

**UT 10-07**

**Tax Type: Use Tax**

**Issue: Private Vehicle Use Tax - Nonresident**

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

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

v.

**JOHN DOE**

**Taxpayer**

**Docket # 09-ST-0000  
Acct ID: 00000-00000**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; H. Wesley Wilkins, Attorney at Law, for JOHN DOE.

Synopsis:

On September 22, 2009, the Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to JOHN DOE (“taxpayer”) for use tax on the purchase of a 2007 Teton Liberty, which is a recreational vehicle (“RV”). The taxpayer timely protested the NTL, and an evidentiary hearing was held. During the hearing, the taxpayer argued that he does not owe use tax on the purchase of the RV because the vehicle was actually purchased by a Montana corporation and was not brought into Illinois until several months after it was purchased. The Department argued that the vehicle was

purchased by the taxpayer, who is a resident of Illinois, and the taxpayer has not shown that he is entitled to any exemption from the use tax. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 20, 2006, the taxpayer paid \$5,000 from his personal account as a down payment for the purchase of a 2007 Teton Liberty from Stalkup's RV Superstore in Casper, Wyoming. The purchase price was \$123,247. (Dept. Group Ex. #3, p. 3)
2. On October 30, 2006, Doe Farms, LLC ("LLC") was organized in the State of Montana. The articles of organization indicate that the registered agent is Jane Doe, who has an address in East Helena, Montana. The articles also indicate that the manager or member of the LLC is the taxpayer. The articles show the taxpayer's address as 123 Anywhere Road, Anywhere, Illinois. (Dept. Group Ex. #3, p. 2)
3. The Sales Order for the RV is dated November 14, 2006 and shows that the RV was purchased by Doe Farms, LLC. A trade in allowance of \$51,747 was given for a 1998 Teton RV that the taxpayer owned personally, and the taxpayer paid the balance of \$66,500 for the new RV from his personal checking account. The taxpayer has one checking account, which is at an Illinois bank, and he pays for everything out of that one account. The taxpayer did not pay tax to another state for the purchase of the new RV. (Dept. Group Ex. #3, p. 3; Tr. pp. 22, 25, 30-31)
4. On January 2, 2007, the State of Montana issued a certificate of title for the RV to Doe Farms, LLC. (Dept. Group Ex. #3, p. 5)

5. On November 8, 2006, the State of Montana issued a certificate of title for a 2004 truck to Doe Farms, LLC. (Dept. Group Ex. #3, p. 4)
6. The taxpayer's permanent address is in the State of Illinois. (Tr. pp. 27-28)
7. The taxpayer pays income tax to the State of Illinois and has an Illinois driver's license. (Tr. pp. 24, 36-37)
8. The taxpayer receives his cell phone, television, and insurance bills at his Illinois address. He occasionally receives dividend checks there. (Tr. p. 11)
9. The taxpayer drove the RV in Illinois. (Tr. p. 14)
10. On September 22, 2009, the Department issued a Notice of Tax Liability for Motor Vehicle Use Tax that assessed use tax in the amount of \$7,703, plus penalties and interest, on the purchase of the RV. The Department's determination was admitted into evidence under the certificate of the Director of the Department. (Dept. Group Ex. #1)

CONCLUSIONS OF LAW:

Under the Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon 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 retailers' occupation tax ("ROT"), which is a tax on persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The use tax is imposed at the same rate as the ROT. 35 ILCS 105/3-10; 120/2-10. The purpose of the use tax is to prevent avoidance of the ROT by people who make purchases in states that do not impose the ROT and to protect Illinois merchants from the diversion of business to retailers outside Illinois. Brown's Furniture, Inc. v. Wagner, 171 Ill. 2d 410, 418 (1996). The use tax complements the

ROT in that an Illinois retailer who collects the use tax as an agent of the State is correspondingly relieved of his ROT liability on the transaction. Chicago Tribune Company v. Johnson, 119 Ill. App. 3d 270, 273 (1<sup>st</sup> Dist. 1983). If the person who uses the property does not pay the use tax to the retailer, it must be paid directly to the Department. 35 ILCS 105/3-45.

Section 12 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the Department's determination of the amount of tax due is *prima facie* correct and is *prima facie* proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/5. Once the Department has established its *prima facie* case by submitting the certified copy of the Department's determination into evidence, the burden shifts 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 his 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 for an exemption. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

It is well-established under Illinois law that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption. *Id.* Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. *Id.*; Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

Department argues that the taxpayer purchased the RV and does not qualify for an exemption because he was a resident of Illinois. The taxpayer has a permanent mailing address in Illinois where he receives his cell phone bills, television bills, and insurance bills. He has a bank account in Illinois and pays income taxes to the State of Illinois. The Department believes that the LLC is the taxpayer's alter ego, and the payments for the LLC are all made from the taxpayer's personal account. The Department contends that the evidence presented in this case does not show that the taxpayer is a nonresident, and the evidence is not sufficient to overcome the Department's *prima facie* case.

The taxpayer believes that he is not a resident of Illinois and that he qualifies for the nonresident exemption. He claims that since he separated from his wife in 1995, he has been living "on the road." (Tr. p. 10) He contends that the mailing address in Illinois is his son's home, and his son pays the bills because the taxpayer executed a Power of Attorney authorizing his son to act on his behalf. The taxpayer argues that the RV was purchased by a Montana LLC and titled in Montana because it is illegal in Illinois to "flat tow the second vehicle behind the fifth wheel."<sup>1</sup> (Tr. p. 13) The taxpayer indicated that the only thing the LLC does is hold title to the RV and one other vehicle, his truck. (Tr. p. 26) After the RV was purchased in November 2006, the taxpayer alleges that he did not bring it into Illinois until the middle of 2007 and used it here only temporarily. The taxpayer, therefore, believes that he does not owe use tax to Illinois.

Under the Act, "use" is 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. According to the Sales Order, Doe Farms, LLC purchased the RV, and the

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<sup>1</sup> The taxpayer did not explain what this phrase means and did not provide any citations, legal references, or documentary evidence to support his contention that it is illegal to register the vehicle in Illinois.

State of Montana issued a certificate of title for the RV to Doe Farms, LLC. The LLC, therefore, owns the RV, and the LLC normally would be the entity that would owe use tax to the Department for the RV's use in Illinois.

Nevertheless, the Department argues that the taxpayer is personally liable for the corporate obligation because the Montana LLC is the alter ego of the taxpayer. A corporation usually is a legal entity that exists separately and distinctly from its officers, shareholders, and directors, who are not liable for the corporation's debts. Fontana v. TLD Builders, Inc., 362 Ill. App. 3d 491, 500 (2<sup>nd</sup> Dist. 2005). Generally, if a taxpayer forms a separate corporation, it is a separate taxable entity. Moline Properties, Inc. v. Commissioner of Internal Revenue, 319 U.S. 436, 438-439 (1943). The Supreme Court stated as follows:

The doctrine of corporate entity fills a useful purpose in business life. Whether the purpose be to gain an advantage under the law of the state of incorporation or to avoid or to comply with the demands of creditors or to serve the creator's personal or undisclosed convenience, so long as that purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity. *Id.*

The Supreme Court recognized, however, that there are exceptions to this rule. “[I]n matters relating to the revenue, the corporate form may be disregarded where it is a sham or unreal. In such situations, the form is a bald and mischievous fiction.” *Id.* at 439, citing Higgins v. Smith, 308 U.S. 473, 477 (1940); Gregory v. Helvering, 293 U.S. 465, 469 (1935).<sup>2</sup>

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<sup>2</sup> It must be noted that determining whether a corporation is a separate taxable entity from the person who created it under the guidelines of Moline Properties, Inc., *supra*, is not the same question as whether the corporation is the individual's alter ego for purposes of “piercing the corporate veil.” See Harris v. United States, 764 F. 2d 1126, 1128 (5<sup>th</sup> Cir. 1985). The issue of whether the corporate veil should be disregarded generally arises in collection actions and is not used to determine tax liability. See Towe v. Martinson, 195 B.R. 137, 144 (1996).

The evidence in the present case supports the rare finding that for tax purposes, the corporate entity should be disregarded because it is a sham. The fact that the taxpayer is the sole member of the LLC and controls the activities of the corporation is not relevant to this determination.<sup>3</sup> The corporation is a sham because the relationship between the taxpayer and the LLC is so connected that they cannot be separated; the existence of two entities is an unsupported fiction. The taxpayer intermingled his personal funds with the corporate funds and did not maintain separate books and records for the corporation. The taxpayer paid the \$5,000 down payment for the RV from his personal funds. He used his personal vehicle as a trade-in for the RV, and he paid the balance due on the RV from his personal account. The taxpayer admitted that the corporation does not have a separate bank account; the taxpayer has one personal bank account from which he pays all his bills because, as the taxpayer stated, “I am Doe Farms.” (Tr. p. 31) Because of these facts, for tax purposes, the LLC is not entitled to recognition as a separate taxable entity.

In the alternative, the taxpayer contends that he should not be personally liable for the use tax because he is not a resident of Illinois. The Act includes an exemption for purchases by nonresidents and provides as follows:

Sec. 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:

(a) The use, in this State, of tangible personal property acquired outside this State by a nonresident individual and brought into this State by the individual for his or her own use while temporarily within this State or while passing through this State....<sup>35</sup> ILCS 105/3-55.

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<sup>3</sup> The Supreme Court stated that “[u]ndoubtedly the great majority of corporations owned by sole stockholders are ‘dummies’ in the sense that their policies and day-to-day activities are determined not as decisions of the corporation but by their owners acting individually.” National Carbide Corporation v. Commissioner of Internal Revenue, 336 U.S. 422, 433 (1949).

The Act also includes the following:

Property acquired by nonresident. The tax imposed by this Act does not apply to the use, in this State, of tangible personal property that is acquired outside this State by a nonresident individual who then brings the property to this State for use here and who has used the property outside this State for at least 3 months before bringing the property to this State..... 35 ILCS 105/3-70.

Under these provisions, the taxpayer's use of the RV in Illinois would be exempt from tax if he was not a resident of Illinois and used the RV outside of Illinois for at least 3 months before bringing it into this State. Although the Use Tax Act does not define the terms "resident" or "nonresident," case law indicates that "residence" is synonymous with "domicile." Hatcher v. Anders, 117 Ill. App. 3d 236, 239 (2<sup>nd</sup> Dist. 1983). "A person can have only one domicile or permanent residence and once it is established it is retained until a new domicile is acquired." *Id.* In order 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. *Id.* "Once a residence has been established, it is presumed to continue until the contrary is shown." *Id.*

In the present case, the evidence supports a finding that the taxpayer is a resident of Illinois. The taxpayer admitted that his permanent address is in Illinois, and he has not established a residence in any other state. (Tr. pp. 27-28) When he was asked if he maintains a permanent address in the State of Illinois, he responded, "Got to have one somewhere." (Tr. p. 22) The taxpayer pays Illinois income tax, which is a tax on the privilege of receiving income as a resident of Illinois. See 35 ILCS 5/201(a). The taxpayer also has an Illinois driver's license, an Illinois bank account, and receives his bills at an Illinois address. The taxpayer is clearly a resident of Illinois and has not

established a new domicile anywhere else. Because the taxpayer is a resident of Illinois, he does not qualify for the nonresident exemption to the use tax.

Recommendation:

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

Linda Olivero  
Administrative Law Judge

Enter: August 17, 2010