimony, alone, does not persuade me that Taxpayer had, in fact, sold the Vehicle to BOB prior to the date title to the Vehicle was assigned to BOB, in Illinois. 810 ILCS 5/2-201(1); 810 ILCS 5/2-401(2); Cloud Corp. v. Hasbro, Inc., 314 F.3d 289, 296 (2002) (“The purpose of the statute of frauds is to prevent a contracting party from creating a triable issue concerning the terms of the contract—or for that matter concerning whether a contract even exists—on the basis of his say-so alone.”).

Nor does the evidence clearly reflect that any oral agreement that might have existed between Taxpayer and BOB contained their explicit agreement that ownership of the Vehicle would pass from Taxpayer to BOB at the Port of Baltimore. 810 ILCS 5/2-401(2). The certificate of origin that Taxpayer entered into evidence created a presumption that Taxpayer was the owner of the Vehicle. Pekin Ins. Co. v. U.S. Credit Funding, Ltd., 212 Ill. App. 3d 673, 677, 571 N.E.2d 769, 771 (1st Dist. 1991) (“A *prima facie* presumption of ownership arises from a certificate of title, this presumption may be rebutted by competent evidence of actual ownership.”). While that presumption could have been overcome by competent evidence, Taxpayer did not produce competent evidence that he and BOB had an explicit agreement that BOB would own the Vehicle before the statutory requirements for transferring ownership were complied with. Instead, Taxpayer reasons that a transfer of ownership should be *implied* from his and BOB’s testimony that BOB paid to have the Vehicle transported from Baltimore to Illinois.

Related to this issue of title versus ownership, in his reply, Taxpayer argued that the Secretary of State’s requirement that BOB first apply for and obtain a certificate of title for the Vehicle, in Taxpayer’s name, before it could be assigned or transferred to

BOB, was an error by that agency. Taxpayer's Reply, p. 2 ("The Vehicle was only titled in the Taxpayer's name in Illinois because the State of Illinois erroneously required this unnecessary administrative step and would not process the desired transaction without it."). I do not agree that the Secretary of State's actions were unnecessary, or erroneous. First, on its face, the certificate of origin, showing Taxpayer as the Vehicle's owner, provided — in bold, all capitalized letters, arranged diagonally across the reverse page — that the named non-retailer owner could not assign it to another person by signing the reverse page of the certificate. Taxpayer Ex. 7, p. 2; 625 ILCS 5/3-104(c)-(d). Second, Taxpayer has not produced credible evidence that any unwritten agreement he might have had with BOB included an explicit agreement regarding the time and place where title to the Vehicle would pass. I conclude that Taxpayer has not rebutted the presumption created by the certificate of origin. Pekin Ins. Co., 212 Ill. App. 3d at 677, 571 N.E.2d at 771. I further conclude that Taxpayer remained the owner of the Vehicle until the title issued by the Secretary of State, in Taxpayer's name, was assigned to BOB. 625 ILCS 5/3-104; 625 ILCS 5/3-112; Libertyville Toyota, 371 Ill. App. 3d at 1013, 864 N.E.2d at 854;

I now return to the content and effect of Taxpayer's power of attorney form, which Taxpayer identified and offered as Taxpayer Exhibit 8. Taxpayer's power of attorney form contains Taxpayer's express directions to BOB, as well as the reasons for those directions, which were "to do the following in my name and in my behalf[.]" Taxpayer Ex. 8 (*quoted supra*, p. 4). This item of documentary evidence clearly and convincingly supports the Department's argument that, when BOB applied for an original Illinois certificate of title for the Vehicle, in Illinois, he was acting in Taxpayer's name, and in Taxpayer's behalf. Taxpayer Ex. 8; Department's Brief, p. 3.

The statements set forth in that document, moreover, are inconsistent with

Taxpayer's position at hearing, which was that, when and after BOB arranged to have the Vehicle picked up, by others, from the Port of Baltimore, he was performing all such subsequent actions as the owner of the Vehicle. Taxpayer's Brief, pp. 2, 4-5; Tr. pp. 24-25 (Taxpayer). Generally, any statement made by a party or on his behalf which is inconsistent with his position in litigation may be introduced into evidence against him. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379, 519 N.E.2d 1010, 1014 (1st Dist. 1988) *aff'd* 131 Ill. 2d 541 (1989). On the question of whether BOB's actions were performed on BOB's behalf, as the owner of the Vehicle, or on Taxpayer's behalf, Taxpayer's prior statements constitute substantive evidence that Taxpayer both intended and directed BOB to perform those acts "in [Taxpayer's] name and in [Taxpayer's] behalf." Taxpayer Ex. 8.

"A written power of attorney must be strictly construed so as to reflect the 'clear and obvious intent of the parties.' " Fort Dearborn Life Ins. Co. v. Holcomb, 316 Ill. App. 3d 485, 499, 736 N.E.2d 578, 589 (1st Dist. 2000). In this case, Taxpayer Exhibit 8 supports a conclusion that, when BOB: arranged to have others pick up and transport the Vehicle from Baltimore to Illinois; accepted physical delivery of the Vehicle in Illinois; prepared the application and other documents necessary to have the Illinois Secretary of State issue an original Illinois certificate of title for the Vehicle, in Taxpayer's name, while the Vehicle was physically present in Illinois; and assigned that certificate of title for the Vehicle to himself; he was exercising rights and powers over the Vehicle, in Illinois, as Taxpayer's power of attorney, on Taxpayer's behalf, and as an incident of Taxpayer's ownership of the Vehicle. Taxpayer Ex. 8; 35 ILCS 105/2; Miller Brewing Co., 35 Ill. 2d at 90-91, 219 N.E.2d at 496. Each and every one of the numbered

paragraphs included within the power of attorney form, moreover, expressly authorize BOB to perform acts regarding “my [i.e., Taxpayer’s Vehicle]” Taxpayer Ex. 8, ¶¶ 1-5. This item of documentary evidence is, in my opinion, much more probative on the question of ownership than the mere testimony Taxpayer and BOB offered at hearing. Since Taxpayer’s own, prior statements show that he expressly directed BOB to exercise rights and powers over the Vehicle, as Taxpayer’s power of attorney, the acts BOB subsequently exercised, in Illinois, regarding the Vehicle are fully attributable to Taxpayer. 35 ILCS 105/2; Miller Brewing Co., 35 Ill. 2d at 90-91, 219 N.E.2d at 496.

Finally, the fact that Taxpayer was, himself, never physically present in Illinois when BOB applied for and obtained an Illinois certificate of title for the Vehicle, in Taxpayer’s name, does not matter. Miller Brewing Co., 35 Ill. 2d at 90-91, 219 N.E.2d at 496. Taxpayer clearly intended that BOB exercise rights and powers over the Vehicle, in Illinois, in his (Taxpayer’s) name and on his behalf, and as an incident to his (Taxpayer’s) ownership of the Vehicle. Taxpayer Ex. 8; 35 ILCS 105/2. The documentary evidence Taxpayer offered does not rebut, and fully supports, the Department’s determination to deny Taxpayer’s claim for refund.

Conclusion:

I respectfully recommend that the Director finalize the Denial as issued.



August 24, 2017
Date

John E. White, Administrative Law Judge