

UT 09-10

Tax Type: Use Tax

Issue: Private Vehicle Use Tax – Value Exceeds \$15,000

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

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

v.

**ABC ENGINEERING,
TAXPAYER**

**No. 00 ST 0000
NTL: 0 0 000000000000
IBT: 0000-0000**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe, *pro se*, on behalf of ABC Engineering; Mr. George Foster, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

On August 13, 2008, the Illinois Department of Revenue (hereinafter the “Department”) issued a Notice of Tax Liability (“NTL”) to ABC Engineering (hereinafter “ABC”). The basis of the assessment was the Department’s determination that ABC had underpaid use tax on the purchase of a 2005 Audi. On September 13, 2008, ABC protested the assessment and requested a hearing. An evidentiary hearing was held on September 23, 2009 with Mr. John Doe, owner of ABC, testifying. Following a review of the testimony and the evidence submitted by ABC and the Department, it is

recommended that the Department's NTL be finalized as issued. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the NTL, dated August 13, 2008, showing a use tax liability remaining due of \$710 plus a late payment penalty and interest. Tr. p. 6; Dept. Ex. No. 1.
2. ABC completed an RUT-50, "Vehicle Use Tax Transaction Return," for the purchase of a 2005 Audi. The RUT-50 was received by the Department on December 12, 2007. ABC listed the "purchase price of vehicle (or fair market value)" on the RUT-50 as \$14,000. ABC paid \$290 in use tax which, according to Schedule A in the RUT-50, was the appropriate use tax for a vehicle with a purchase price or fair market value of less than \$15,000. Tr. pp. 12-13; Dept. Ex. No. 2.
3. The "NADA (National Automobile Dealers Association) Valuation" for a 2005 Audi was \$20,950. The Department used this valuation in assessing use tax. Tr. pp. 13-14; Dept. Ex. No. 4.
4. The use tax on a vehicle with a purchase price or fair market value of \$20,000 to \$24,999 was \$1,000. The NTL issued to ABC shows an underpaid use tax liability of \$710 (\$1,000 less \$290, paid by ABC). Tr. pp. 14-15, 19; Dept. Ex. Nos. 1 and 3.
5. Mr. Doe's protest of the NTL, dated September 13, 2008, states that he is an "entrepreneur" involved in "auto repossession." According to the protest, Mr. Doe acquired the automobile at issue "as a reposessor." The vehicle "started, moved &

stopped, that was about it.” According to the protest, the dealership that Mr. Doe brought the vehicle to advised him that “no dealership had even serviced the vehicle within the past couple of years.” “Before I even used the vehicle, I had incurred a bill from the dealership in excess of \$3,000 just to make it road worthy.” Tr. pp. 7-8; Taxpayer’s Ex. No. 1.

6. A repair bill from “Continental Audi of Naperville,” dated January 21, 2008, shows repairs to a “2005 Audi” in the amount of \$3,241. Tr. pp. 9-11; Taxpayer’s Ex. No. 2.

Conclusions of Law:

The State of Illinois imposes a tax on the privilege of using a motor vehicle in the State. 625 ILCS 5/3-1001. The amount of the use tax imposed is based on the selling price of the vehicle, defined as “the consideration received for a motor vehicle subject to the tax imposed by Section 3-1001 valued in money, whether received in money or otherwise, including cash, credits service, or property.” “In the case of gifts or transfers without reasonable consideration, ‘selling price’ shall be deemed to be the fair market value as determined by the Department of Revenue.” 625 ILCS 5/1-186.5. The amount of use tax due on a motor vehicle with a selling price or fair market value of from \$20,000 to \$24,999 is \$1,000. 625 ILCS 5/3-1001.

The Notice of Tax Liability issued by the Department is *prima facie* evidence of the correct amount of tax due. 625 ILCS 5/3-1003 incorporating 35 ILCS 105/12 incorporating 35 ILCS 120/4. The Department’s *prima facie* case can be overcome upon the taxpayer’s production of “competent evidence” identified with its books and records, showing that the Department’s determination is incorrect. Copilevitz v. Department of

Revenue, 41 Ill. 2d 154 (1968). Oral evidence is insufficient to overcome the prima facie correctness of the Department's determination. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988).

I conclude that ABC has failed to overcome the *prima facie* correctness of the Department's NTL. ABC presented no evidence for the record as to the fair market value of the 2005 Audi when the RUT-50 was filed with the Department. Mr. Doe testified that he was "fair and reasonable in the assessment of the vehicle's value." Tr. p. 9. There is no evidence in the record as to how he determined that value. In Mr. Doe's closing argument, he remarked that he purchased the Audi 2005 for \$14,000. Tr. pp. 21-22. No documentary evidence was offered to support this. Taxpayer did not offer into evidence either a bill of sale or a fair market valuation of the 2005 Audi from a licensed dealer. The repair bill from Continental Audi of Naperville is neither evidence of the fair market value of the vehicle nor evidence of how much ABC paid for the vehicle. Accordingly, ABC failed to overcome the *prima facie* correctness of the NTL, which set the value of the 2005 Audi at more than the "under \$15,000" that the taxpayer averred.

Wherefore, for the reasons stated above, it is my recommendation that the Department's Notice of Tax Liability dated August 13, 2008, showing a use tax liability remaining due of \$710 plus a late payment penalty and interest should be finalized as issued.

December 14, 2009

ENTER:

Kenneth J. Galvin
Administrative Law Judge