

UT 04-4

Tax Type: Use Tax

Issue: Use Tax On Aircraft Purchase

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

THE DEPARTMENT OF REVENUE)	Docket No.	03-ST-0000
OF THE STATE OF ILLINOIS)	IBT No.	0000-0000
v.)	NTL No.	00 00000000000000
JOHN DOE,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Dennis R. O’Neill, Dennis R. O’Neill, P.C., appeared for John Doe, Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when John Doe, (“Doe” or “taxpayer”) protested a Notice of Tax Liability (“NTL”) the Illinois Department of Revenue (“Department”) issued to him to assess use tax regarding his purchase of an aircraft for use in Illinois. There are two issues: whether taxpayer’s purchase was subject to use tax or to vehicle use tax; and (2) if it was subject to use tax, what was the proper base upon which tax should be measured.

The hearing was held at the Department’s offices in Chicago. Doe presented evidence through testimony, and through documents. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Department’s assessment of Illinois use tax be upheld, and that the tax base be revised.

Findings of Fact:

1. Doe is a resident of Illinois. Hearing Transcript (“Tr.”), pp. 18, 22 (Doe).
2. On February 28, 2000, Doe purchased a Piper model PA-28-181 aircraft, bearing a serial number of 000000000 (hereinafter, “the aircraft”), from ABC Aviation, Inc. (“ABC”). Department Ex. 3 (copies of FAA documents relating to the title and registration history of the aircraft), p. 5 (copy of FAA bill of sale documenting the 2/28/00 sale from ABC to Doe); Taxpayer Ex. 3 (photo of aircraft); Tr. p. 22 (testimony of Doe). A Piper model PA-28-181 aircraft has a maximum seating capacity of 4 people, including the pilot. *See* Taxpayer Ex. 3; www.airliners.net/info/stats.main?id=304 (site accessible as of July 13, 2004).¹
3. At the time of the sale to Doe, ABC was a retailer based in Oklahoma. Department Ex. 2, p. 8 (copy of the FAA bill of sale showing ABC’s purchase of the Aircraft from an individual).
4. To pay for the aircraft, Doe had a bank check drawn on a Bank of an Illinois account, in the amount of \$53,500.00, which was made payable to the order of ABC. Taxpayer Ex. 1 (copy of the front and back of the 2/28/00 bank check); Tr. pp. 22-23 (Doe). The check was dated 2/28/00, and was presented and paid promptly thereafter. Taxpayer Ex. 1.
5. At the time of his purchase, ABC gave Doe a copy of a bill of sale that would be recorded with the FAA, and a receipt for his payment of the aircraft. Tr. pp. 25-26 (Doe). Doe subsequently lost possession of those documents. *Id.*, p. 26 (Doe).

¹ I take official notice of the maximum seating capacity of the aircraft.

6. The Department reviewed Doe's purchase of the aircraft after receiving information from the United States Aircraft Registry. Department Ex. 2 (documents made or reviewed by the auditor conducting the audit here), p. 1 (audit comments).
7. The auditor contacted Doe regarding the Department's review of the aircraft purchase, but received no response from him. Department Ex. 2, p. 1. The auditor had sought documentation from Doe as to whether the aircraft was purchased at retail, whether Doe paid any tax to the seller or to the Department directly, and whether the purchase was exempt or not subject to Illinois use tax. Department Ex. 2, p. 1.
8. The auditor determined that ABC was a retailer, and that Doe purchased it at retail. Department Ex. 2, p. 2 (ABC's affirmative, written and signed response to the auditor's letter asking whether it was a retailer).
9. Based on his review, the auditor concluded that an NTL should be issued to Doe to assess use tax regarding his aircraft purchase. Department Ex. 2, p. 1.
10. The tax assessed in the NTL was based on the best information available to the auditor. *Id.* That information included an average retail price of \$65,000.00 for an aircraft of the same year, make and model as Doe's. Department Ex. 2, pp. 1, 3 (copy of page 390, Aircraft Bluebook Digest, Winter 1999-2000 edition, showing various data regarding Piper Archer II aircraft, model PA-28-181). The auditor also added to this amount the value of certain items of equipment that were affixed to Doe's aircraft, which totaled another \$9,470.00, Department Ex. 2, pp. 4-5 (copies of email messages from auditor detailing the itemized values of the

aircraft equipment used to increase the aircraft's estimated selling price).

11. The NTL also included assessments of a late filing and late payment penalties, plus interest. Department Exs. 1-2.
12. After the Department initiated its audit of Doe's purchase of the aircraft, Doe sought documentation from ABC to show the Department proof of his purchase price for that aircraft. Tr. p. 26-27 (Doe).
13. In response to Doe's request, ABC sent Doe a handwritten note, on its office letterhead, which provided:

10-29-03
To whom it may concern
On or about 2-28-00 I sold N8343N to John Doe for
\$53,500.

XXXX XXXXXX
Pres ABC Aviation

Taxpayer Ex. 2.

14. Sometime after purchasing the aircraft, Doe brought the aircraft into Illinois, where it was kept until it was sold. Tr. p. 24 (Doe).
15. Doe sold the aircraft on May 20, 2003. Department Ex. 2, p. 1 (copy of FAA bill of sale from Doe to XXXXXXXX); Tr. pp. 24-25 (Doe).

Conclusions of Law:

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. The Illinois General Assembly incorporated into the UTA certain provisions of the Retailers' Occupation Tax Act ("ROTA"). 35 ILCS 105/12. Among them is § 4 of the ROTA, which provides that the Department's determination of tax due constitutes prima

facie proof that tax is due in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4.

In this case, the Department established its prima facie case when it introduced Department Exhibit 1, consisting of a copy of the auditor's determination of tax due, under the certificate of the Director. Department Ex. 1; Tr. p. 13. That exhibit, without more, constitutes prima facie proof that Doe owes Illinois use tax in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4. 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. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157-58, 242 N.E.2d 205, 207 (1968).

Doe first claims that the Department assessed the wrong tax in this case, and that vehicle use tax is more properly applicable here. The vehicle use tax is found within Article X of the Illinois Vehicle Code ("IVC"), and § 3-1001 of that act provides as follows:

A tax is hereby imposed on the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase, and having a year model designation preceding the year of application for title by 5 or fewer years prior to October 1, 1985 and 10 or fewer years on and after October 1, 1985 and prior to January 1, 1988. On and after January 1, 1988, the tax shall apply to all motor vehicles without regard to model year. Except that the tax shall not apply

(i) if the use of the motor vehicle is otherwise taxed under the Use Tax Act;

625 ILCS 5/3-1001.

Section 1-146 of the IVC defines a motor vehicle as:

Every vehicle which is self-propelled and

every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except for vehicles moved solely by human power and motorized wheelchairs. For this Act, motor vehicles are divided into two divisions:

First Division: Those motor vehicles which are designed for the carrying of not more than 10 persons.

Second Division: Those motor vehicles which are designed for carrying more than 10 persons, those motor vehicles designed or used for living quarters, those motor vehicles which are designed for pulling or carrying freight, cargo or implements of husbandry, and those motor vehicles of the First Division remodelled for use and used as motor vehicles of the Second Division.

625 ILCS 5/1-146.

Taxpayer's argument is not well founded. The IVC was clearly designed to apply to motor vehicles "operated upon the public highways of this State" *E.g.*, 625 ILCS 5/3-801(a) (owners of first division vehicles must apply for registration of said vehicles with the Secretary of State within 24 hours of ownership). This is confirmed by reviewing, *inter alia*, the Secretary of State's description of, and statutes relating to, first division and second division motor vehicles, as set forth in various sections of the IVC, including, *inter alia*, §§ 3-806, 3-808, 3-809, 3-810.1, and 3-812 to 3-815. 625 ILCS 5/3-806, 3-808, 3-809, 3-810.1, and 3-812 to 3-815.

Contrary to Doe's suggestion, Illinois regulates all aspects of air transportation within the state pursuant to the Illinois Aeronautics Act (620 ILCS 5/1 *et seq.*), and not pursuant to the IVC. 620 ILCS 5/42.² Doe, moreover, knows full well the difference

² Section 42 of the Illinois Aeronautics Act provides, in pertinent part:
Regulation of aircraft, airmen, and airports.
(a) The general public interest and safety, the safety of persons operating, using, or traveling in, aircraft, and of persons and property on the ground, and the interest of aeronautical progress require that aircraft operated within this State should be airworthy, that airmen should be properly

between how motor vehicles versus aircraft are regulated, and proof of his knowledge is reflected by the fact that he registered his ownership of the aircraft with the FAA, and recorded his purchase of the aircraft with that agency. Department Ex. 3, pp. 4-5. Yet Doe offered no evidence to show that he ever acted consistent with his claim that the IVC applies to his use of the aircraft in Illinois. For example, he offered no evidence to show that he tried to register his aircraft with the Illinois Secretary of State as a motor vehicle

qualified, and that air navigation facilities should be suitable for the purposes for which they are designed. The purposes of this Act require that the Department [i.e., the Division of Aeronautics of the Department of Transportation of Illinois] should be enabled to exercise the powers of regulation and supervision herein granted. The advantage of uniform regulation makes it desirable that aircraft operated within this State should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States Government with respect to civil aircraft subject to its jurisdiction and that persons engaging in aeronautics within this State should have the qualifications necessary for obtaining and holding appropriate airman certificates of the United States. **It is desirable and right that all applicable fees and taxes shall be paid with respect to aircraft operated within this State.**

c) The Department may refuse to issue or may suspend the certificate of any person who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the Illinois Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

620 ILCS 5/42 (emphasis added).

of the first division, because he thought § 3-801 of the IVC applied to his ownership and use of a four-seat aircraft in Illinois.

In contrast with the IVC, the whole of which says absolutely nothing about the taxation or the regulation of any type of aircraft, § 10 of the UTA sets forth the legislature's express direction to persons who purchase an aircraft at retail from an out-of-state retailer — in other words, to persons such as Doe. 35 ILCS 105/10. The pertinent parts of that section provide:

... with respect to motor vehicles, aircraft, watercraft, and trailers, a purchaser of such tangible personal property for use in this State, who purchases such tangible personal property from an out-of-state retailer, shall file with the Department, upon a form to be prescribed and supplied by the Department, a return for each such item of tangible personal property purchased Such return in the case of motor vehicles and aircraft must show the name and address of the seller, the name, address of purchaser, the amount of the selling price including the amount allowed by the retailer for traded in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any, to the extent to which Section 2 of this Act allows an exemption for the value of traded-in property; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the purchaser with respect to such transaction; the amount of tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance if that is claimed to be the fact); the place and date of the sale, a sufficient identification of the property sold, and such other information as the Department may reasonably require.

Such return shall be filed not later than 30 days after such motor vehicle or aircraft is brought into this State for use.

35 ILCS 105/10 (emphasis added). Clearly, § 10 of the UTA, and not Article X of the IVC, applies here.

The next issue is the proper base upon which use tax should have been measured. Use tax is to be measured by the selling price of the property sold at retail, which the legislature generally defined as the consideration for a sale valued in money, less the trade-in value of like property given by the purchaser to the retailer. *See* 35 **ILCS** 105/2 (definition of “selling price”).

Here, the Department’s auditor used the best information that was available to him, since Doe did not file a return as required by UTA § 10. Department Ex. 2, p. 1. The auditor used as the tax base an average retail price, which the auditor obtained from the Aircraft Bluebook Digest, a trade publication that, among other things, details the value of used aircraft. *Id.* pp. 1, 3. That average retail price was \$65,000.00. *Id.*, p. 3. The auditor also increased the tax base by taking into account the cost of certain items of equipment that were affixed to Doe’s aircraft, leading to a total tax base of \$74,470.00. *Id.*, pp. 3-5. All of these estimates were reasonable, given the absence of any documentation showing the true selling price Doe paid for the aircraft.

At hearing, Doe had an opportunity to present evidence to rebut the Department’s presumptively correct determination of the tax base here. The evidence admitted included a copy of a bank check Doe testified he had drawn to pay for the aircraft, in the amount of \$53,500.00. Taxpayer Ex. 1; Tr. pp. 22-23 (Doe). The check bears the same date as the date of the aircraft sale shown on the FAA recorded bill of sale. *Compare* Taxpayer Ex. 1 *with* Department Ex. 2, p. 5. The check shows, in the memo section, that it was drawn regarding a “1981 Piper – N8342N” and that taxpayer was the remitter of the check. Taxpayer Ex. 1. That evidence also shows that the check was honored when presented for payment, shortly after the date of the sale. *Id.* The amount in which the

check was drawn, finally, is the same amount that the seller said that it charged Doe for the aircraft. Taxpayer Ex. 2.

The documentary evidence Doe presented at hearing constitute credible, competent evidence of Doe's true purchase price for the aircraft. I conclude, therefore, that such documentary evidence was sufficient to rebut the Department's estimate of the consideration Doe paid, valued in money, for the aircraft.

After a taxpayer introduces competent, credible documentary evidence sufficient to rebut one of the Department's determinations, the burden shifts to the Department to prove its case with competent evidence. Goldfarb v. Department of Revenue, 411 Ill. 573, 579, 104 N.E.2d 606, 608 (1952). Since the Department's determination was based on the auditor's best estimate, it had no such competent evidence to offer here. I recommend, therefore, that the NTL be revised to reflect the true selling price of the aircraft.

Conclusion:

I recommend that the Director revise the NTL so as to take into account Doe's true purchase price of \$53,500.00 for the aircraft. I further recommend that the NTL be finalized as so revised, with interest to accrue pursuant to statute.

Date: 7/14/2004

John E. White
Administrative Law Judge