

UT 18-06

Taxy Type: Use Tax

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

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

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

v.

**ABC LLC,
Taxpayer**

**No. XX-XX-XXXX
Account ID XXXXX-XXXX
Letter ID CXXXXXXXXXXXX
CXXXXXXXXXXXX
CXXXXXXXXXXXX
CXXXXXXXXXXXX
Period 10/28/11-3/20/14**

**Ted Sherrod
Administrative Law
Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General George Foster on behalf of the Illinois Department of Revenue; Robert Hall, Esq. of Bishop & LaForte, Ltd. on behalf of ABC LLC.

Synopsis:

This matter involves audit determinations issued by the Illinois Department of Revenue (“Department”) to ABC LLC (“Taxpayer”) to assess use tax regarding the Taxpayer’s use in Illinois of various trailer vehicles purchased for lease to lessees engaged in interstate commerce transportation of property. The Taxpayer, at the time it purchased the trailer vehicles at issue, claimed that these vehicles were exempt from

Illinois use tax as rolling stock used in interstate commerce. The Department determined that these trailer vehicles were not rolling stock used in interstate commerce and assessed use tax. The Taxpayer protested this audit determination and requested a hearing, which was held on May 19, 2016.

During the hearing, a representative of the Taxpayer presented testimony and the Department and the Taxpayer introduced numerous documents into the record. After considering the record and the parties' arguments, I am including in this recommendation findings of fact and conclusions of law. I recommend that, with the exception of vehicles having VIN numbers ending XXXX, XXXX, XXXX and XXXX, which the Department has stipulated qualify for the "rolling stock" exemption, the Director finalize the Department's denial of the exemption to all other trailer vehicles enumerated in the Notices of Tax Liability at issue and revise and affirm the Taxpayer's assessed liabilities indicated in the Notices of Tax Liability accordingly.

Findings of Fact:

1. The Department audited the books and records of ABC LLC ("Taxpayer") for the period beginning October 28, 2011 and ending March 20, 2014 and, on October 24, 2013 and July 25, 2014, issued Notices of Tax Liability number CXXXXXXXXXXXXX, CXXXXXXXXXXXXX, CXXXXXXXXXXXXX and CXXXXXXXXXXXXX showing use tax, penalty and interest assessed by the Department. Department Exhibit ("Ex.") 1.
2. The Department's *prima facie* case, including all jurisdictional elements, was established by the admission into evidence of the Department's Notices of Tax Liability for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report and

Notices of Tax Liability for Form RUT-25, Vehicle Use Tax Transaction Return showing additional tax due for the audited period. *Id.*

3. Taxpayer, a for profit limited liability company commercially domiciled in Illinois, is engaged in the business of buying vehicles, including trailers for lease and leasing these vehicles to transportation companies engaged in interstate transportation in the United States. Tr. pp. 49, 50; Department Ex. 1. Taxpayer purchased various trailer vehicles during the tax period in controversy on the dates indicated below:

| DESCRIPTION | LAST 4 DIGITS OF VIN | DATE PURCHASED¹ |
|----------------------------------|-----------------------------|-----------------------------------|
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |

¹ The “Date Purchased” indicates the date the Taxpayer completed the purchase of the vehicles identified above by taking delivery of these vehicles. An agreement to purchase all of the vehicles shown above except those having VIN number ending XXXX and XXXX was entered into between the Taxpayer and Midwest Utility Inc. on October 28, 2011. Department Ex. 1.

| | | |
|----------------------------------|-------------|----------------|
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2014 Trailer | XXXX | 3/20/14 |
| 2014 Trailer | XXXX | 3/20/14 |

Department Ex. 1.

The record in this case does not indicate when the aforementioned vehicles were registered or titled.

4. AAA Freight Transportation Inc. (“AAA Freight”), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. AAA Freight is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued AAA Freight U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
5. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in 9701 on December 5, 2011 (Department Ex. 1) and leased this vehicle to AAA Freight pursuant to a lease for not less than 6 months executed on August 31, 2011. Taxpayer’s Ex. 2. This vehicle was used by AAA Freight from 12/8/11 through 7/14/12. Taxpayer’s Ex. 3.
6. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX at issue in this case as having vehicle

- identification number ending in XXXX on December 5, 2011 (Department Ex. 1) and leased this vehicle to AAA freight pursuant to a lease for not less than six months executed on June 13, 2012. Taxpayer's Ex. 2. This vehicle was used by AAA Freight from 12/8/11 through 11/3/12. Taxpayer's Ex. 3.
7. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX at issue in this case as having a vehicle identification number ending in XXXX on December 5, 2011 (Department Ex. 1) and leased this vehicle to AAA Freight pursuant to a lease for not less than six months executed on August 31, 2011. Taxpayer's Ex. 2. This vehicle was used by AAA Freight from 12/9/11 through 12/1/12. Taxpayer's Ex. 3.
 8. BBB Express Inc. ("BBB Express"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. BBB Express is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued BBB Express U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
 9. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by BBB Express from 6/19/12 through 11/3/12. Taxpayer's Ex. 3.

10. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by BBB Express from 12/8/11 through 9/8/12. Taxpayer's Ex. 3.
11. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by BBB Express from 12/15/11 through 5/19/12. Taxpayer's Ex. 3.
12. CCC Corporation ("CCC"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. CCC is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued CCC U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
13. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by CCC from 4/8/13 through 8/12/13. Taxpayer's Ex. 3.
14. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by CCC from 4/23/13 through 9/11/13. Taxpayer's Ex. 3.

15. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by CCC from 4/9/13 through 11/4/13. Taxpayer's Ex. 3.
16. DDD Express Inc. ("DDD Express"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. DDD Express is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued DDD Express U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
17. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by DDD Express from 7/29/13 through 10/31/13. Taxpayer's Ex. 3.
18. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by DDD Express from 4/12/13 through 4/30/14. Taxpayer's Ex. 3.
19. EEE Logistics Inc. ("EEE"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. EEE is authorized by an agency of the Federal government to act as a property

carrier for hire and to transport property between all points in the United States.

Id. The Federal government has issued United Backhaul U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States.

Id.

20. The Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by EEE from 3/1/15 through 11/30/15. Taxpayer's Ex. 3.

21. FFF Trucking Inc. ("FFF Trucking"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. FFF Trucking is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued FFF Trucking U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*

22. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by FFF Trucking from 7/6/15 through 12/2/15. Taxpayer's Ex. 3.

23. GGG Inc. ("GGG"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. GGG is

- authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued GGG U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
24. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by GGG from 5/17/12 through 6/16/12. Taxpayer's Ex. 3.
25. HHH Motor Service Inc. ("HHH Motor Service"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. HHH Motor Service is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued HHH Motor Service U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
26. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by J&J Motor Service from 8/7/14 through 10/31/14. Taxpayer's Ex. 3.
27. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification

- number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by HHH Motor Service from 8/8/14 through 10/31/14. Taxpayer's Ex. 3.
28. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by HHH Motor Service from 8/6/14 through 10/31/14. Taxpayer's Ex. 3.
29. JJJ One Inc. ("Carrier One"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. JJJ One is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued JJJ One U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
30. The Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by JJJ One from 4/2/15 through 6/30/15. Taxpayer's Ex. 3.
31. KKK Freight Inc. ("KKK Freight"), a for profit corporation commercially domiciled in Illinois is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. KKK Freight is authorized by an agency of the Federal

- government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued to KKK Freight U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
32. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having vehicle identification number ending in XXXX on December 5, 2011 (Department Ex. 1) and leased this vehicle to KKK Freight pursuant to a lease for not less than one month executed on May 3, 2012. Taxpayer's Ex. 2. This vehicle was used by KKK Freight from 6/4/12 through 11/3/12. Taxpayer's Ex. 3.
33. LLL Trucking Inc. ("LLL Trucking"), a for profit corporation commercially domiciled in Illinois is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. LLL Trucking is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued to LLL Trucking U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
34. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on December 5, 2011 (Department Ex. 1) and leased this vehicle to LLL Trucking pursuant to a lease for no less than 1 day executed on

- June 28, 2013. Taxpayer's Ex. 2. This vehicle was used by LLL Trucking from 2/26/12 through 12/29/12. Taxpayer's Ex. 3.
35. The Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on February 16, 2012 (Department Ex. 1) and leased this vehicle to LLL Trucking pursuant to a lease for not less than one day executed on June 28, 2013. Taxpayer's Ex. 2. This vehicle was used by LLL Trucking from 2/21/12 through 12/1/12. Taxpayer's Ex. 3.
36. MMM Liner Corp. ("MMM Liner"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. MMM Liner is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued Trans Liner U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
37. The Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by Trans Liner from 5/11/15 through 12/2/15. Taxpayer's Ex. 3.
38. NNN Partners Co. ("NNN Partners"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. NNN Partners is authorized by an agency of the Federal

government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued NNN Partners U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*

39. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability CXXXXXXXXXXXXX as having vehicle identification number ending in XXXX on February 16, 2012 (Department Ex. 1) and leased this vehicle to NNN Partners pursuant to a lease for not less than one month executed on November 8, 2011. Taxpayer's Ex. 2. This vehicle was used by NNN Partners from 2/20/12 through 4/22/13. Taxpayer's Ex. 3.

40. OOO Corporation, LLC ("OOO"), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. OOO is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points within the United States. *Id.* The Federal government has issued OOO U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. Taxpayer's Ex. 2.

41. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as a having vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by OOO from 4/4/14 through 9/17/15. Taxpayer's Ex. 3.

42. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability CXXXXXXXXXXXXX at issue in this case as having vehicle identification number ending in XXXX on December 5, 2011 (Department Ex. 1) and leased this vehicle to OOO pursuant to a lease for not less than one month executed on August 20, 2012. Taxpayer's Ex. 2. This vehicle was used by OOO from 9/6/12 through 7/15/13. Taxpayer's Ex. 3.
43. PPP Transport Inc. ("PPP Transport") a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. PPP Transport is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points within the United States. *Id.* The Federal government has issued PPP Transport U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. Taxpayer's Ex. 3.
44. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by PPP Transport from 6/25/14 through 12/31/14. Taxpayer's Ex. 3.
45. The Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by PPP Transport from 7/17/14 through 8/31/15. Taxpayer's Ex. 3.

46. QQQ Import Export Inc. (“QQQ”), a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. QQQ is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued QQQ U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
47. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by QQQ from 8/11/15 through 12/2/15. Taxpayer’s Ex. 3.
48. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by QQQ on 7/2/15. Taxpayer’s Ex. 3.
49. RRR Transportation LLC (“RRR Transportation”), a for profit corporation commercially domiciled in North Carolina, is engaged in business as an interstate carrier for hire. Taxpayer’s Ex. 1. RRR Transportation is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points within the United States. *Id.* The Federal government has issued RRR Transportation U.S. Department of Transportation certificate

number XXXXXXXX and MC number MC-XXXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*

50. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by RRR Transportation from 11/12/14 through 5/31/15. Taxpayer's Ex. 3.
51. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on or about February 16, 2012 (Department Ex. 1) and leased this vehicle to RRR Transportation pursuant to a lease for not less than one day executed on January 29, 2015. Taxpayer's Ex. 2. This vehicle was used by RRR Transportation from 9/9/12 through 4/30/13. Taxpayer's Ex. 3.
52. Taxpayer purchased a 2013 truck semi-trailer identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on or about February 16, 2012 (Department Ex. 1) and leased this vehicle to RRR Transportation pursuant to a lease for not less than 1 day executed on January 29, 2015. Taxpayer's Ex. 2. This vehicle was used by RRR from 4/5/13 through 4/30/14. Taxpayer's Ex. 3.
53. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle

- was used by RRR Transportation from 10/21/13 through 12/31/13. Taxpayer's Ex. 3.
54. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by RRR Transportation from 6/4/14 through 6/30/15. Taxpayer's Ex. 3.
55. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by RRR Transportation from 4/4/14 through 3/31/15. Taxpayer's Ex. 3.
56. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by RRR Transportation from 11/4/14 through 3/31/15. Taxpayer's Ex. 3.
57. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by RRR Transportation from 7/15/13 through 12/31/13. Taxpayer's Ex. 3.
58. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification

number ending XXXX on or about February 16, 2012. Department Ex. 1. This vehicle was used by RRR from 8/20/12 through 4/30/13. Taxpayer's Ex. 3.

59. SSS Express Inc., ("SSS Express") a for profit corporation commercially domiciled in Illinois, is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. SSS Express is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between points within the United States. *Id.* The Federal government has issued SSS Express U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*

60. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on or about February 16, 2012 (Department Ex. 1) and leased this vehicle to SSS Express pursuant to a lease for not less than one month executed on May 4, 2011. Taxpayer's Ex. 2. SSS Express used this vehicle from 2/17/12 through 9/8/12. Taxpayer's Ex. 3.

61. TTT Express Inc. ("TTT Express"), a for profit corporation commercially domiciled in Illinois is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. TTT Express is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between points in the United States. *Id.* The Federal government has issued to TTT Express U.S. Department of Transportation certificate number XXXXXXXX and

- MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
62. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on or about December 5, 2011 (Department Ex. 1) and leased this vehicle to TTT Express pursuant to a lease of not less than one month executed on or about October 11, 2012. Taxpayer's Ex. 2. TTT Express used this vehicle from 3/5/13 through 2/28/15. Taxpayer's Ex. 3.
63. UUU Service LLC ("UUU Service") a for profit corporation commercially domiciled in Illinois is engaged in business as an interstate carrier for hire. Taxpayer's Ex. 1. UUU Service is authorized by an agency of the Federal government to act as a property carrier for hire and to transport property between all points in the United States. *Id.* The Federal government has issued to UUU Service U.S. Department of Transportation certificate number XXXXXXXX and MC number MC-XXXXXX authorizing it to transport property in interstate commerce in the United States. *Id.*
64. Taxpayer purchased a vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on or about March 20, 2014. Department Ex. 1. This vehicle was used by UUU Service from 3/26/13 through 11/30/14. Taxpayer's Ex. 3.
65. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle

was used by VVV LTD Inc. (“VVV Ltd.”) from 3/1/13 through 11/30/13. Taxpayer’s Ex. 3. There is no evidence in the record indicting whether VVV LTD has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

66. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by WWW Solutions LLC (“WWW Solutions”) from 12/9/11 through 2/25/12. Taxpayer’s Ex. 3. There is no evidence in the record indicting whether WWW Solutions has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

67. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by XZZ Logistics Inc. from 5/18/15 through 7/15/15. Taxpayer’s Ex. 3. There is no evidence in the record indicting whether XZZ Logistics has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record

contains no U.S. Department of Transportation certificate and no MC number for this company.

68. Taxpayer purchased a 2012 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on December 5, 2011. Department Ex. 1. This vehicle was used by YYY LLC (“YYY”) from 9/10/15 through 12/2/15. Taxpayer’s Ex. 3. There is no evidence in the record indicating whether YYY has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

69. Taxpayer purchased a 2013 truck semi-trailer vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending in XXXX on February 16, 2012. Department Ex. 1. This vehicle was used by ZZZ LLC (“ZZZ”) from 6/2/15 through 12/2/15. Taxpayer’s Ex. 3. There is no evidence in the record indicting whether ZZZ has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

70. Taxpayer purchased a vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX identified as having a vehicle identification number ending the XXXX on December 5, 2011 (Department Ex. 1) and leased this

- vehicle to AAB, Inc., a company having its commercial domicile in Illinois pursuant to a lease for not less than 1 month executed on August 22, 2011. Taxpayer's Ex. 2. The record in this case does not indicate the date on which the lease was executed or when this vehicle was used by AAB. Moreover, there is no evidence in the record to indicate whether AAB has been authorized by an agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate number or MC number for this company.
71. Taxpayer purchased a vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on or about March 20, 2014 (Department Ex. 1) and leased this vehicle to AAC Inc. ("AAC") pursuant to a lease for not less than six months executed on or about July 14, 2014. Taxpayer's Ex. 2. This vehicle was used by AAC from 7/21/14 through 12/2/15. Taxpayer's Ex. 3. There is no evidence in the record indicting whether AAC has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.
72. Taxpayer purchased a vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX as having a vehicle identification number ending XXXX on or about March 20, 2014. Department Ex. 1. This vehicle was used by YYZ from 3/31/14 through 7/31/14. Taxpayer's Ex. 3. There is no evidence in the record indicting whether YYZ has been authorized by any agency of the Federal

government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

73. Taxpayer purchased a vehicle identified in Notice of Tax Liability number CXXXXXXXXXXXXX at issue in this case as having a vehicle identification number ending XXXX on or about March 20, 2014 (Department Ex. 1) and leased this vehicle to CBD LTD pursuant to a lease for not less than six months executed on or about November 14, 2014. Taxpayer's Ex. 2. This vehicle was used by CBD from 11/17/14 through 11/30/15. Taxpayer's Ex. 3.

74. There is no evidence in the record indicting whether CBD LTD has been authorized by any agency of the Federal government to act as a property carrier for hire or to transport property in interstate commerce. Specifically, the record contains no U.S. Department of Transportation certificate and no MC number for this company.

75. The Department has stipulated that Taxpayer's books and records are sufficient to show that trailer vehicles having VIN numbers ending XXXX, XXXX, XXXX and XXXX qualify for exemption as rolling stock used in interstate commerce. Tr. pp. 6, 38.

76. The Taxpayer has produced books and records demonstrating interstate use of each of the vehicles identified above as indicated below:²

² The Department has stipulated that books and records produced by the Taxpayer some of which are not contained in the record are sufficient to document the periods of interstate use identified under the heading "Stipulated Interstate Use-Period" noted above. See Tr. pp. 6-9.

| VEHICLE VIN ENDING | STIPULATED INTERSTATE USE – PERIOD | DOCUMENTED INTERSTATE USE – PERIOD |
|---------------------------|---|---|
| XXXX | 1/12-6/12 (Tr. pp. 6-9) | |
| XXXX | | 1/12-9/12 (Taxpayer’s Ex. 7) |
| XXXX | 1/12-10/12 (Tr. pp. 6-9) | |
| XXXX | EXEMPT (Tr. p. 6) | |
| XXXX | 11/14-3/15 (Tr. pp. 6-9) | 11/14-3/15 (Taxpayer’s Ex. 8) |
| XXXX | | 5/15-8/15 (Taxpayer’s Ex. 9) |
| XXXX | | 8/13-12/13 (Taxpayer’s Ex. 10) |
| XXXX | EXEMPT (Tr. p. 6) | |
| XXXX | 11/14-5/15 (Tr. pp. 6-9) | 11/14-4/15 (Taxpayer’s Ex. 6) |
| XXXX | EXEMPT (Tr. p. 38) | |
| XXXX | 8/12-12/12 (Tr. pp. 6-9) | 2/12-12/12 (Taxpayer’s Ex. 4) |
| XXXX | 2/15-7/15 (Tr. pp. 6-9) | 8/15-12/15 (Taxpayer’s Ex. 5) |
| XXXX | EXEMPT (Tr. pp. 6-7) | |
| XXXX | TAXABLE | |
| XXXX | NONE | 4/15-10/15 (Taxpayer’s Ex. 11) |

77. With the exception of evidence of interstate use summarized above, the record in this case contains no documentation of how lessees of trailer vehicles identified in the Notices of Tax Liability at issue used them during the tax period in

controversy or documenting that these vehicles were used in interstate commerce while being leased from the Taxpayer during this period.

Conclusions of Law:

The Department prepared a corrected return which formed the basis of Notices of Tax Liability for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report admitted into evidence as part of Department Exhibit (“Ex.”) 1 for Use Tax liabilities of ABC LLC (“Taxpayer”) pursuant to section 4 of the Retailers’ Occupation Tax Act (“ROTA”), 35 ILCS 120/4. Said section is incorporated into the Use Tax Act (“UTA”) by section 12 of the UTA (35 ILCS 105/12). Section 4 of the ROTA provides in pertinent part as follows:

As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information ... [which return] ... shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.

Proof of such correction by the Department may be made at any hearing before the Department or any legal proceeding by reproduced copy in the name of the Director of Revenue. ... Such certified 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 amount of tax due, as shown therein.

35 ILCS 120/4.

The Department also prepared Notices of Tax Liability for Form RUT-25, Vehicle Use Tax Transaction Return based upon its review of Form RUT-25 returns submitted by the Taxpayer for the liability date March 20, 2014. Department Ex. 1.

Pursuant to section 4 of the ROTA, quoted above, the Department’s Notices of Tax Liability are *prima facie* correct and are *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 35 ILCS 120/4. Once the Department has established its *prima facie* case by submitting Notices of Tax Liability into the 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 assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). Rather, the taxpayer must present sufficient documentary evidence to support its claim denying the correctness of the Department’s determination. *Id.*

In this case, Taxpayer, a lessor of vehicle trailers to lessees engaged in interstate commerce, challenges the denial of the rolling stock use tax exemption (“rolling stock exemption”) by the Department and resulting assessment of use tax, penalty and interest on the purchase of various trailer vehicles. Taxpayer asserts that its purchases of the following trailer vehicles were exempt from Use Tax based upon the rolling stock exemption as set forth in section 3-55, 3-60 and 3-61 of the UTA (35 ILCS 105/3-55, 35 ILCS 105/3-60 and 35 ILCS 105/3-61):

| DESCRIPTION | LAST 4 DIGITS OF VIN | DATE ACQUIRED |
|----------------------------------|-----------------------------|----------------------|
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |

| | | |
|----------------------------------|-------------|----------------|
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2012 Flatbed Semi Trailer | XXXX | 12/5/11 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2013 Flatbed Semi Trailer | XXXX | 2/16/12 |
| 2014 Trailer | XXXX | 3/20/14 |
| 2014 Trailer | XXXX | 3/20/14 |

Department Ex. 1.

The Department's assessments indicated in the Notices of Tax Liability at issue arising from the Department's denial of the rolling stock exemption for the Taxpayer's vehicles indicated above includes trailer vehicles having VIN numbers ending XXXX, XXXX, XXXX and XXXX. Department Ex. 1. During the evidentiary hearing in this matter, Special Assistant Attorney General George Foster, the Department's counsel, stipulated that trip logs presented by the Taxpayer constitute sufficient evidence to prove that each of the foregoing vehicles qualifies for the rolling stock exemption. Tr. pp. 6, 7, 38. Consequently, the applicability of the rolling stock exemption to these vehicles is not in controversy.

Case law is clear that the burden is always on the taxpayer to show that it is entitled to an exemption. Wyndemere Retirement Community v. Department of

Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). Moreover, statutes that exempt property, a transaction, or an entity from taxation must be strictly construed in favor of taxation and against exemption. Id.; Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975).

The rolling stock exemption as set forth in sections 3-55, 3-60 and 3-61 of the Use Tax Act (“UTA”) states as follows:

§ 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:

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce or by lessors under lease of one year or longer executed or in effect at the time of purchase of tangible personal property by interstate carriers for-hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carrier for-hire ...

(c) The use, in this State, by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carrier for hire ...[.]
35 ILCS 105/3-55(b), (c)

§ 3-60. Rolling stock exemption. Except as provided in Section 3-61 of this Act, the rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside of Illinois.
35 ILCS 105/3-60

§ 3-61. (d) Beginning July 1, 2004, “used as rolling stock moving in interstate commerce” in paragraphs (b) and (c) of Section 3-55 occurs for trailers, as defined in Section 1-209 of the Illinois Vehicle Code, semitrailers as defined in Section 1-187 of the Illinois Vehicle Code, and pole trailers as defined in Section 1-161 of the Illinois Vehicle

Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. ... If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method.

35 **ILCS** 105/3-61(d)

Pursuant to the aforementioned statutory provisions, the Retailers' Occupation Tax (at 35 **ILCS** 120/2-5(12)) and the Illinois Use Tax (quoted above) do not apply to sales of tangible personal property to lessors of tangible personal property that is utilized by interstate carriers for use as rolling stock moving in interstate commerce as long as it is so used by the interstate carrier "for hire."

The applicability of the rolling stock exemption is governed by Department regulation 86 Ill. Admin. Code, ch. I, section 130.340. As pertains to lessors of vehicles this regulation provides as follows:

- a) Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under lease of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. [35 **ILCS** 120/2-5 (12)] In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. [35 **ILCS** 120/2-5(13)] For example, the exemption may also apply to lessors under leases of less than one year's duration and manufacturers who provide tangible personal property (such as shipping containers) to interstate carriers for hire when those interstate carriers use that property as rolling stock moving in interstate commerce.

86 Ill. Admin. Code, Ch. I, section 130.340(a)

The applicability of the rolling stock exemption to “lessors under lease of one year or longer” outlined above, which is prescribed by statute (at 35 ILCS 105/3-55(b)) is not at issue in this case because none of the leases in evidence entered into between the Taxpayer and its lessees were for a duration of at least one year. Taxpayer’s Ex. 2. Rather, the Taxpayer’s claim to exemption rests upon 35 ILCS 105/3-55(c) which applies to lessors leasing property for less than one year. See Department of Revenue General Information Letter ST 04-0167-GIL, 9/14/04, which states as follows:

If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors ... of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) ...[.]

In accordance with the aforementioned statutes as implemented by Department regulation 86 Ill. Admin. Code, ch. I, section 130.340, in order to qualify for the “rolling stock” exemption, the exemption claimant or lessee leasing transportation vehicles from the claimant must fulfill three distinct requirements. First, to be considered an interstate carrier for hire, the claimant or its lessee must possess an Interstate Commerce Commission Certificate of Authority, an Illinois Commerce Commission registration number indicating that it is recognized by the Illinois Commerce Commission as an interstate carrier for hire, or “[I]f the carrier is a type which is subject to regulation by some Federal Government regulatory agency other than the Interstate Commerce Commission”, a registration number from such other Federal Government regulatory agency. 86 Ill. Admin. Code, ch. I, section 130.340(g). See also Instructions to Illinois Department of Revenue Form RUT-7 “Rolling Stock Certification.”

During the hearing in this matter, the Taxpayer produced records of official government documents containing registration numbers obtained by lessees of all of the vehicles at issue except lessees of its trailer vehicle having VIN number ending XXXX from the Federal Motor Carrier Safety Administration to show that this requirement has been met. Taxpayer's Ex. 1. With the exception of the aforementioned vehicle (VIN number ending XXXX), the evidence establishes that all of the Taxpayer's other trailer vehicles at issue were leased to lessees having certificates from the Interstate Commerce Commission to transport goods in interstate commerce and motor carrier numbers issued by an agency of the Federal government. *Id.* Conversely, the Taxpayer's failure to prove that lessees of its vehicle having VIN number ending XXXX possess such documentation of Federal authority to transport goods in interstate commerce precludes the application of the rolling stock exemption to this vehicle.

The second requirement needed to qualify for exemption is that the interstate carrier must be "for hire" when providing transportation services. As detailed in administrative rules, "[t]he term 'Rolling Stock' includes the transportation vehicles of any kind of interstate transportation company for hire ... but not vehicles which are being used by a person to transport its officers, employees, customers or others for hire (even if they cross State lines) or to transport property that the person owns or is selling and delivering to customers (even if the transportation crosses State lines)." 86 Ill. Admin. Code, ch. I, section 130.340(b). In order to meet this requirement, a taxpayer must establish that it transports, or leases vehicles to lessees to transport, materials for other customers and that the taxpayer or its lessee has no ownership interest in or control over

the property being transported. *Id.* In the instant case, the Department has not challenged Taxpayer's claim that all of its lessees operate "for hire." Tr. p. 52.

In order for the rolling stock exemption to apply, the third requirement is that a taxpayer must prove that it or its lessees transport persons or property for hire that moves in interstate commerce. 35 ILCS 105/3-55(c). With respect to this requirement, section 3-61 of the UTA, 35 ILCS 105/3-61 as in effect prior to July 1, 2004 provides as follows:

§3-61. Use as rolling stock definition. "Use as rolling stock moving in interstate commerce" in subsections (b) and (c) of Section 3-55 means for motor vehicles...and trailers ... when on 15 or more occasions in a 12-month period the motor vehicle and trailer has carried persons or property for hire in interstate commerce, even just between points in Illinois, if the motor vehicle and trailer transports persons whose journeys or property whose shipments originate or terminate outside Illinois.

In 2004 Governor Rod Blagojevich signed into law P.A. 93-1033. Section 10 of this Act amends section 3-61 of the UTA as indicated below:

(c) Beginning July 1, 2004, "use as rolling stock moving in interstate commerce" in paragraphs (b) and (c) of Section 3-55 occurs for trailers, as defined in Section 1-209 of the Illinois Vehicle Code, semitrailers as defined in Section 1-197 of the Illinois Vehicle Code and pole trailers as defined in Section 1-161 of the Illinois Vehicle Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption for a trailer or trailers that will not be dedicated to a motor vehicle or group of motor vehicles shall make an election at the time of purchase to use either the trips or mileage method. Persons who purchased trailers prior to July 1, 2004 that are not dedicated to a motor vehicle or group of motor vehicles shall make an election to use either the trips or mileage method and to document that election in their books and records. If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method.

For purposes of determining qualifying trips or miles, trailers, semi-trailers or pole trailers that carry property for hire, even just between

points in Illinois, will be considered used for hire in interstate commerce if the trailers, semi-trailers, or pole trailers transport property whose shipments originate or terminate outside of Illinois. This definition applies to all property purchased for the purpose of being attached to those trailers, semi-trailers, or pole trailers as a part thereof.

...

35 **ILCS** 105/3-61

As is readily apparent from the above, P.A. 93-1033, as in effect July 1, 2004, substitutes a new requirement for pre-existing requirements necessary to qualify for the rolling stock exemption by providing, in pertinent part that beginning July 1, 2004, “used as rolling stock moving in interstate commerce” in paragraphs (b) and (c) of Section 3-55 of the UTA occurs for trailers, as defined in Section 1-209 of the Illinois Vehicle Code, semitrailers as defined in Section 1-187 of the Illinois Vehicle Code, and pole trailers as defined in Section 1-161 of the Illinois Vehicle Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The manner in which this new requirement is to be applied is explained in Department regulation 130.340(e)(1), which states as follows:

- 1) The first 12-month qualifying period for the use of a vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. If the vehicle or trailer is not required to be titled or registered with an agency of this State and the vehicle or trailer is not titled or registered with an agency of this State, the first 12-month qualifying period for use of that vehicle or trailer begins on the date of purchase of that vehicle or trailer. Motor vehicles and trailers must continue to be used in a qualifying manner for each consecutive 12-month period subject to the limitations period for issuing a Notice of Tax Liability under the Retailers’ Occupation Tax Act ...(or)...the Use Tax Act ...[.]”

Pursuant to the foregoing, a lessor of vehicles, including trailers, does not qualify for exemption if the lessees to which it leases these vehicles do not use them in a qualifying manner during each of the first 12 months after either: 1) the date of purchase or, if the vehicle is required to be registered or titled, 2) the later of the date of titling or registration.

None of the dates on which any of the Taxpayer's vehicles at issue were titled or registered are indicated in the record. However, during the hearing in this matter, the Taxpayer produced trip logs documenting interstate commerce use of some of the trailer vehicles at issue. Moreover, the Department has stipulated that other documentation, not included in the record, evidences additional interstate commerce use of some of these vehicles. Assuming registration occurred no later than the month in which use of each vehicle commenced as required by sections 3-401 and 3-402 of the Illinois Vehicle Code, 625 ILCS 5/3-401, 5/3-402, qualification for the rolling stock exemption can be evaluated based upon the aforementioned evidence which is summarized below.

| VEHICLE VIN ENDING | STIPULATED INTERSTATE USE – PERIOD | DOCUMENTED INTERSTATE USE – PERIOD |
|---------------------------|---|---|
| XXXX | 1/12-6/12 (Tr. pp. 6-9) | |
| XXXX | | 1/12-9/12 (Taxpayer's Ex. 7) |
| XXXX | 1/12-10/12 (Tr. pp. 6-9) | |
| XXXX | EXEMPT (Tr. p. 6) | |

| | | |
|------|---------------------------------|---------------------------------------|
| XXXX | 11/14-3/15 (Tr. pp. 6-9) | 11/14-3/15 (Taxpayer's Ex. 8) |
| XXXX | | 5/15-8/15 (Taxpayer's Ex. 9) |
| XXXX | | 8/13-12/13 (Taxpayer's Ex. 10) |
| XXXX | EXEMPT (Tr. p. 6) | |
| XXXX | 11/14-5/15 (Tr. pp. 6-9) | 11/14-4/15 (Taxpayer's Ex. 6) |
| XXXX | EXEMPT (Tr. p. 38) | |
| XXXX | 8/12-12/12 (Tr. pp. 6-9) | 2/12-12/12 (Taxpayer's Ex. 4) |
| XXXX | 2/15-7/15 (Tr. pp. 6-9) | 8/15-12/15 (Taxpayer's Ex. 5) |
| XXXX | EXEMPT (Tr. pp. 6-7) | |
| XXXX | TAXABLE | |
| XXXX | NONE | 4/15-10/15 (Taxpayer's Ex. 11) |

As previously noted, section 3-61 of the UTA provides, in part, as follows:

Beginning July 1, 2004, “use as rolling stock moving in interstate commerce” in paragraphs (b) and (c) of Section 3-55 occurs for trailers, as defined in Section 1-209 of the Illinois Vehicle Code, semitrailers as defined in Section 1-197 of the Illinois Vehicle Code and pole trailers as defined in Section 1-161 of the Illinois Vehicle Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period.

In accordance with the foregoing statutory provision, Department regulation 130.340(e)(1) requires that trailers be used in an exempt manner (i.e. used in interstate commerce for over 50% of trips or over 50% of miles during a 12 consecutive month period beginning with the date of purchase or, if the vehicle is required to be registered or

titled, beginning the later of the date of registration or titling), in order to qualify for the rolling stock exemption. To determine whether the trips or mileage tests enumerated in section 3-61 of the UTA and regulation 130.340(e)(1) have been met, it is incumbent upon a taxpayer to provide sufficient books and records, generally in the form of trip logs, to show that more than 50% of the trips taken by a vehicle for which the rolling stock exemption is claimed or more than 50% of the miles traveled by such vehicle were in interstate commerce during a consecutive 12 month period. As a consequence of the foregoing, trip logs showing where each vehicle for which the rolling stock exemption is claimed traveled must be provided for a complete consecutive 12 month period in order for either of these tests to be applied.

While none of the dates on which Taxpayer's trailer vehicles at issue were registered or titled are identified in the record, even if one assumes that vehicle registration occurred in the first month of documented use of each of the trailer vehicles as required by the Illinois Vehicle Code provisions noted above, it is clear from the aforementioned summary of documentary evidence showing interstate use by lessees that in no case does documented use cover a consecutive 12 month period commencing with the month in which any of the trailer vehicles at issue was first used. As a consequence, even assuming trailer vehicle registration occurred in the month when initial trailer vehicle use commenced rather than when each vehicle was acquired, a showing of interstate use for over 50% of trips or over 50% of mileage use during the first 12 months commencing with the month of initial use cannot be made because the Taxpayer has insufficient records to document 12 complete months of trailer vehicle use in interstate

commerce commencing with the month of initial vehicle use for any of the trailer vehicles in controversy.

During the hearing, the Taxpayer also provided records kept in the ordinary course of business showing that, with the exception of lessees VVV Ltd., WWW Solutions, XZZ Logistics, YYY LLC, ZZZ LLC, AAB Inc., AAC Inc., YYZ, and CBD Ltd., all of its lessees have been authorized by the Federal government to act as property carriers for hire, and to transport property between all points in the United States, and all have U.S. Department of Transportation certificate numbers and possess motor carrier (MC) numbers issued by the Federal government. Taxpayer's Ex. 1, 3.

However, the Taxpayer's records showing interstate carriers to whom the Taxpayer leased the vehicles at issue (Taxpayer's Ex. 3) do not provide any indication of how these vehicles were used or document actual interstate trips taken by these vehicles during the period these vehicles were being used by lessees. The Illinois appellate court has ruled that such documentation is a prerequisite to the allowance of the rolling stock exemption. First National Leasing & Financial Corporation v. Zagel, 80 Ill. App. 3d 358, 359 (4th Dist. 1980). Consequently, Taxpayer's record of vehicle leases to lessees does not constitute sufficient documentation to prove movement in interstate commerce by these vehicles necessary to show that these vehicles qualify for exemption under any of the tests enumerated in section 3-61 of the Use Tax Act as amended in 2004. A showing of use by lessees cannot be equated with a showing of interstate use which is required to qualify for exemption. In effect, regulation 130.340(e)(1) requires a taxpayer to have a complete set of trip logs or comparable evidence of vehicle usage documenting all vehicle trips for at least 12 consecutive months commencing with the month of purchase

(if registration or titling is not required), or the later of the month of registration or titling since the test to determine qualifying use in interstate commerce can only be applied based upon a consecutive 12 month period commencing with one of the aforementioned months. 86 Ill. Admin. Code, ch. I, section 130.340(e)(1).

The Taxpayer argues that it should not be required to strictly adhere to the requirement to produce documentation showing qualifying use for 12 consecutive months commencing with the date of purchase, titling or registration of these vehicles because this information is not contained in the Taxpayer's books and records and is difficult to obtain from the Taxpayer's lessees. Tr. pp. 55-56. It contends that a more equitable methodology to determine the Taxpayer's liability would be a projection of its lessees' use of these vehicles during the period after purchase or initial use based upon the lessees' more current records of trailer vehicle use in interstate commerce. *Id.*

The Department is at liberty to use such estimates and projections in arriving at the Taxpayer's tax liability. However, I am not authorized to require it to do so, and there is no provision in the Illinois Retailers' Occupation Tax Act or Use Tax Act mandating the Department to determine liability in such a manner.

CONCLUSION

In sum, based upon the evidence contained in the record, with the exception of vehicles the Department has stipulated are exempt, Taxpayer has failed to show that its vehicles leased to lessees for use in interstate commerce qualified for exemption as rolling stock. Taxpayer's trailer vehicle having VIN number ending XXXX does not qualify for exemption because there is no evidence that any lessees of this vehicle

possessed Federal government documentation indicating that these lessees were authorized to act as interstate carriers for hire as required by Department regulation 130.340(g). With the exception of trailer vehicles the Department has stipulated are exempt, the Taxpayer's other vehicles do not qualify under subsection (e)(1) of this regulation because the Taxpayer cannot demonstrate from its books and records that these vehicles were used in a qualifying manner (i.e. for more than 50% of their trips or more than 50% of their mileage during a 12 month period commencing with either the month of purchase or, if the vehicle is required to be registered or titled the later of the month of titling or the month of registration).

WHEREFORE, for the reasons stated above, it is my recommendation that, with the exception of trailer vehicles having VIN numbers ending XXXX, XXXX, XXXX and XXXX which the Department has stipulated qualify for the rolling stock exemption, the Department's assessments resulting from the denial of the rolling stock exemption for all other vehicles identified in the Notices of Tax Liability at issue be affirmed.

Ted Sherrod
Administrative Law Judge

Date: August 16, 2018