

**UT 08-4**

**Tax Type: Use Tax**

**Issue: Use Tax On Aircraft Purchase**

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

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

v.

**JOHN AND JANE DOE,  
Taxpayer**

**No. 07-ST-0000  
IBT# 0000-0000  
NTL# 00 00000000000000**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Foster on behalf of the Illinois Department of Revenue; Donald F. Franz of William M. Franz & Associates, LLC on behalf of John and Jane Doe.

**Synopsis:**

On October 25, 2005, the Illinois Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to John and Jane Doe (“Doe” or “taxpayer”) that assessed Aircraft Use Tax regarding Doe’ purchase of a North American T-28C military aircraft, Serial No. XXXXX in a non-retail transaction that took place in 2003. Taxpayer protested this NTL and requested a hearing.

A hearing was held at the Department’s offices in Chicago on May 22, 2008 at which John Doe testified and submitted an exhibit purporting to prove that use tax was

improperly assessed in this case. I have reviewed the record of that proceeding, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director resolve this matter in favor of the Department.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of NTL number 00 000000000000 showing use tax and related liabilities.<sup>1</sup> Department Exhibit ("Ex.") 1.
2. The taxpayer is a resident of Illinois residing in Lake In the Hills, Illinois. *Id.*
3. During 2003, the taxpayer purchased a North American T-28C military trainer aircraft, Serial Number XXXXX (the "Aircraft") from ABC Service Corp. of.<sup>2</sup> Tr. pp. 10-12; Department Ex. 2.
4. Taxpayer paid \$159,000 in cash for the Aircraft. Tr. p. 11.
5. Taxpayer registered as owner of the Aircraft and recorded the conveyance of the Aircraft from ABC Service Corp. to the taxpayer with the Federal Aviation Administration ("FAA") by filing an "Aircraft Registration Application" and "Aircraft Bill of Sale" with the FAA on or about October 2, 2003. Tr. p. 15; Department Ex. 2. The Aircraft Bill of Sale, which accompanied the taxpayer's Aircraft Registration Application, contained the following representations: "FOR AND IN CONSIDERATION OF \$ THE UNDERSIGNED OWNER(S) OF THE

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<sup>1</sup> The tax assessed was determined to be due pursuant to section 157/10-15 of the Illinois Aircraft Use Tax Law, 35 ILCS 157/10-1 *et seq.* which imposes tax on "the privilege of using, in this State, any aircraft ... acquired by gift, transfer, or purchase after June 30, 2003."

<sup>2</sup> The transaction at issue was a non-retail purchase because the seller, ABC Corp. is not registered as an aircraft retailer or dealer. Department Ex. 2. Consequently, this transaction was not subject to Illinois Use Tax pursuant to the Illinois Use Tax Act, 35 ILCS 105/1 *et seq.* which only applies to retail transactions.

AIRCRAFT DESCRIBED AS FOLLOWS: UNITED STATES REGISTRATION NUMBER XXXXX ... AIRCRAFT SERIAL No. XXXXX DOES THIS 2 DAY OF OCT 2003 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO: ...[PURCHASER] Doe, John. ...Doe, Jane. ... AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.” Tr. pp. 15, 32; Department Ex. 2. This Aircraft Registration Application, which included the Aircraft Bill of Sale was signed by John Doe and Jane Doe as “PURCHASER.”<sup>3</sup> The date of execution of the Aircraft Registration Application indicated next to the taxpayer’s signatures is “10-3-03.” Department Ex. 2.

6. The taxpayer failed to file a use tax return reporting the purchase of the Aircraft and failed to pay taxes claimed by the Department to be due on the Aircraft. Department Ex. 1.
7. During his lifetime, John Doe has purchased and sold approximately 20 aircraft including the Aircraft in controversy. Tr. p. 12.

**Conclusions of Law:**

Pursuant to the Illinois Aircraft Use Tax Law, 35 ILCS 157/10-1 *et seq.*, Illinois imposes a use tax, at the rate of 6.25%, upon the use in this State of any aircraft, whether

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<sup>3</sup> The Aircraft Bill of Sale (see Department Ex. 2) was required to be submitted with the Aircraft Registration Application the taxpayer filed with the FAA pursuant to FAA regulation 14 C.F.R. section 47.35.

or not purchased at retail, if acquired by gift, transfer or purchase. See also 86 Ill. Admin. Code, ch. I, section 152.101 through section 152.115; Illinois Dept. of Revenue Information Bulletin FY 2004-06 issued 7/1/03. This tax is only applicable to aircraft acquired after June 30, 2003. 35 **ILCS** 157/10-15. By regulation, an aircraft that is acquired by non-retail purchase outside of Illinois before June 30, 2003 and is brought into Illinois after June 30, 2003 is not subject to the tax. See 86 Ill. Admin. Code, ch. I, section 152.101(a).

Pursuant to the aforementioned provisions, the Department issued an NTL assessing use tax upon the taxpayer as a result of its purchase of the Aircraft at issue in this case. Section 35 **ILCS** 157/10-35 of the Aircraft Use Tax Law incorporates Section 12 of the Use Tax Act (35 **ILCS** 105/12). Section 12 of the Use Tax Act, in turn, incorporates by reference Section 4 of the Retailers' Occupation Tax Act (35 **ILCS** 120/4) which provides that a correction of return or NTL issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. *Id.* The burden shifts to the taxpayer to overcome the presumption of validity once the Department has established its *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1<sup>st</sup> Dist. 1987). In order to overcome the presumption of validity attached to the Department's NTL the taxpayer must produce competent evidence, identified with its books and records showing that the Department's return is incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). To prove its case, a taxpayer must present more than its testimony denying the accuracy of the Department's assessment. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991).

The taxpayer concedes that the Aircraft, which was purchased in Florida, was purchased for use in Illinois. Tr. pp. 10 – 15. Consequently, the Aircraft was covered by section 157/10-15 of the Aircraft Use Tax Law. However, the taxpayer contends that he purchased the Aircraft prior to June 30, 2003. Tr. p. 5. Since section 157/10-15 only applies to purchases made after June 30, 2003, the taxpayer contends that he is not subject to this tax. *Id.*

At hearing, and after the Department presented its *prima facie* case, the taxpayer presented only one item of documentary evidence to support its claim. This documentary evidence consisted of a writing entitled “Bill of Sale” setting forth the specifications of the Aircraft at issue and indicating a purchase price of \$159,000. Taxpayer’s Ex. 1. Significantly, this document is dated May 2, 2003. No other evidence closely identified with the taxpayer’s books and records – indeed, no other evidence whatsoever – was presented to contest the Department’s assessment determination. In rebuttal, the Department’s counsel argued that the taxpayer’s exhibit was insufficient evidence to establish that the taxpayer purchased the Aircraft on May 2, 2003. Tr. p. 39.

As noted above, the sole item of evidence the taxpayer has offered to support its claim that the Aircraft Use Tax Law did not apply consists of the aforementioned “Bill of Sale” document signed by XXXXX as President of ABC Corp., the seller of the Aircraft at issue. While this document was admitted into evidence at hearing without objection, there is no doubt that this document is hearsay. Specifically, it contains the out-of-court statements of a declarant (XXXX) which are being offered to prove the truth of the matters asserted (the statements being made in the document), chief among them, the declarant’s implied statement that the Bill of Sale was intended to transfer title to the

Aircraft and was signed on May 2, 2003.<sup>4</sup> When hearsay is admitted without objection, it must be considered and given its natural probative effect. Jackson v. Department of Labor, 105 Ill. 2d 501, 508 (1985).

The record in this case does not support giving probative weight to the taxpayer's sole item of evidence. An examination of this document raises a number of concerns. First of all, it is unclear from the information contained in the taxpayer's exhibit what the purpose of this document is. While it is called a "Bill of Sale" it does not indicate any intent on the part of the seller to sell, or the purchaser to purchase the Aircraft. Specifically, there is no language in this document conveying ownership to the taxpayer. Moreover, this document is not signed by the taxpayer. The document on its face is little more than a description of the Aircraft with an indication of its sale price. Thus it is more consistent with an offer for sale than it is with a document consummating a sale transaction.<sup>5</sup>

Moreover, the veracity of the hearsay in the taxpayer's Ex. 1 "Bill of Sale" is undermined by the fact that this hearsay is patently inconsistent with other documentary evidence admitted into the record at hearing. The principal inconsistency arises from the

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<sup>4</sup> For reasons that are unclear from the record, XXXX was not called as a witness. His testimony was clearly necessary to corroborate the taxpayer's claim that the "Bill of Sale" dated May 2, 2003 was executed by Jacobs and memorialized the purchase of the Aircraft by the taxpayer on that date.

<sup>5</sup> The taxpayer contends that he paid for the Aircraft at the time he received the "Bill of Sale" on May 2, 2003 and that this Bill of Sale was intended to be a receipt for payment. Tr. p. 19. This assertion is self-serving at the very least. To give it probative force I would have to place my wholehearted trust in purported declarations by Mr. XXXXX concerning the intent of the "Bill of Sale" (the import of which is not indicated in the record) even though he was never placed under oath and was never the subject of cross-examination. Accordingly, I cannot give probative weight to the assertion that the "Bill of Sale" was a receipt.

“Bill of Sale” filed with the FAA by the taxpayer (the “FAA Bill of Sale”) that was admitted into the record as Department Ex. 2.

The taxpayer’s objection to the admission of the FAA Bill of Sale was overruled; the taxpayer admitted that he submitted the FAA Bill of Sale to the FAA in order to register the Aircraft as part of the Aircraft Registration Application he signed in October, 2003. Tr. pp. 15, 32. Assuming the FAA Bill of Sale did not fall within some other exception to the hearsay rule, it constituted an admission that the sale of the Aircraft took place on October 2, 2003. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379 (1989). Moreover, the FAA Bill of Sale contains indicia of accuracy and authenticity that makes this document “reliable” hearsay having probative import.

In the course of the performance of its designated ministerial function to record aircraft conveyances (see 49 U.S.C. 44107), the FAA has included the information indicated in the Department’s Exhibit 2 in its official records. Such official records are generally accorded probative force in judicial proceedings. See Stewart v. Crissel, 289 Ill. App. 3d 66 (1<sup>st</sup> Dist. 1997). Moreover, the FAA Bill of Sale was part of the Aircraft Registration Application that was executed by the taxpayer, who certified to the veracity of the information contained therein. Department Ex. 2.

A comparison of the Bill of Sale introduced as an exhibit by the taxpayer and the FAA Bill of Sale demonstrates the unreliability of the taxpayer’s exhibit. The FAA Bill of Sale states as follows:

FOR AND IN CONSIDERATION OF \$        THE UNDERSIGNED  
OWNER(S) OF THE AIRCRAFT DESCRIBED AS FOLLOWS:  
UNITED STATES REGISTRATION NUMBER XXXX ...  
AIRCRAFT SERIAL No. XXXXX DOES THIS 2 DAY OF OCT  
2003 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL

RIGHTS, TITLE AND INTERESTS IN AND TO SUCH AIRCRAFT  
UNTO: ...[PURCHASER] Doe, John...Doe, Jane ... AND ASSIGNS  
TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT  
FOREVER, AND WARRANTS THE TITLE THEREOF.

Department Ex. 2.

This document was prepared and signed by the taxpayer after the “Bill of Sale” tendered by the taxpayer as the exhibit which the taxpayer claims evidences the date on which the Aircraft was purchased. If the date shown in the taxpayer’s exhibit was correct, then why did not the taxpayer report the same thing on the documents it filed with the FAA? Why did not the taxpayer tender documents to the FAA showing that the transfer of ownership took place on May 2, 2003? If the information contained in the FAA Bill of Sale emanated from the fact that the taxpayer, having purchased the Aircraft in May, did not find it necessary to register the Aircraft with FAA until October, 2003 (Tr. pp. 41, 42), then the information contained in the FAA Bill of Sale was clearly in need of subsequent correction. The taxpayer’s failure to conform the FAA Bill of Sale filed with the government to the “Bill of Sale” introduced as an exhibit by the taxpayer, strongly corroborates the Department’s presumptively correct determination that the taxpayer purchased the Aircraft on October 2, 2003, rather than on May 2, 2003 as the taxpayer contends.

In submitting the FAA Bill of Sale for recordation with the FAA along with the Aircraft Registration Application the taxpayer signed, the taxpayer clearly acted as though it accepted the truth of the statements indicated in the FAA Bill of Sale, which the taxpayer now characterizes as erroneous or mistaken. Having ratified that it purchased the Aircraft on October 2, 2003 in this manner, I do not find credible the taxpayer’s claim that the material facts stated on that recorded document were in error. Under the law of

evidence the taxpayer's acts of signing the Aircraft Registration Application and submitting the FAA Bill of Sale to the FAA with it, constituted probative "admissions" by the taxpayer that the sale of the Aircraft took place on October 2, 2003 which was after the Aircraft Use Tax Law became applicable. See In re Cook County Treasurer, *supra*.

For the foregoing reasons, I have accorded no probative weight to the taxpayer's exhibit purporting to show the purchase of the Aircraft at issue in this case on May 2, 2003, prior to imposition of tax liability on non-retail aircraft purchases under the Aircraft Use Tax Law. Since the taxpayer has submitted no other evidence in support of its claim, I find that the taxpayer has failed to submit sufficient competent evidence to rebut the Department's *pima facie* case.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Department's NTL at issue in this case be affirmed and finalized.

Ted Sherrod  
Administrative Law Judge

Date: August 21, 2008