

UT 16-05

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
SPRINGFIELD, ILLINOIS**

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

v.

ABC BUSINESS, INC.

Taxpayer

**Docket # XXXX
Acct ID: XXXX
Letter ID: XXXX**

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC BUSINESS, Inc.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to ABC BUSINESS, Inc. (“taxpayer”) for use tax on the purchase of a motor home. The taxpayer timely protested the NTL, and an evidentiary hearing was held. During the hearing, the taxpayer argued that the tax is not owed because the motor home is not used very often in Illinois. The Department argued that use tax was properly assessed because the motor home was used in Illinois, which is also the taxpayer’s principal place of business. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 1, 2011, the taxpayer purchased a motor home from a dealership located in Kentucky.¹ (Dept. Ex. #1, p. 7; Tr. pp. 13-14)
2. The taxpayer's address on the bill of sale is Illinois. (Dept. Ex. #1, p. 7; Tr. pp. 13-14)
3. The taxpayer did not indicate in which State the vehicle was registered or titled.
4. Mr. John Doe is the president of the taxpayer. (Tr. p. 9)
5. Mr. John Doe is a race car driver who also develops racing software. His business uses the motor home, a race car trailer, and race cars all over the country throughout the year in order to participate in races and sell the software. (Dept. Ex. #1, pp. 3-4)
6. The taxpayer's mail is sent to the address in Happytown, Illinois. The mail is then forwarded to Mr. John Doe wherever he is located. (Tr. pp. 17-18)
7. The taxpayer maintains utilities at the address in Illinois, and the taxpayer uses a credit union that is located in Illinois. (Dept. Ex. #1, p. 9; Taxpayer Ex. #1; Tr. pp. 14-15, 18, 21-23)
8. The taxpayer used the motor home in Illinois at least two weeks each year. (Tr. pp. 9, 11)
9. On December 5, 2011, Mr. John Doe organized a limited liability company known as ABC BUSINESS, LLC in the State of Montana. (Dept. Ex. #1, p. 5)
10. The articles of organization for the LLC indicate that the mailing address for the business is Happytown, Illinois. (Dept. Ex. #1, p. 5)
11. The taxpayer sold the motor home in May of 2013. (Dept. Ex. #1, p. 10)

¹ The bill of sale indicates that the buyer is "John Doe DBA ABC BUSINESS." (Dept. Ex. #1, p. 7) Mr. John Doe testified that he has never operated as a sole proprietorship; his business has always been incorporated. (Tr. pp. 19-20)

12. On March 16, 2015, the Department issued a Notice of Tax Liability to the taxpayer for Motor Vehicle Use Tax that assessed tax in the amount of \$XXXX, plus penalties and interest, on the purchase of the motor home. The NTL was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Under the Vehicle Code (625 ILCS 5/1-100 *et seq.*), Illinois imposes a tax on the privilege of using in Illinois any motor vehicle acquired by gift, transfer, or purchase. 625 ILCS 5/3-1001. In the administration of the vehicle use tax, the Department and the taxpayers “have the same rights, remedies, privileges, immunities, powers and duties, and [are] subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act.” 625 ILCS 5/3-1003.

Under the Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The use tax is a corollary to the retailers’ occupation tax (“ROT”), which is a tax on persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The use tax is imposed at the same rate as the ROT. 35 ILCS 105/3-10; 120/2-10. The purpose of the use tax is to prevent avoidance of the ROT by people who make purchases in states that do not impose the ROT and to protect Illinois merchants from the diversion of business to retailers outside Illinois. Brown’s Furniture, Inc. v. Wagner, 171 Ill. 2d 410, 418 (1996). The use tax complements the ROT in that an Illinois retailer who collects the use tax as an agent of the State is correspondingly relieved of his ROT liability on the transaction. Chicago Tribune Company v. Johnson, 119 Ill. App. 3d 270, 273 (1st Dist. 1983). If the person who uses the property does not pay the use tax to the retailer, it must be paid directly to the Department. 35 ILCS 105/3-45.

Under the Act, “use” is defined as “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. The Act includes a multistate exemption and provides, in relevant part, as follows:

Sec. 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:

...

(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.² ... 35 ILCS 105/3-55.

Section 12 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the Department’s determination of the amount of tax due is *prima facie* correct and is *prima facie* proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/5. Once the Department has established its *prima facie* case by submitting the certified copy of the Department’s determination into 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 his case, a taxpayer must present more than his testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support his claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

It is well-established under Illinois law that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is

² The definition of the word “person” under the Act includes a corporation and limited liability company. 35 ILCS 105/2.

entitled to the exemption. *Id.*; JB4 Air, LLC v. Department of Revenue, 388 Ill. App. 3d 970, 974 (2nd Dist. 2009). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. *Id.*; Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The Department argues that use tax was properly assessed in this case because the motor home was used in Illinois, and the taxpayer has its principal place of business in Illinois. The taxpayer has an Illinois business address, and its mail is sent to that address. Utilities are also maintained at that address. The taxpayer uses a credit union that is based in Illinois. Mr. John Doe testified that he is occasionally in Illinois, and the motor home is used when he is in Illinois. The Department claims that the use tax assessment is appropriate.

The taxpayer argues that the use tax should not be assessed because the motor home is rarely used in Illinois. Mr. John Doe presented his 2015 racing schedule to show that he travels throughout the country most of the year. He claims that he works at races for 48 weeks of the year, and he is off 4 weeks each year. Of those 4 weeks, he spends two weeks in Illinois. (Tr. pp. 9-11) He stated that the motor home was not purchased in Illinois and was not intended to be used in Illinois. Mr. John Doe also provided a copy of an account history for a utility company for the address in Illinois to show that he used electricity and gas so infrequently that he received a credit on his bill. (Taxpayer's Ex. #1) Mr. John Doe's job of designing software allows him to work anywhere as long as he has a computer, and he performs his job throughout the country. During his testimony, Mr. John Doe stated "as a traveling drag racer, I don't feel like my home address is really relevant to where the vehicle use takes place." (Tr. p. 10) Mr. John Doe believes that Illinois should not be assessing use tax on a motor home that is not used often in Illinois.

The taxpayer's argument that the vehicle was not in Illinois often enough to impose the use tax raises the issue of whether the tax meets the nexus requirement in order to be constitutional. See Irwin Industrial Tool Co. v. Department of Revenue, 394 Ill. App. 3d 1002, 1013 (1st Dist. 2009), *aff'd*, 238 Ill. 2d 332 (2010). The commerce clause requires a "definite link" between a state and the person or property that it seeks to tax. Irwin, 238 Ill. 2d at 342. Physical presence within the taxing state is necessary; the physical presence need not be "substantial" but must be more than a "slightest presence." *Id.*, citing Brown's Furniture, 171 Ill. 2d at 424; see also Quill Corp. v. North Dakota, 504 U.S. 298, 315 n. 8 (1992) (title to "a few floppy diskettes" in a state is a "slightest presence" and not sufficient to establish constitutional nexus).

The taxpayer in this case has more than a slight presence in Illinois because the taxpayer's principal place of business is in Illinois, and the taxpayer admitted to using the vehicle in Illinois. The taxpayer's business address is in Happytown, Illinois.³ The taxpayer receives all of its mail at that address. The taxpayer maintains utilities there, and the taxpayer uses a credit union in Illinois. The taxpayer did not provide its articles of incorporation or any other evidence to show that it is not an Illinois corporation. Although Mr. John Doe testified that the LLC is the entity that owned the motor home (tr. p. 19), Mr. John Doe did not organize the Montana LLC until December 5, 2011, which was more than 6 months after the taxpayer purchased the motor home. Nothing in the record indicates that ownership was transferred to the LLC.

In addition, the taxpayer did not present evidence that the vehicle was not registered or titled in Illinois, and there is no indication that taxes were paid on the vehicle to another State. The taxpayer admitted that the motor home was used in Illinois at least two weeks each year,

³ Based on Mr. John Doe' comment that his home address should not be relevant to the vehicle use, the address in Happytown is apparently his personal residence. He also testified, however, that the utility company relates to an office or business location. (Tr. p. 23) The business office for the taxpayer is apparently in Mr. John Doe' home.

which, along with the other connections to Illinois, is sufficient to support the use tax assessment. The use in Illinois could have been more frequent because the taxpayer did not substantiate the use with travel logs or records for the time period that the taxpayer owned the vehicle. The record in this case supports a finding that the Department properly assessed the use tax.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: March 11, 2016