

UT 08-5

Tax Type: Use Tax

Issue: Use Tax On Aircraft Purchase

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

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

v.

JOHN DOE

Taxpayer

NTL # 00 00000000000000

Docket # 08-ST-0000

IBT # 0000-0000

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*.

Synopsis:

Based on a Federal Aviation Administration report concerning registration changes for aircrafts, the Department of Revenue (“Department”) conducted an office audit of a change in the registration of an aircraft purchased by John Doe (“taxpayer”). The Department issued a Notice of Tax Liability (“NTL”) to the taxpayer that assessed additional tax, penalties, and interest on the purchase of the aircraft pursuant to the Aircraft Use Tax Law (35 ILCS 157/10-1 *et seq.*). The taxpayer paid the assessment but timely protested the NTL. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer’s change in ownership of the aircraft, from a co-

owner to an individual owner, warrants assessment of the aircraft use tax. The taxpayer contends the tax does not apply because his right to use the aircraft did not change as a result of the ownership change. After reviewing the evidence and testimony, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On May 10, 2001, the taxpayer and Jones Smith purchased a Cessna 152 aircraft. The Aircraft Registration Application indicated that the type of registration was “Co-owner.” Mr. Jones Smith’s address on the application is in Anywhere, Missouri. The taxpayer’s address is not on the application. (Dept. Ex. #1, pp. 6-7)
2. The Aircraft Bill of Sale for the May 10, 2001 sale shows the sellers as Jones Smith and Jane Jones Smith, co-owners. (Dept. Ex. #1, p. 6)
3. On October 25, 2004, the taxpayer purchased the same aircraft as the sole owner. The Aircraft Bill of Sale shows the taxpayer paid \$11,500 for the purchase, and the sellers were Mr. Jones Smith and the taxpayer as co-owners. The Aircraft Registration Application for this sale indicates that the type of registration was “Individual.” The taxpayer’s address on the application is in Anywhere, Illinois. (Dept. Ex. #1, pp. 8-9)
4. The Department prepared an SC-10-K, Audit Correction and/or Determination of Tax Due, for the purchase of the aircraft on October 25, 2004. The Department determined the taxpayer owed the aircraft use tax in the amount of \$719. (Dept. Ex. #1, p. 3)

5. On January 29, 2008, the Department issued a Notice of Tax Liability to the taxpayer that shows tax due in the amount of \$719, plus interest and penalties, for the purchase of the aircraft on October 25, 2004. (Dept. Ex. #1, p. 2)

CONCLUSIONS OF LAW:

The Aircraft Use Tax Law (“AUTL”) imposes a tax upon the privilege of using in Illinois any aircraft acquired by gift, transfer, or purchase after June 30, 2003. 35 ILCS 157/10-15. Section 10-35 of the AUTL incorporates by reference the Use Tax Act (“UTA”) (35 ILCS 105/1 *et seq.*), except for the provisions of section 3-70.¹ Section 12 of the UTA incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department’s determination of the amount of tax due shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due as shown therein. 35 ILCS 157/10-35; 105/12; 120/5.

Pursuant to these provisions, the Department determined the amount of tax due; the Department’s determination and the Notice of Tax Liability were admitted into evidence. Once the Department established its *prima facie* case by the admission of these documents, the burden of proof shifted 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 its 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.*

¹ Section 3-70 of the UTA allows an exemption for property acquired by a nonresident. 35 ILCS 105/3-70.

The taxpayer believes that the purpose of the AUTL is to tax the use created by a transaction that occurred after June 30, 2003. The taxpayer emphasizes that he initially acquired a co-ownership interest, not a partnership interest, in the aircraft. As a co-owner, he obtained the right to use 100% of the aircraft 100% of the time if he wanted to do so. Mr. Jones Smith could do the same, and there were no restrictions, documents or agreements between the owners. The taxpayer contends that it is similar to co-ownership of a financial account: if the taxpayer had co-ownership of a financial account, he would have 100% unfettered use of that account. The taxpayer maintains that he had unfettered use of the aircraft prior to June 30, 2003, and that did not change after that date. He claims the transaction on October 25, 2004 only removed Mr. Jones Smith's right to use the aircraft.

The taxpayer also refers to the Department's regulation, which provides in part as follows:

a) The Aircraft Use Tax is a privilege tax imposed on the privilege of using, in this State, aircraft as defined in Section 3 of the Illinois Aeronautics Act. The tax applies to aircraft acquired by gift, transfer, or non-retail purchase after June 30, 2003. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. Examples:

1) An aircraft that is acquired by non-retail purchase outside of Illinois prior to June 30, 2003 and is brought into Illinois after June 30, 2003 is not subject to the tax imposed by this Part.

2) Fractional share ownership in an aircraft would be subject to tax if the plane were used in Illinois.

3) A multi-state corporation leases a corporate aircraft from a related entity to transport its corporate executives on business travel throughout the United States. The aircraft is registered and hangered outside Illinois. As part of a corporate restructure, ownership of the aircraft will be moved to a new entity. The transfer of both possession and ownership of the aircraft will occur

outside Illinois after June 30, 2003 and the transfer of the aircraft to the new entity will qualify as a tax-free capital contribution under the Internal Revenue Code. After completion of this restructuring the aircraft will be based in Illinois. This transfer is a taxable event in Illinois and Aircraft Use Tax is incurred. 86 Ill. Admin. Code §152.101(a).

The taxpayer argues that the third example clearly does not apply in this case, and the second example does not apply because he did not have a fractional interest in the aircraft. He believes the first example applies because he acquired the aircraft by non-retail purchase outside of Illinois prior to June 30, 2003 and brought it into Illinois after June 30, 2003.² The taxpayer also believes the lawmakers' intent was to tax the use created by a transaction after June 30, 2003, and that did not happen in this case.

Notwithstanding the taxpayer's averment, the transaction that took place after June 30, 2003 triggered the tax. "Any non-retail transfer of ownership in an aircraft that results in a new registration or title will subject the aircraft to the Aircraft Use Tax." ST 04-0191-GIL (10/15/04). When a person purchases a fractional share in an aircraft, the aircraft use tax is assessed on the purchase price of the fractional share; the amount taxable, however, shall not be less than the fair market value of the fractional share. *Id.* Moreover, the tax liability is not affected by the fact that the beneficial use of the aircraft will not change after the transaction. ST 07-0138-GIL (10/22/07).

In the present case, there was a non-retail transfer of ownership on October 25, 2004 that resulted in a new registration. On that date, the taxpayer's ownership changed

² It must be noted that the only documents presented at the hearing (other than the NTL, SC-10-K, and auditor report) were the two Bills of Sale and two Registration Applications. These documents do not show where the taxpayer lived at the time of the purchase in 2001 or when the aircraft was brought into Illinois. The taxpayer did not provide the aircraft logs, despite the Department's request for them. (Tr. pp. 13, 21) The evidence, therefore, does not support the taxpayer's argument that the aircraft was first brought into Illinois after June 30, 2003. Nevertheless, it is undisputed that at the time of the transaction in 2004, the taxpayer lived in Illinois and the aircraft was used in Illinois, which are the only facts, in addition to the change in ownership, that are necessary to resolve this dispute.

from being a co-owner to being the sole owner. A Bill of Sale was completed for the sale on October 25, 2004, as well as a new Registration Application. The Registration Application for the first sale shows the type of registration as “Co-owner,” and the Registration Application for the second sale shows the type of registration as “Individual.” On October 25, 2004, Mr. Jones Smith’s name was no longer on the title to the aircraft. This change in ownership, which resulted in a new registration, caused the assessment of the tax. The first example provided in the Department’s regulation does not apply in this case because in that illustration there was no transfer or transaction after June 30, 2003 that triggered the tax.

The fact that the use of the plane may not have changed as a result of the transfer of ownership does not affect the application of the tax. In General Information Letter (“GIL”) ST 07-0138 (10/22/07), the inquiry concerned the applicability of the aircraft use tax to the situation when the title was transferred from a person individually to the same person as the trustee of a Self Declaration of Trust. The GIL advises that the transfer from an individual owner to a trust is a taxable event. *Id.* It further states that the taxability of the transfer is not affected by the fact that the beneficial ownership of the aircraft will not change after the transfer. *Id.*

Even though the tax is still applicable if the beneficial use of the aircraft did not change, the transaction in this case did affect the beneficial use because on October 25, 2004 Mr. Jones Smith no longer had the right to use the aircraft. The taxpayer contends he and Mr. Jones Smith obtained the right to use 100% of the aircraft prior to June 30, 2003, and the taxpayer’s use did not change after that date. Although the taxpayer may have had the right to use the aircraft 100% of the time, it is impossible for both the

taxpayer and Mr. Jones Smith to actually use the aircraft 100% of the time. If Mr. Jones Smith used the aircraft for even a small period of time, then the taxpayer's actual use of the aircraft was not 100%.

The taxpayer admitted that the transaction on October 25, 2004 removed Mr. Jones Smith's right to use the aircraft (Tr. p. 29), so prior to October 25, 2004, the taxpayer shared the right to use the aircraft. After October 25, 2004, the taxpayer no longer shared that right; he had the sole right to use the aircraft. Although the taxpayer claims that his right to use the aircraft did not change, what has changed is that the taxpayer no longer shares his right to use the aircraft. The taxpayer acquired Mr. Jones Smith's right to use the aircraft, and the aircraft use tax was properly assessed on this acquisition.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: October 6, 2008