

UT 10-12
Tax Type: Use Tax
Issue: Private Vehicle Use Tax – Nonresident

**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. 00-ST-0000
Account ID 00000-00000
Letter ID**

Date 11/22/06

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

This matter comes on for hearing pursuant to a grant of late discretionary hearing to John Doe (“John Doe” or “taxpayer”) based upon Notice of Tax Liability Letter ID number XXXXXX(“NTL”) issued by the Illinois Department of Revenue (“Department”) for Motor Vehicle Use Tax on John Doe’s purchase of a 2007 Nissan Titan motor vehicle in November 2006. John Doe did not pay any use tax to Illinois on this purchase based upon his position that he was not an Illinois resident at that time, and, therefore, was exempt from the payment of any such tax. At the hearing in this matter, John Doe and his wife testified on John Doe’s behalf, Robert Temple, a Department auditor, testified on behalf of the Department, and documentary

evidence was offered for each party. Following the submission of all evidence, and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Department's SC-10-K, Audit Correction and Determination of Tax Due showing a tax liability of \$2,009 including penalties. Department Exhibit ("Ex.") 1.
2. On November 22, 2006, John Doe ("taxpayer") and his wife, Jane Doe purchased a 2007 Nissan Titan motor vehicle (the "motor vehicle") from JK Pontiac-GMC-Truck Inc., an Illinois automobile retail dealership located in Downers Grove, Illinois. Hearing Transcript ("Tr.") p. 10; Department Ex. 3 (ST-556 Sales Tax Transaction Return signed by the taxpayer); Taxpayer's Ex. 1.
3. At the time of the purchase, the taxpayer and his wife owned a home in Anywhere, Illinois. Department Ex. 4. They continued to own this home in Illinois until at least November 27, 2006. Tr. p. 18; Department Ex. 4. The taxpayer held an Illinois driver's license at the time. Tr. pp. 11, 12, 25; Department Ex. 5. The taxpayer and his wife also owned a home in Oregon at that time. Tr. p. 22; Department Ex. 2.
4. The taxpayer's 2006 IL-1040 income tax return indicates that the taxpayer was a resident of Illinois in 2006; the taxpayer does not identify himself as a non-resident or part-year resident on his return filed for that year. Department Ex. 6.
5. The motor vehicle was delivered to the taxpayer and her husband at the Illinois dealership from which the motor vehicle was purchased on November 22, 2006. Tr. p. 17.

Subsequent to its acquisition by the taxpayer and his wife the motor vehicle was driven to Oregon. Tr. p. 18.

6. The dealer from which the vehicle was purchased issued no Oregon license plates to the taxpayer at the time the motor vehicle was purchased and did not affix a driveaway decal sticker, designating the purchase of a vehicle by a non-resident at that time. Tr. p. 24. In lieu of the foregoing, the dealer affixed a temporary Illinois license. *Id.*
7. Subsequent to the motor vehicle's arrival in Oregon, the taxpayer applied for an Oregon title and registration for the motor vehicle. Taxpayer's Ex. 1. On their application for an Oregon title, the taxpayer and his wife listed as their address an address in Nehalem, Oregon. *Id.*

Conclusions of law:

In this case, the taxpayer contests the Department's imposition of a use tax on his purchase of a 2007 Nissan Titan motor vehicle from an Illinois automobile retailer on November 22, 2006. Under the Use Tax Act ("UTA"), 35 ILCS 105/1 *et seq.*, Illinois imposes a tax on 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 State's sales tax which is normally collected by automobile dealers and other retailers engaged in the business of selling tangible personal property in Illinois. Boye Needle Co. v. Department of Revenue, 45 Ill. 2d 484 (1970). If sales tax is collected on a purchase of a vehicle or other tangible personal property, the purchaser is not required to pay use tax to the state. 86 Ill. Admin. Code, ch. I, § 150.130. However, a retailer's failure to collect sales tax from the purchaser when it is legally due does not prevent the Department from collecting tax directly from the purchaser. *Id.* ("If the user purchases the

tangible personal property from a retailer, but does not pay use tax to such retailer, the purchaser shall pay use tax directly to the Department.”).

The facts at issue indicate that no sales tax was collected from the taxpayer when he purchased the motor vehicle at issue. In November, 2006, the taxpayer purchased the vehicle from JK Pontiac-GMC-Truck Inc. Department Ex. 3. The form ST-556 completed by the seller and filed with the Department to report the sale avers that the vehicle was exempt because it was sold to “a Out-of-state buyer.” *Id.* Consequently, the taxpayer did not pay Illinois retailers’ occupation tax to the dealer on the purchase. The taxpayer testified that he and his wife followed instructions given them by the car dealer who advised them that they should pay use tax in Oregon because they were going to register the motor vehicle there. Tr. pp. 18, 19, 25. The Department contends that the taxpayer was not an “Out-of-state buyer” and therefore sales tax was due on the taxpayer’s purchase. Tr. pp. 5, 6.

An analysis of the facts and law in this matter is governed by well-settled legal premises. In Illinois, tax exemption provisions are strictly construed against the taxpayer and in favor of the taxing body (Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305 (1976)) with the exemption claimant having to clearly and conclusively prove entitlement to the exemption (*id.* at 310) and with doubts being resolved in favor of taxation. Follett’s Illinois Book Supply Store, Inc. v. Isaacs, 27 Ill. 2d 600 (1963).

Moreover, the SC-10-K, Audit Correction and/or Determination of Tax Due issued in this cause is *prima facie* evidence of the correctness of the liability due. 35 ILCS 105/12 (incorporating 35 ILCS 120/4, 120/5); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978). After the Department establishes its *prima facie* case, the burden shifts to the taxpayer to overcome it (*id.* at 15) and the taxpayer must carry its burden with competent

evidence, identified with its books and records. *Id.*; Copilevitz v. Department of Revenue, 41 Ill. 2nd 154 (1968). It is not enough that the taxpayer gives testimony regarding its entitlement to any exemption (Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1st Dist. 1981) as “exemptions are to be strictly construed in favor of taxation.” *Id.* at 295.

On the merits, the taxpayer defends against the assessment of tax on the motor vehicle at issue averring that at the time of his purchase of the motor vehicle he was a resident of Oregon. Tr. pp. 6, 7, 20. He contends that he purchased the motor vehicle for his wife to use in Oregon (tr. pp. 19, 20), and drove it from Illinois to Oregon soon after it was delivered to him by the retailer. Tr. pp. 17, 18. He argues that it was his intent at the time of the purchase to be a resident of Oregon and not Illinois. *Id.*

The Department argues that John Doe was a resident of Illinois at the time of the purchase and that indicia of this are the facts that he maintained an Illinois driver’s license and that John Doe’s 2006 IL-1040 showed that he and his wife were residents of Illinois during that year. Tr. p. 31.

The issue whether taxpayer was a resident of Illinois or Oregon at the time of the purchase of the motor vehicle is important because the legal basis of the taxpayer’s claim of exemption from the tax is section 3-55(h) of the UTA, 35 **ILCS** 105/3-55(h), which provides:

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:

h) Except as provided in subsection (h-1), the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided by Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. The issuance of the drive-

away permit or having the out-of-state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State.
35 ILCS 105/3-55(h)

If John Doe was a nonresident, and otherwise satisfied the conditions for exemption prescribed by section 3-55(h), no tax would be due from him on the purchase of the motor vehicle at issue.

It is first observed that the Illinois Vehicle Code (“Code”) defines “resident”, in pertinent part, as follows: “Every natural person who resides in this state shall be deemed a resident of this State.” 625 ILCS 5/1-173. The Use Tax Act does not define “resident.” The appellate court, in the case of Hatcher v. Anders, 117 Ill. App. 3d 236 (2d District 1983), discussed the meaning of the term “resident” for purposes of the Code. The court determined that the term “resident” is synonymous with “domicile.” *Id.* at 239. Further, the court provided that:

[A] person can have only one domicile or permanent residence and once it is established it is retained until a new domicile is acquired. (citations omitted). Affirmative acts must be proved to sustain the abandonment of an Illinois residence and a temporary absence from the state, no matter how protracted, does not equate with abandonment. (citations omitted). To establish a new domicile, a person must physically go to a new home and live there with the intention of making it his permanent home. (citations omitted). Only when abandonment has been proven is residency lost. (citations omitted).

Id.

Intent is a critical question in determining residency. Connelly by Connelly v. Gibbs, 112 Ill. App. 3d 257 (1st Dist.1983).

While the taxpayer contends that he and his wife intended to become Oregon residents in 2006, there is no question that for the year 2006, John Doe filed an Illinois income tax return on which he affirmatively represented for legal purposes that he was an Illinois resident. Department Ex. 6. While the taxpayer was given the option on his 2006 return of indicating his status as a “Non Resident” or as a “Part Year Resident” he chose not to do so. *Id.* Accordingly, the taxpayer’s representation that he was a resident of Illinois during the entire year of 2006

seriously undermines the credibility of his claim that he intended to become a resident of Oregon during that year.

Similarly, the record indicates that the taxpayer held an Illinois driver's license at the time of the purchase of the vehicle at issue in this case. Department Ex. 5. Rules promulgated by the Department deem this to be clear evidence that the taxpayer was not a nonresident at the time of this purchase in 2006. Specifically, regulation 86 Ill. Admin. Code, ch. I, section 130.605(b)(1)(A) states in part as follows:

(A) Documentation of nonresidency. The exemption under subsection (b)(1) is available only to nonresidents. A vehicle purchased by an Illinois resident is not eligible for exemption (even if the purchaser is only a part-time Illinois resident or has dual residency in Illinois and another state, and, in the case of more than one purchaser, even if only one of the purchasers is an Illinois resident) ... i) when the purchaser is a natural person, the best evidence of nonresidence is a non-Illinois driver's license. (Emphasis added)

Moreover, the taxpayer has offered little documentary evidence to support his position that he was an Oregon resident during 2006. In fact, the taxpayer's only document indicating the taxpayer's purported Oregon residence contained in the record is the ST-556 Sales Tax Transaction Return (Department Ex. 3) which shows an Oregon address for him. However, there is no evidentiary support for this document that allows for any conclusion that this is a competent representation of legal residency, as opposed to being a listing of an address in Oregon that the taxpayer asked the dealer to place on this form. Therefore, no value can be placed on this document on the issue of John Doe's legal residency in 2006.

The taxpayer also submitted into evidence an Oregon Vehicle Certificate of Title showing that the motor vehicle at issue was registered in Oregon. Taxpayer's Ex. 1. However, Department regulation 86 Ill. Admin. Code, ch. I, § 130.605(b)(1) states that a mere showing that a vehicle is "not to be titled in this State [Illinois]" is only one of several conditions that must be

shown to establish that a vehicle purportedly purchased for use outside of Illinois is not taxable in this state. Specifically, this regulation provides in part as follows:

Except as otherwise provided in subsection (b)(1)(C), the tax is not imposed upon the sale of a motor vehicle in this State even though the motor vehicle is delivered in this State, if all of the following conditions are met: the motor vehicle is to be sold to a nonresident; the motor vehicle is not to be titled in this State; and either a drive-away permit for purposes of transporting the motor vehicle to a destination outside of Illinois is issued to the motor vehicle ..., or the nonresident purchaser has non-Illinois vehicle registration plates to transfer to the motor vehicle upon transporting the vehicle outside of Illinois. (Emphasis added)

86 Ill. Admin. Code, ch. I, section 130.605(b)(1)

The taxpayer also submitted evidence of utility usage by the taxpayer at the address of the taxpayer's Oregon home commencing prior to the date on which the taxpayer purchased the motor vehicle at issue in Illinois. Taxpayer's Exhibit 2. Although this evidence shows that the taxpayer spent time in Oregon during 2006, it is not persuasive on the issue of the taxpayer's legal residency during that year.

The record indicates that the taxpayer submitted an Illinois return declaring his legal residency during 2006 to be Illinois. Department Ex. 6. Given that the taxpayer has submitted a 2006 Illinois income tax return affirmatively averring that he was an Illinois resident, evidence of utility usage in Oregon is at best ambiguous, and falls far short of clearly and convincingly establishing that the taxpayer was a resident of Oregon in 2006.

In sum, applying the fundamental legal premises that control tax assessments and claims of exemption related thereto, the taxpayer has failed to establish, clearly and convincingly, that he was not a legal resident of Illinois in 2006 when he purchased the motor vehicle at issue. Consequently, he has failed to rebut the *prima facie* correctness of the Department's SC-10-K Audit Correction and/or Determination of Tax Due at issue.

Aside from the failure to establish that he was a nonresident of Illinois when he purchased the motor vehicle at issue, another requirement of the exemption statute was not satisfied. Section 3-55 of the UTA exempts from tax a motor vehicle sold to a nonresident but delivered to him in Illinois “if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state[.] The issuance of the drive-away permit or having the out-of-state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State.” 35 ILCS 105/3-55(h).

Section 3-603 of the Code specifically provides for the issuance of a driveaway decal when a dealer sells a motor vehicle to a nonresident who does not, at the time the motor vehicle is delivered to the buyer, have out-of-state registration plates to transfer to it. The purpose of this specific permit is to allow for the “operation of such vehicle without registration from the place of sale to the place of destination outside of the State of Illinois...” 625 ILCS 5/3-603(a). Further, “[A]ny vehicle being operated pursuant to a driveaway decal permit may not be used for any other purpose and such permits shall be effective only for a period of 10 days from the date of sale.” *Id.* This decal is to be “firmly attached to the inside windshield of the motor vehicle in such a manner that it cannot be removed without being destroyed.” 625 ILCS 5/3-413(c).

In this matter, the taxpayer did not have Oregon vehicle registration plates at the time of his purchase, and, the Illinois dealer did not issue him a driveaway permit, as specifically required for the nonresident exemption statute to apply. Tr. p. 24. Rather, the dealer caused to be issued to the taxpayer a temporary registration sticker plate for the motor vehicle. *Id.*

The temporary registration sticker plate is markedly different, statutorily, from the driveaway permit that is expressly required in the exemption provision. The purpose of the

temporary plate is to allow for the operation of a motor vehicle that is subject to registration in Illinois, i.e. a vehicle that is sold to an Illinois resident, until such time as the registration process is completed. 625 ILCS 5/3-407. In contrast, the driveway permit is a decal that allows for the operation of a motor vehicle in Illinois that is not to be registered in Illinois, i.e. that is sold to a non-resident but is delivered in Illinois. The sole purpose of the operation of the motor vehicle operating with a driveway permit is to drive it from Illinois to a destination state. 625 ILCS 5/3-603. Thus, it is legally valid for only a matter of days. *Id.*

It cannot be ascertained from this record why the dealer issued the taxpayer a temporary registration sticker plate rather than a driveway permit. No one from the dealer that was familiar with the transaction appeared to testify on the taxpayer's behalf. Regardless, for whatever reason, the dealer did not issue the statutorily required driveway permit to the taxpayer. Thus, the transaction does not satisfy the mandates of one that would allow exemption from the imposition of Illinois use tax, as tax exemption provisions are strictly construed against the taxpayer and in favor of the taxing body. Telco Leasing, Inc., *supra*. The exemption provision was not complied with and there is no clear evidence provided as to why this occurred. Therefore, the Department correctly assessed the use tax on this transaction.

Wherefore, for the reasons stated above, it is recommended that Notice of Tax Liability Letter ID number XXXXXXXX be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: December 21, 2010