

UT 09-2

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

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

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

v.

**JOHN DOE,
Taxpayer**

**No. 08-ST-0000
IBT# 0000-0000
NTL# 00 00000000000000**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Marc Muchin on behalf of the Illinois Department of Revenue (“Department”); John Doe, *pro se*.

Synopsis:

The issue presented in this case is whether the purchase of an all terrain vehicle in Indiana by John Doe (“taxpayer”), an Illinois resident, was properly subject to Illinois use tax. A hearing on this matter was conducted by the Department’s Office of Administrative Hearings on December 11, 2008 in Chicago, Illinois. The taxpayer, proceeding *pro se* introduced only one document into the record, an invoice evidencing the purchase of the all terrain vehicle at issue on January 2, 2002 and its delivery to the taxpayer in Indiana on April 1, 2002. Other documentation proffered for admission into

the record was determined to be inadmissible. The taxpayer also testified on his own behalf.

After considering the evidence adduced at hearing, I recommend that this matter be resolved in favor of the Department. In support of this determination, I am including herein specific findings of fact and conclusions of law as indicated below.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by admitting, under the certificate of the Director of the Department of Revenue, the Department's SC-10-K Audit Correction and/or Determination covering the audited period 1/2/02 showing a use tax deficiency and penalties in the aggregate amount of \$685. Department Exhibit ("Department Ex.") 1.
2. John Doe ("taxpayer") purchased a motor vehicle, to wit: a 2002 Yamaha model number XXXXXI terrain vehicle (the "ATV") on January 2, 2002. Taxpayer's Exhibit ("Taxpayer's Ex.") 3.
3. The taxpayer is an Illinois resident, residing in Anywhere, Illinois. Tr. p. 20; Taxpayer's Ex. 3.
4. The taxpayer purchased the ATV from Xtreme Motor Sports, a motor sports vehicle dealer located in Hammond, Indiana. Tr. pp. 23, 24; Taxpayer's Ex. 3.
5. The sales invoice Xtreme Motor Sports prepared, which bears the taxpayer's signature, indicates that delivery of the ATV was made to the taxpayer on April 1,

2002 at the retailer's dealership location in Hammond, Indiana. Taxpayer's Ex. 3.

No sales tax was paid on the vehicle at the time it was purchased. *Id.*¹

6. Immediately after accepting delivery of the ATV, the taxpayer transported it, using another vehicle, on interstate highways located in Illinois. Tr. pp. 5, 8-10, 19, 24, 25.
7. The taxpayer introduced no documentary evidence that the ATV was ever registered or titled in any state or country, or that it was insured in Mexico.

Conclusions of Law:

The issue presented in this case is whether an all terrain vehicle (the "ATV") purchased by the taxpayer in January, 2002 and brought into Illinois in April, 2002 while allegedly in route to Mexico is subject to tax in Illinois under the Illinois Use Tax Act. A resolution of this issue must begin with a determination whether the taxpayer ever used the ATV in Illinois, as the term "use" is defined by the Illinois Use Tax Act ("UTA"), 35 ILCS 105/1 *et seq.* Section 2 of the UTA defines a taxable "use" broadly, as follows:

"Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes.

35 ILCS 105/2.

¹ The purchase of the ATV from an Indiana dealer by the taxpayer, an Illinois resident, was exempt from Indiana sales tax pursuant to Indiana Code 6-2.5-5-39 which provides in part as follows: "(c) A transaction involving a cargo trailer or recreational vehicle is exempt from the state gross retail tax if: (1) the purchaser is a nonresident; (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana; (3) the cargo trailer or recreational vehicle will be titled or registered in another state or country ... [.]"

When a statute defines terms, those terms must be given the plain meaning articulated in the statute. Berwyn Lumber Co. v. Korshak, 34 Ill. 2d 320 (1966).

The taxpayer has admitted that he transported the ATV at issue on Illinois highways immediately after purchasing it, but contends that he did not use this vehicle in the state because it was only briefly in the state and because the vehicle was being transported on a trailer while it was in the state and “did not touch ... soil” in Illinois. Tr. pp. 5, 21 (“The motorcycle never touched Illinois soil [.] That’s what I’m defending [.] If it would have touched Illinois soil, I would have purchased plates [.] I would have used it in Illinois [.] I would have paid my taxes [.]”). The taxpayer contends that the ATV, after briefly being driven through Illinois, was taken to Mexico and never brought back to Illinois. Tr. pp. 5, 8-10, 21, 24, 25. He contends that the ATV has been kept in Mexico ever since 2002 and is used exclusively in that country. *Id.*; Tr. p. 26.

It is clear from a reading of the UTA’s definition of “use” that this term means something entirely different than the interpretation the taxpayer ascribes to it. A person need not drive a vehicle on the highway in Illinois in order to use it in this state under the statutory definition of use set forth in section 2 of the UTA. As noted above, “use” means 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. When the taxpayer, an Illinois resident, brought the ATV into Illinois on a trailer after he purchased and took possession of this vehicle, this action constituted an exercise of rights and power over the ATV in Illinois incident to the taxpayer’s ownership of this vehicle. Consequently, his actions in doing so constituted a use of the ATV in Illinois as the term “use” is defined in the UTA.

The taxpayer also contends that he never used the ATV in Illinois for its intended purpose as an all terrain vehicle. Tr. p. 26. He contends that it was used exclusively in Mexico for this purpose. *Id.* The broad meaning to be given the term “use” encompassing “the exercise of ...any right or power over tangible personal property incident to the ownership of the property” (emphasis added) covers any use made of such property whether or not it is different from the use for which the property was originally purchased. If a taxable use was limited only to the use for which property was originally acquired, use of an all terrain vehicle in Illinois as a commuter vehicle on city streets and highways but not in wetlands, sand dunes and other similar off highway terrain for which it was designed, would not subject that vehicle to use tax. Such an argument is wholly inconsistent with the legislature’s unambiguous intent to uniformly tax the use, in Illinois, of all tangible personal property purchased at retail. See Square D Co. v. Johnson, 233 Ill. App. 3d 1070, 1080 (1st Dist. 1992).

Here, the taxpayer’s contention that he never used the ATV for its intended purpose in Illinois is an insufficient basis for me to find that no use occurred in this state. By the taxpayer’s own admission, the vehicle was taken to Illinois and transported using the highways in this state, immediately after it was purchased. Tr. pp. 5, 10, 19, 24, 25. Consequently, the taxpayer engaged in a use of this vehicle in this state under the UTA after he acquired the vehicle at issue.

Given the taxpayer’s use of the ATV in Illinois for purposes of the UTA, the taxpayer must show that his use comes within some exemption from the UTA to prove his claim that use tax was not due on this vehicle. The taxpayer, proceeding *pro se*, did not cite any statutory exemption provision in support of his claim that tax has been

improperly assessed. However, during his testimony at the evidentiary hearing, the taxpayer alleged the following:

[T]he motorcycle did come into Illinois but travel-wise the motorcycle never touched Illinois soil. It was ...on the 80 to the 294 to the 57, and that was about it. Other than that it went straight to Mexico.
Tr. p. 10. See also Tr. pp. 24, 25.

The statutory provision that most closely conforms to the taxpayer's allegation noted above is section 3-55(a) of the UTA which states as follows:

§ 3-55. Multistate exemption. The tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

- (a) The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by the individual for his or her own use while temporarily within this State or while passing through this State.

35 ILCS 105/3-55(a)

While this provision covers the circumstance alleged by the taxpayer to preclude taxation, namely the acquisition of property outside of Illinois, and its temporary presence in this state while passing through the state in route to Mexico, this exemption provision is not applicable to the taxpayer. The record clearly indicates that the taxpayer was a resident of Illinois at the time he alleges that he temporarily used the ATV in this state while passing through it. Tr. p. 20; Taxpayer's Ex. 3. Section 3-55(a) only exempts from tax the temporary use of property in this state under such circumstances by a person who is a non-resident of Illinois. Given this limitation on its applicability, the clear import of section 3-55(a) is that the use of property in this state by virtue of passing through it is a taxable use in this state when engaged in by a resident.

Moreover, the taxpayer's admitted use of the ATV in Illinois is not exempt pursuant to section 3-55(e) of the UTA. This section exempts:

- (e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.
35 **ILCS** 105/3-55(e)

Assuming that one can construe the taxpayer's carriage of the ATV on the Illinois highways in the manner described by the taxpayer noted above to be "storage", the law is clear that in applying this statutory provision to the facts in this case, the burden of proof is on the taxpayer. Where a taxpayer fails to file a return required to be filed by the UTA, the Department is required to determine the amount of tax due according to its best judgment and information. 35 **ILCS** 120/5. The admission into evidence of the records of the Department under the certification of the Director at hearing before the Department or in any legal proceeding establishes the Department's *prima facie* case. 35 **ILCS** 120/5; 35 **ILCS** 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968).²

Moreover, as a statutory provision exempting property or an entity from taxation, section 3-55 of the UTA must be strictly construed against exemption. Board of Education School District No. 150 v. City of Peoria, 76 Ill. 2d 469 (1979). All debatable questions should be resolved in favor of taxation. People ex rel. Nordland v. Association of Winnebago Home for the Aged, 40 Ill. 2d 91 (1969); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Accordingly, the taxpayer has the burden of showing that he comes under the protection of section 3-55(e).

² Section 12 of the UTA (35 **ILCS** 105/12) incorporates by reference sections 5 and 8 of the Retailers' Occupation Tax Act, 35 **ILCS** 120/5 and 35 **ILCS** 120/8, cited above.

The Department's *prima facie* case was established when it introduced into evidence the Department's SC-10-K Audit Correction and/or Determination under the certificate of the Director. Department Ex. 1. To overcome the Department's *prima facie* case the taxpayer must present consistent, probable evidence identified with his books and records. Copilevitz, supra. Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988).

In this case, the taxpayer failed to provide any documentation, such as a vehicle title (which the taxpayer admitted he possesses at Tr. p. 22), or a vehicle registration, showing that the ATV was titled or registered in Mexico, or documentation that the vehicle is insured by a Mexican insurance company in accordance with Mexican law (see Illinois Insurance Facts Tips on Traveling into Mexico by Car, Illinois Division of Insurance, Revised June 2004). There is simply no documentary evidence that has been admitted into the record to establish that the taxpayer stored the ATV at issue in Mexico and used it exclusively outside of Illinois.

In order to rebut the Department's *prima facie* case based on the temporary storage exemption the taxpayer had the burden of showing by documentary evidence that the ATV was used exclusively outside of Illinois after it left this state. Time v. Department of Revenue, 11 Ill. App. 3d 282, 287-88 (1st Dist. 1973) ("The claimed [temporary storage] exemption would still not apply unless it were also shown that the property ... had been used solely outside this State"). While evidence that the ATV was titled and registered in Mexico, or that the taxpayer insured the ATV in Mexico in accordance with the requirements of Mexican law, would support an inference that this

vehicle was used exclusively in Mexico as the taxpayer alleges, in the absence of such proof the taxpayer cannot show that his use of the ATV at issue was covered by the UTA's temporary storage exemption.³

WHEREFORE, for the reasons stated above, it is my recommendation that the Director finalize the Department's issuance of the Notice of Tax Liability at issue in this case.

Ted Sherrod
Administrative Law Judge

Date: January 27, 2009

³ With the exception of subsection 3-55(a) and subsection 3-55(e) of section 3-55, the UTA's Multistate 7exemption, none of the other subsections of section 3-55 apply to the facts at issue in this case. 35 **ILCS** 105/3-55.