

UT 15-06

Tax Type: Use Tax

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

**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

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

v.

**JOHN DOE,
TAXPAYER**

No. XXXX

NTL LetterID: XXXX

Account ID: XXXX

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. JOHN DOE, *pro se*; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing pursuant to JOHN DOE’s (hereinafter “Mr. JOHN DOE”) protest of the Notice of Tax Liability (“NTL”), captioned above, issued by the Department of Revenue (hereinafter the “Department”) on November 27, 2012, for Illinois use tax on the purchase of a limousine. Mr. JOHN DOE’s position is that the limousine was exempt from use tax on the purchase because it was used by an interstate carrier for hire and was entitled to the rolling stock exemption. A hearing was held in this matter on July 2, 2014, with testimony from Mr. JOHN DOE. Revenue Auditor, William Gaffigan, testified for the Department. Following a careful review of the evidence, it is recommended that the NTL be finalized as issued. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of NTL No. XXXX, dated November 27, 2012, issued to Mr. JOHN DOE and showing a use tax due of \$XXXX, late filing penalty of \$XX, late payment penalty of \$XXXX, interest of \$XXXX, totaling \$XXXX. Tr. pp. 4-5; Dept. Ex. No. 1.
2. Mr. JOHN DOE and a business partner purchased a Town Car on January 26, 2010 from ABC Business. The ST-556, "Sales Tax Transaction Report" shows that the sale of the limo was listed as "exempt" because it was "sold to an interstate carrier for hire for use as rolling stock." The limo was intended to be used in the business partner's limo business and for Mr. JOHN DOE's restaurant/bar where the limo would pick people up for private parties and banquets. Mr. JOHN DOE testified that he never used the limo in his business and "wasn't aware of its use at all." Tr. pp. 6-8, 12-13; Taxpayer's Ex. No. 1.
3. On July 7, 2010, Mr. JOHN DOE sold the car back to the original seller for \$XXXX. The agreement between Mr. JOHN DOE and the seller states that "the payment will be sent to Happyville Motor Credit ... to satisfy the loan balance on this vehicle." Tr. pp. 10-11; Taxpayer's Ex. No. 3.
4. On July 17, 2012, the Department sent Mr. JOHN DOE an "Audit Records Request" asking for documentation to support the rolling stock exemption. The Department requested, *inter alia*, "trip records/logs for all trips made from January 26, 2010 through January 26, 2011" with an indication of which trips were for hire. Tr. pp. 16-19; Dept. Ex. No. 2.

5. On July 23, 2012, Mr. JOHN DOE responded to the Department's request as follows: "The car was not driven nor used for business and the business it was intended for was not successful. There [were] no miles put on this vehicle and there is no additional information available..." Mr. JOHN DOE also submitted an "Audit Questionnaire," stating that the limo "was never used for its intended purpose." He responded "no" to the following questions: "does this vehicle" 1) transport your own property/deliver your own products 2) transport company personnel 3) transport property or persons for hire 4) transport for hire, property whose shipments or persons whose journeys originate or terminate outside Illinois and 5) travel solely within the State of Illinois. Mr. JOHN DOE responded "zero percent" to the request for the percentage of time that the limo travels in "interstate commerce" and "zero percent" to percentage of time that the limo travels in "intrastate commerce (shipments within Illinois.)" Mr. JOHN DOE stated that the "gross vehicle weight rating" of the limousine was 6,300 pounds. Mr. JOHN DOE signed the "Audit Questionnaire" "under penalties of perjury." Tr. pp. 16-21; Dept. Ex. No. 2.
6. A "Limo Driving Record," offered by Mr. JOHN DOE as evidence at the hearing, shows 26 trips, totaling 244 miles, from "Limo Operation Start Date," of March 6, 2010 through "Limo End Service Date" of May 8, 2010. All trips had a pickup location of "XYZ Airport," with drop-off locations identified as either "public location," "customer home" or "customer work." No customers' names or addresses are listed. There is no indication in the Limo Driving Record that the customers were traveling in interstate commerce. Tr. pp. 9-10; Taxpayer's Ex. No. 2.

Conclusions of Law:

The fundamental issue in this case is whether Mr. JOHN DOE's limousine is eligible for the Illinois Use Tax Act's rolling stock exemption. 35 ILCS 105/3-55(b). Before addressing the text of the exemption, it is important to note "that the [Use Tax Act], as written, unambiguously intends to tax all property purchased for use in Illinois, even if that property is also used in interstate commerce." Square D Co. v. Johnson, 233 Ill. App. 3d 1070, 1080 (1st Dist. 1992). The Use Tax Act's rolling stock exemption provides, in part:

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 ...

35 ILCS 105/3-55(b). The statute is an exemption statute, and as such, it is an exception to the general rule that property purchased for use in Illinois is taxable. Taxation is the rule; tax exemption is the exception. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286 (1956). Every presumption is against the intention of the state to exempt property from taxation and the burden of sustaining the right to an exemption rests upon the party seeking it; he must show clearly that specific property for which the exemption is claimed is within the contemplation of the statute. Reeser v. Koons, 34 Ill. 2d 29 (1966).

The record of this case forces me to conclude that Mr. JOHN DOE has not met his burden of proving that the limo was exempt as rolling stock. Mr. JOHN DOE and a business partner purchased the Town Car on January 26, 2010 from ABC Business. The ST-556, "Sales Tax Transaction Report" shows that the sale of the limo was listed as "exempt" because it was "sold to an interstate carrier for hire for use as rolling stock." Taxpayer's Ex. No. 1. According to Mr. JOHN DOE, the limo was intended to be used in the business partner's limo business and for Mr. JOHN DOE's restaurant/bar. It was intended that the limo would pick people up for private parties and

banquets. Mr. JOHN DOE testified that the restaurant/bar was a “failure” and he “never used the limo whatsoever.” “I wasn’t aware of its use at all.” “When this case came up, I didn’t know what rolling stock meant.” Tr. pp. 6-8, 12-13. On July 7, 2010, Mr. JOHN DOE sold the car back to the original seller for \$XXXX. The agreement between Mr. JOHN DOE and the seller states that “the payment will be sent to Happyville Motor Credit ... to satisfy the loan balance on this vehicle.” Tr. pp. 10-11; Taxpayer’s Ex. No. 3. Mr. JOHN DOE owned the limo from January 26 to July 7, 2010.

On July 17, 2012, the Department sent Mr. JOHN DOE an “Audit Records Request” asking for documentation to support the rolling stock exemption. The Department requested, *inter alia*, “trip records/logs for all trips made from January 26, 2010 through January 26, 2011” with an indication of which trips were for hire. Tr. pp. 16-19; Dept. Ex. No. 2.

On July 23, 2012, Mr. JOHN DOE responded to the Department’s request as follows: “The car was not driven nor used for business and the business it was intended for was not successful. There [were] no miles put on this vehicle and there is no additional information available...” Mr. JOHN DOE also submitted an “Audit Questionnaire,” stating that the limo “was never used for its intended purpose.” He responded “no” to the following questions: “does this vehicle” 1) transport your own property/deliver your own products 2) transport company personnel 3) transport property or persons for hire 4) transport for hire, property whose shipments or persons whose journeys originate or terminate outside Illinois and 5) travel solely within the State of Illinois. Mr. JOHN DOE responded “zero percent” to the request for the percentage of time that the limo travels in “interstate commerce” and “zero percent” to percentage of time that the limo travels in “intrastate commerce (shipments within Illinois.)” Mr. JOHN DOE stated that the “gross vehicle weight rating” for the limo was 6,300 pounds. Mr. JOHN DOE signed the “Audit Questionnaire” “under

penalties of perjury.” Tr. pp. 16-21; Dept. Ex. No. 2. No trip logs were submitted with the Questionnaire. The Department then issued the NTL that is the subject of this hearing.

The Use Tax Act, 35 ILCS 105/1 *et seq.* (hereinafter referred to as the “UTA”) imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer...” *Id.* at 105/3. The UTA was passed to complement and prevent evasion of the Retailers’ Occupation Tax Act. Boye Needle Co. v. Department of Revenue, 45 Ill. 2d 484 (1970). On November 27, 2012, the Department issued a Notice of Tax Liability (“NTL”) assessing use tax for the purchase of the limousine. Section 12 of the UTA (35 ILCS 105/12) incorporates by reference Section 4 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the NTL issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. *Id.* at 120/4. Once the Department has established its *prima facie* case by submitting the NTL into evidence, the burden shifts to the taxpayer to overcome the presumption of validity. Clark Oil & Refining v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the NTL, the taxpayer must produce competent evidence, identified with its books and records showing that the NTL is incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Documentary proof of tax-exempt status is required to prevail against an assessment of tax by the Department. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). On examination of the record in this case, I find that Mr. JOHN DOE has not demonstrated, through testimony, exhibits and argument, evidence sufficient to overcome the Department’s determination that use tax is due on the purchase of the limousine.

Mr. JOHN DOE offered into evidence a “Limo Driving Record” to rebut the Department’s case. The Limo Driving Record shows 26 trips, totaling 244 miles, from “Limo Operation Start Date,” of March 6, 2010 through “Limo End Service Date” of May 8, 2010. All trips had a pickup location of “XYZ Airport,” with drop-off locations identified as either “public location,” “customer home” or “customer work.” No customers’ names or addresses are listed. There is no indication in the Limo Driving Record that the customers were traveling in interstate commerce. Tr. pp. 9-10; Taxpayer’s Ex. No. 2.

86 Ill. Admin. Code § 130.340 contains the Department’s Regulations for the rolling stock exemption. 86 Ill. Admin. Code § 130.340(k) states that limousines that do not meet the 16,000 pound gross weight rating limitation, may qualify for rolling stock exemption if the use of the vehicle otherwise meets the requirements of subsection (i) of the Regulations. For the limousine at issue to qualify, it must meet the requirements of subsection (i). 86 Ill. Admin. Code § 130.340(i)(C) states that a vehicle will qualify for the rolling stock exemption, if during a 12 month period, it carries 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 rolling stock exemption must make an election at the time of purchase to use either the trips or mileage method to document that the motor vehicle will be used in a manner that qualifies for the exemption. If no election is made, the owner will be deemed to have chosen the mileage method. 86 Ill. Admin. Code § 130.340(i)(C). Although Mr. JOHN DOE did not own the limo for a full 12 month period, he must show that the use of the limo was in conformance with the Regulations during his period of ownership.

The limo was purchased on January 26, 2010. Tr. p. 6. Mr. JOHN DOE did not offer into evidence a trip log for the period from January 26, 2010 to March 5, 2010 (38 days). The Limo

Driving Record, offered into evidence, is for the period from March 6, 2010 to May 8, 2010 (64 days). Taxpayer's Ex. No. 2. Mr. JOHN DOE did not offer into evidence a trip log for the period from May 9, 2010 until the limo was sold back to the dealer on July 7, 2010 (60 days). Mr. JOHN DOE owned the limo for 162 days. To determine that the limousine qualifies for the rolling stock exemption, I have to look at the use of the vehicle for the entire 162 days that Mr. JOHN DOE owned it.

There is no evidence in the record as to whether Mr. JOHN DOE chose the "trip method" or the "mileage method" to document that the limousine qualified for exemption as rolling stock. In accordance with the Regulations, he is "deemed" to have chosen the "mileage method." The Limo Driving Record offered into evidence by Mr. JOHN DOE shows use of the limo for 244 miles on 63 of the 162 days that Mr. JOHN DOE owned it. Essentially, a Limo Driving Record must be submitted for the entire period of use in order to determine whether the 244 miles in the Limo Driving Record were greater than 50% of the total miles for which the vehicle was operated during the period of ownership. Although Mr. JOHN DOE is "deemed" to have chosen the "mileage method," the limousine also does not qualify for exemption under the "trips method." The Limo Driving Record shows use of the limo for 26 trips on 63 of the 162 days that Mr. JOHN DOE owned it. A Limo Driving Record must be submitted for the entire period of use in order to determine whether the 26 trips in the Limo Driving Record were greater than 50% of the total trips for which the vehicle was operated during the period of ownership. Without a Limo Driving Record for the entire period of ownership, I am unable to conclude that the vehicle at issue qualifies under 86 Ill. Admin. Code § 130.340(i)(C).

Furthermore, it is impossible to tell from the Limo Driving Record that was admitted into evidence that the limo was used "for hire" as required by the rolling stock exemption, 35 ILCS

105/3-55(b). It is suggested that “for hire,” as used in the Use Tax Act implies that the individual using the service compensates the service provider. In the instant matter, there are no customer’s names or addresses listed on the Limo Driving Record. The Department was not able to verify that the Limo Driving Record was accurate because no individuals could be contacted from the Limo Driving Record and, according to the Revenue Auditor, “there is nothing on here that we could actually review.” Tr. p. 36. The Department would normally verify the Limo Driving Record through a random sampling of the customers. This was impossible in this case because there are no customer’s names and addresses on the Limo Driving Record. This verification was important and necessary because Mr. JOHN DOE did not submit trip logs, as requested, when he responded to the Department’s Audit Questionnaire. As the Revenue Auditor noted: “... And then later on you come up with trip logs... that would set up an issue that we would ... want to contact a few of the individuals, just to verify because as you stated in the [Audit Questionnaire], it was never used and now it’s coming in with use.” Tr. pp. 38-39.

In addition, 86 Ill. Admin. Code § 130.340(d) states that the exemption for rolling stock cannot be claimed for the use of vehicles solely between points in Illinois “where the journeys of the passengers ... neither originate nor terminate outside Illinois.” The Limo Driving Record shows all passengers picked up at XYZ Airport with drop-off locations identified as either “public location,” “customer home” or “customer work.” Taxpayer’s Ex. No. 2. I cannot determine from the Limo Driving Record that the customers’ journeys originated or terminated outside Illinois. For example, the limo could be picking up a customer arriving at XYZ Airport from Someplace, Illinois being dropped-off at his “customer home” in Anyplace. Without complete information on each customer’s journey and whether it originated or terminated outside Illinois, I cannot determine that the limo was used in interstate commerce.

Mr. JOHN DOE has not produced competent evidence showing that the NTL is incorrect. For the reasons stated above, I recommend that the Notice of Tax Liability, captioned above, issued to JOHN DOE on November 27, 2012 be finalized as issued.

June 12, 2015

Kenneth J. Galvin
Administrative Law Judge