

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

---

---

SAFETY-KLEEN SYSTEMS, INC.,	)	
Petitioner,	)	
	)	
	)	
v.	)	16 TT 167
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Respondent.	)	

---

---

**SUMMARY JUDGMENT ORDER**

The Petitioner, Safety-Kleen Systems, Inc. (“Safety-Kleen”), is in the business of supplying parts washers and solvents for cleaning and degreasing metal parts and tools. As part of its parts washer business, it purchases virgin solvent, which it blends with recycled solvent and provides to its customers. It also sells industrial chemicals and equipment, and purchases and uses various chemical catalysts, recycling equipment and machinery.

The Department of Revenue (“Department”) issued a Notice of Tax Liability (“Notice”) that assessed Safety-Kleen Illinois use tax, interest and penalties on its purchases of virgin solvent, machinery, equipment, chemicals, parts, and other tangible personal property for the tax reporting periods of January 1, 2010 through December 31, 2012.

Safety-Kleen filed a multi-count petition in the Tax Tribunal challenging the Notice. Count IV of the petition alleged, *inter alia*, that virgin solvent, which Safety-Kleen purchased outside of Illinois and supplied to out-of-state customers, was exempt from use tax under the temporary storage exemption found at section 3-55(e) of the Use Tax Act, 35 ILCS 105/3-55(e). The parties have filed cross-motions

for summary judgment on the question of whether the virgin solvent qualifies for the temporary storage exemption. For the reason stated below, I find that Safety-Kleen is not entitled to the temporary storage exemption, and the Department is entitled to summary judgment on this issue.

### **Facts<sup>1</sup>**

Safety-Kleen supplies its customers with solvent for cleaning and degreasing metal parts and tools as part of its business of supplying commercial parts washers. Mot. for Summ J. Ex. A, Stipulation of Facts (“Stip.”) ¶¶ 14, 18. The solvent Safety-Kleen supplies is a blend of recycled and virgin solvent. Stip. ¶¶ 46, 48. The virgin solvent is purchased by Safety-Kleen outside of Illinois. Pet’r Mot. for Summ. J. at ¶ 3.

Safety-Kleen’s customers do not own the solvent that is transferred to them. Stip. ¶ 16. After the solvent has been used for a period, it no longer has the cleaning capability of the virgin or recycled solvent. *Id.*, ¶ 20. The used solvent “contains all of the oils, chemical, liquids, and debris that were previously attached to the metal parts or tools.” *Id.*, ¶ 19. For this reason, Safety-Kleen periodically drains the used solvent from its customers parts washers and returns the used solvent to its Dolton, Illinois plant for recycling. *Id.*, ¶¶ 17, 24.

Safety-Kleen cleans the used solvent through a process known as fractional distillation, under which the mixture is heated and different compounds are vaporized at their various boiling points and then collected. *Id.*, ¶¶ 30-31. Safety-Kleen blends the recycled solvent with virgin solvent and then ships the blended solvent to its customers. *Id.*, ¶¶ 25-31, 46-50. The virgin solvent is an ingredient of the solvent transferred to Safety-Kleen’s customers for use. *Id.*, at 48.

Used solvent, unlike virgin or recycled solvent, does not have a cleaning capacity or any commercial value. *Id.*, ¶¶ 20, 36, 43. Virgin and recycled solvent are clear, colorless or green liquids, consisting of hydrotreated light petroleum distillates, with a mild hydrocarbon odor and a constant PH Level of 7. *Id.*, ¶¶ 37-

---

<sup>1</sup> Except where otherwise stated, the facts are taken from the parties’ Stipulation of Facts.

38, 42. Used solvent is dark and opaque, containing the oils, chemicals, liquids and debris that were attached to the cleansed metal tools. *Id.*, ¶¶ 37-38, 42-43. Thus, used solvent's odor represents the many residues contained in it, and its PH level is unpredictable. *Id.*, 37, 42.

Virgin and recycled solvents boil at 310°F, have flash points of 105°F and auto-ignite at 410°F. *Id.*, ¶ 40. The boiling point, flash point and auto ignition point of used solvent is unpredictable due to the various oils, chemicals, liquids and debris it may contain. *Id.*, ¶ 41.

Virgin and recycled solvent are not regulated under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* Stip. ¶ 44. Used solvent is considered a hazardous waste under that Act. *Id.*

The Department assessed \$1,162,335.43 in use tax on Safety-Kleen's purchase of virgin solvent for the tax periods in issue. *Id.*, ¶¶ 53-54. The parties agreed that 88.46% of the virgin solvent Safety-Kleen purchased during the tax periods in issue was shipped outside of Illinois. *Id.*, ¶ 50. Accordingly, Safety-Kleen contends that, if the temporary storage exemption applies, it owes \$134,133.51 in use tax from its virgin solvent purchases during the tax periods in issue. *Id.*, ¶ 56.

### **Analysis**

The parties have brought cross-motions for summary judgment to resolve the question of whether the virgin solvent is subject to Illinois use tax or is an exempt use under the temporary storage exemption of section 3-55(e) of the Use Tax Act, 35 ILCS 105/3-55(e). Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c). Where the parties file cross-motions for summary judgment, “they invite the court to decide the issues based on the record.” *Shared Imaging, LLC v. Hamer*, 2017 IL App (1st) 152817, ¶ 13.

The Illinois Use Tax Act imposes a tax upon the privilege of using tangible personal property in the state. 35 ILCS 105/3. The Use Tax Act complements the

Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, which imposes a tax on the privilege of selling personal property at retail, and is the primary means by which Illinois taxes the sale of tangible goods. *Shared Imaging, LLC*, 2017 IL App (1st) 152817, ¶ 24. Use tax is designed to prevent buyers from avoiding the retailers' occupation tax by making purchases from out-of-state retailers taxable and is intended to protect Illinois retailers from losing sales to out-of-state sellers. *Id.* (citing *Irwin Indus. Tool Co. v. Dep't of Revenue*, 238 Ill. 2d 332, 340 (2010)).

Use, under the Use Tax Act, is broadly 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. Storage is considered a taxable use. *See Shared Imaging*, 2017 IL App (1st) 152817, ¶¶ 38-39. The Act, however, exempts from taxation:

(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). The temporary storage exemption is one of several exemptions created “to prevent actual or likely multistate taxation” of tangible personal property. 35 ILCS 105/3-55. However, it is not necessary to show actual or likely multistate taxation to be entitled to the exemption. *See Burlington N., Inc. v. Dep't of Revenue*, 32 Ill. App. 3d 166, 173-74 (1st Dist. 1975).

The temporary storage exemption, as with any tax exemption, “is to be strictly construed in favor of taxation.” *Nutrition Headquarters, Inc. v. Dep't of Revenue*, 106 Ill. 2d 58, 62 (1984); *see Shared Imaging, LLC*, 2017 IL App (1st) 152817, ¶ 25. The taxpayer has the burden to show it is entitled to the exemption that it claims. *Nat'l School Bus. Service, Inc. v. Ill. Dep't of Revenue*, 302 Ill. App. 3d 820, 828 (1st Dist. 1998). All doubts are resolved against allowing the exemption. *Lombard Pub. Facilities Corp. v. Dep't of Revenue*, 378 Ill. App. 3d 921,

936 (2d Dist. 2008); *Rogy's New Generation, Inc. v. Dep't of Revenue*, 318 Ill. App. 3d 765, 771 (1st Dist. 2000).<sup>2</sup>

The temporary storage exemption applies to property (1) acquired outside of Illinois (2) that is stored temporarily here and (3) then used solely outside this State. *Nutrition Headquarters, Inc.*, 106 Ill. 2d at 61. Because the temporary storage exemption is allowed for property used solely outside of the State, the taxpayer is limited to a single Illinois exempt use. *Shared Imaging, LLC*, 2017 IL App. (1st) 152817, ¶¶ 42-44. If, after the initial qualifying temporary storage in Illinois, the property is returned here again and stored temporarily it is subject to use tax. *Id.*

The parties agree that the temporary storage exemption was not lost by blending the virgin solvent with the recycled solvent before sending the mixture out of Illinois the first time. *See* Pet'r Mem. in Supp. of Mot. for Summ. J. at 8-9; Dep't Mot. for Summ. J. at 8. But, because the temporary storage exemption can apply only once, if the property is returned to Illinois for further storage the exemption is lost. *Shared Imaging, LLC*, 2017 IL App (1st) 152817, ¶ 44.

Safety-Kleen tries to avoid this outcome by claiming that the used solvent that comes back to Illinois is entirely different property than the blended solvent that it sent out of Illinois. Pet'r Mem. in Supp. of Mot. for Summ. J. at 11-12. In support of this argument Safety-Kleen points out that the used solvent, when returned to Illinois, has a distinct look, smell, chemical composition, PH balance, and flashpoint from the blended solvent. *Id.* at 11-12. The used solvent is a hazardous waste, while the recycled solvent is not. *Id.* at 12. In fact, according to Safety-Kleen, the used solvent is not solvent at all, because it cannot be used to

---

<sup>2</sup> In a footnote, Safety-Kleen argues that the exemption is really an exclusion from taxation, and thus the burden of proof shifts to the Department. *See* Pet'r Mem. in Supp. of Mot. for Summ. J. at 6, n.2. This argument is foreclosed by binding precedent which treats temporary storage as an exemption from tax, not an exclusion. *See Nutrition Headquarters, Inc.*, 106 Ill. 2d at 61-62; *Shared Imaging*, 2017 IL App. (1st) 152817, ¶ 39.

clean and degrease parts and has no commercial value. *Id.*; see also Pet'r Reply at 3-5.

Safety-Kleen does not cite to any legal authority to support its proposition that the return of its property in a different form allows it to reset the clock on the temporary storage exemption. Rather, Safety-Kleen draws a negative implication from the statutory test to support its claim. To qualify for the exemption, Safety-Kleen acknowledges that the exempt property can never return to Illinois. See Pet'r Reply at 2-3 (citing *Shared Imaging, LLC*, 2017 IL App (1st) 152817, ¶¶ 37,40). Safety-Kleen thus reasons that property returned to Illinois as a different product qualifies for the exemption. See Pet'r Reply at 3.

Safety-Kleen then draws an analogy to refining crude oil into gasoline. It contends that “no one would argue that they are the same product,” Pet'r Mem. in Suppt. of Mot. for Summ. J. at 12, thereby suggesting that refined gasoline, on a return trip to Illinois for storage could be entitled to its own qualifying temporary storage exemption, regardless of whether it was once crude oil. See *id.*

Despite the lack of legal authority, it does seem reasonable that at some point property may be so transformed out of state that when returned to Illinois it could claim its own temporary storage exemption. But Safety-Kleen has not made a persuasive argument for its property here. The used solvent that Safety-Kleen returns to Illinois is intended to be recycled into usable solvent to clean industrial tools and machinery—unlike the gasoline in Safety-Kleen's analogy which is not turned back into petroleum when returned to Illinois.

The intended use of the property for which Safety-Kleen seeks an exemption has not fundamentally changed. In returning the used to solvent to Illinois to be recycled into usable solvent and blended with virgin solvent, Safety-Kleen engaged in the same activity more than once with the same property. Thus, the temporary storage exemption was lost. See *Shared Imaging, LLC*, 2017 IL App (1st) 152817, at ¶ 44.

### **Conclusion**

The Petitioner's motion for summary judgment is DENIED, and the Department's cross-motion for summary judgment is GRANTED. This matter is set for a telephone status conference on September 20, 2018, at 10:30 a.m., to discuss further proceedings in this matter.

s/ Brian Barov  
BRIAN F. BAROV  
Administrative Law Judge

Date: September 6, 2018