

UT 15-03

Tax Type: Use Tax

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

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

THE DEPARTMENT OF REVENUE)	Docket No.	XXXX
OF THE STATE OF ILLINOIS)	Account ID	XXXX
v.)	NTL No.	XXXX
ABC BUSINESS LLC,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Kenneth Rawson, appeared for ABC Business LLC, John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when ABC Business LLC (Taxpayer) protested the Notice of Tax Liability (NTL) the Illinois Department of Revenue (Department) issued to it to assess use tax (UT) after it determined that Taxpayer acquired a motor vehicle for use in Illinois. The issue is whether the Department properly imposed UT here.

The hearing was held at the Department's offices in Chicago. Taxpayer's counsel offered facts and other evidence admitted by the Department. I have reviewed the evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the issue be resolved in Taxpayer's favor.

Findings of Fact:

1. On or about February 13, 2004, Taxpayer was organized as a single-member Montana LLC.

Taxpayer Ex. A (copy of Taxpayer's Request for Admission of Facts and Genuineness of

Documents (Requests to Admit), and accompanying exhibits), ¶ 1 & attachment (att.) 2 (copy of: letter dated February 13, 2004, on letterhead of Montana Secretary of State address to counsel for Taxpayer, acknowledging receipt of Taxpayer's Articles of Organization; and copy of Taxpayer's Articles of Organization); Hearing Transcript (Tr.) pp. 7-9 (colloquy regarding Taxpayer's assertion, and the Department's concession, that the Department did not respond to Taxpayer's Requests to Admit).

2. Taxpayer is a manager-managed LLC. Taxpayer Ex. A, att. 2, p. 3.
3. Taxpayer's principal place of business is in Montana. Taxpayer Ex. A, att. 2, p. 2.
4. Taxpayer's manager and registered agent was and is Grigsby Law Office, P.C. (Grigsby). Taxpayer Ex. A, ¶¶ 1-2 & att. 2, pp. 2-3. Grigsby is located in Montana. Taxpayer Ex. A, att. 2, p. 3.
5. Taxpayer's purposes are: "to acquire, by purchase, lease or otherwise, any real and/or personal property, to maintain such ownership and to manage such real and/or personal property and to dispose of it, in any manner." Taxpayer Ex. A, att. 2, p. 2.
6. Taxpayer's sole member is John Doe (John Doe). Taxpayer Ex. A, ¶ 6; Tr. pp. 7-9.
7. In 2005, John Doe and his wife filed an Illinois individual income tax return as non-residents of Illinois. Taxpayer Ex. A, att. 8 (copy of John Doe's 2005 Illinois non-resident return, showing his Florida residence address).
8. On August 4, 2005, Taxpayer purchased a used 2004 Newell motor home, bearing a VIN of XXXX (the Vehicle), from XYZ Business of Florida, Inc. Taxpayer Ex. A, ¶ 3 & att. 5 (copy of retail order form showing sale of the Vehicle to Taxpayer).
9. XYZ Business is a retailer in Florida, and it also has an office located in North Anywhere, Illinois. Taxpayer Ex. A, att. 5.

10. Taxpayer purchased the Vehicle in Florida, and not in Illinois. Taxpayer Ex. A, ¶ 3; Tr. pp. 7-9.
11. The Vehicle is a large motor home, and has an unladen weight in excess of 30,000 pounds. Taxpayer Ex. A, atts. 3 (copy of Montana Certificate of Title for the Vehicle), 5; *see also* 625 ILCS 5/1-145.01 (Illinois Vehicle Code's definition of motor home as "[a] self-contained motor vehicle, not used commercially, designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk through access to the living quarters from the driver's seat.').
12. The selling price for the Vehicle was \$XXXX. Taxpayer Ex. A, att. 5.
13. After its purchase of the Vehicle in Florida, Taxpayer promptly titled it in Montana. Taxpayer Ex. A, ¶¶ 4-5 atts. 3, 5.
14. Taxpayer did not file an Illinois use tax return regarding its purchase of the Vehicle in Florida. *See* Department Ex. 1 (copy of NTL).
15. At the time Taxpayer purchased the Vehicle, and at the time of hearing, John Doe was a resident of Florida, and held a Florida driver's license. Taxpayer Ex. A, ¶¶ 7-9 & atts. 6-7, 9 (copies of John Doe's Florida driver's licenses issued in 2000 and in 2006). During the same period, John Doe was registered to vote in Florida. Taxpayer Ex. A, ¶ 7.
16. On May 18, 2012, the Department issued an NTL to Taxpayer. Department Ex. 1.
17. The NTL assessed Illinois tax regarding Taxpayer's use of the Vehicle, and provided that such tax was based on a determination that the Vehicle was brought into Illinois on August 4, 2005. *Id.*
18. The NTL was based on an Auditor-prepared Motor Vehicle Use Tax Report. *See* Department Ex. 1.

19. The NTL assessed tax, penalties and interest in the following amounts:

Tax	XXXX
Audit Late Payment Penalty	XXXX
Amnesty Penalty	XXXX
Audit Late Filing Penalty	XXXX
Interest	XXXX
Amnesty Interest	XXXX
Assessment Total	\$XXXX

Department Ex. 1 (copy of NTL).

20. The NTL was issued to Taxpayer, but addressed to John Doe’s individual residence address in Florida. Department Ex. 1.

Conclusions of Law:

Illinois’ Use Tax Act (UTA) imposes a tax on the privilege of using tangible personal property purchased at retail from a retailer, for use or consumption in Illinois. 35 ILCS 105/3. The Illinois General Assembly incorporated into the UTA certain provisions of the complementary Retailers’ Occupation Tax Act (ROTA). 35 ILCS 105/12. Among them is § 5 of the ROTA, which provides that, in the event a required return is not filed, the Department shall determine the amount of tax due using its best judgment and information. 35 ILCS 120/5. It also provides that, under such circumstances, the Department’s determination of tax due constitutes prima facie proof that tax is due in the amount determined by the Department. 35 ILCS 120/5.

In this case, the Department established its prima facie case when it introduced Department Exhibit 1, consisting of a copy of the NTL, under the certificate of the Director. Department Ex. 1; 35 ILCS 105/12; 35 ILCS 120/5. That exhibit, without more, constitutes prima facie proof that Taxpayer owes Illinois use tax in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/5; Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 156, 242 N.E.2d 205, 206-07 (1968). 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, 41 Ill. 2d at 157-58, 242 N.E.2d at 207; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

Issues and Arguments

Taxpayer argues that it has no nexus with Illinois sufficient for Illinois to impose a use tax on it regarding its purchase and use of the Vehicle. The evidence Taxpayer offered to support its argument consists of documents the Department admitted were genuine. Taxpayer Ex. A; Tr. pp. 7-9; *see also* 86 Ill. Admin. Code § 200.125(d).¹ Taxpayer also relies on the Department's admission of certain facts. Taxpayer Ex. A.

One of the documents admitted is copy of the retail sales invoice XYZ Business prepared when it sold the Vehicle to Taxpayer in Florida. Taxpayer Ex. A, att. 5; Tr. p. 9. On its face, that document shows that XYZ Business sold the Vehicle to Taxpayer, in Florida, on August 4, 2005, the same day the Department determined the Vehicle was brought into Illinois for use. Taxpayer Ex. A, ¶ 3 & att. 5; Tr. pp. 7-9; Department Ex. 1. Further, the Department admits that Taxpayer purchased the Vehicle in Florida, on August 4, 2005. Taxpayer Ex. A, ¶ 3; Tr. pp. 7-9.

Section 4 of the UTA provides:

Evidence that tangible personal property was sold by any person for delivery to a person residing or engaged in business in this State shall be prima facie evidence that such tangible personal property was sold for use in this State.

35 ILCS 105/4.

¹ During the course of discovery, Taxpayer served the Department with Requests to Admit. Taxpayer Ex. A; *see also* 86 Ill. Admin. Code § 200.125(d). The Department did not respond to Taxpayer's Requests to Admit, and thus, did not object when, at hearing, counsel for Taxpayer sought to admit a copy of its Requests to Admit to show that certain facts had been admitted by the Department, and that it had also admitted the genuineness of certain documents. Tr. pp. 7-9. The Department did not object when such documents were admitted at hearing. *Id.*, p. 9.

The Department has admitted that Taxpayer is registered and engaged in business in Montana. Taxpayer Ex. A, ¶ 2 & att. 2. Further, the Department has admitted that Taxpayer's sole member was, when Taxpayer purchased the Vehicle, and since that time, a resident of Florida, and not an Illinois resident. Taxpayer Ex. A, ¶¶ 6-7 & att. 6, 8; Tr. pp. 7-9. Thus, Taxpayer has established, as a matter of undisputed fact, that the Vehicle was not "sold by any person for delivery to a person residing or engaged in business in [Illinois]" 35 ILCS 105/4.

The NTL reflects that the Department determined that Taxpayer brought the Vehicle into Illinois on the date of purchase. Department Ex. 1. A reasonable inference to draw from that document is that the auditor who prepared the report upon which the NTL was based determined (or assumed) that Taxpayer took physical delivery of the Vehicle in Illinois. *Compare id. with* Taxpayer Ex. A, att. 5. This, in turn, may have been based on a determination (or assumption) that XYZ Business delivered it to Taxpayer at the office XYZ Business maintained in Illinois. *See* Department Ex. 1; Taxpayer Ex. A, att. 5. There is no way to confirm whether these inferences are correct, at least from a review of this record. But what the record does make clear is that the Department has now admitted that Taxpayer purchased the Vehicle in Florida, from XYZ Business's Florida office. Taxpayer Ex. A, ¶ 3; Tr. pp. 7-9.

In sum, the undisputed facts and evidence show that the Vehicle was purchased, at retail, outside of Illinois, by a person who was not a resident of Illinois. Further, no evidence was presented showing that Taxpayer was engaged in business in Illinois. The evidence shows that, since its purchase, the Vehicle has been titled in Montana. Finally, the evidence shows that Taxpayer's sole owner was a non-resident of Illinois. At a minimum, Taxpayer has rebutted the statutory presumption that the Vehicle was sold for use in Illinois. 35 ILCS 105/4. The

undisputed facts and evidence are sufficient to rebut the Department's prima facie determination that Taxpayer owes Illinois use tax because it purchased the Vehicle for use in Illinois. *Id.*

Once a taxpayer offers documentary evidence that overcomes the Department's prima facie case, the burden shifts to the Department to prove its case by a preponderance of the competent evidence. Miller v. Department of Revenue, 408 Ill 574, 581-82, 97 N.E.2d 788, 792 (1951). The Department offered no evidence in rebuttal.

As a final note, I acknowledge that it is possible that Taxpayer may have subjected itself to Illinois use tax regarding its use of the Vehicle, in Illinois, if it had brought the Vehicle into Illinois and used it in a manner such that Illinois law required Taxpayer to register it in Illinois. 625 ILCS 5/3-402 (Vehicles subject to registration, exceptions); *see also* 86 Ill. Admin. Code § 130.605(b)(1)(A)(iii) (2008). But that was not the basis for the Department's assessment of use tax here. Department Ex. 1. Taxpayer rebutted the presumptive correctness of the tax — as well as the basis for that tax — which the Department actually assessed here. Taxpayer offered documentary evidence, and the Department's own admissions, that Taxpayer did not purchase the Vehicle in Illinois on August 4, 2005, and that Taxpayer purchased the Vehicle outside Illinois on that date, for use in Montana. Once Taxpayer did so, the burden shifted back to the Department to show that Taxpayer used the Vehicle in Illinois, sufficient to trigger a use tax liability. Miller, 408 Ill at 581-82, 97 N.E.2d at 792. Here, however, there is no evidence in this record which shows that the Vehicle was ever physically present in Illinois. I am not saying that such evidence does not exist, I am just noting that no such evidence was offered at hearing.

Conclusion:

I respectfully recommend that the Director cancel the NTL.

October 28, 2014

John E. White
Administrative Law Judge