

UT 10-08

Tax Type:

Use Tax

Issue:

Rolling Stock (Vehicle Used Interstate For Hire)

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

ABC TRUCKING, INC.,
Taxpayer

No. 09-ST-0000
IBT# 0000-000
NTL#

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Marc Muchin on behalf of the Illinois Department of Revenue; Bernard Weiler of Mickey, Wilson, Weiler, Renzi & Anderson, P.C. on behalf of ABC Trucking, Inc.

Synopsis:

This matter involves two audit determinations issued to ABC Trucking, Inc. (“taxpayer”) to assess use tax regarding the taxpayer’s use in Illinois of two pickup trucks it purchased during the months of March and October 2007. The taxpayer protested these audit determinations and requested a hearing, which was held on June 30, 2010. During the hearing, the taxpayer’s president and owner presented testimony and the Department and the taxpayer introduced numerous documents into the record. After considering the record and the parties’ arguments, I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the Department’s audit

determinations as indicated in two SC-10-K (Audit Correction and Determination of Tax Due) forms contained in the record, as issued pursuant to statute.

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/or Determination of Tax Due ("SC-10-K") showing a liability due and owing in the amount of \$2,593 for state use tax on purchases, and a penalty in the amount of \$519, for a total of \$3,112, for the period March 2007, and by the admission into evidence of the Department's SC-10-K showing a liability due in the amount of \$2,836 for state use tax on purchases and a penalty in the amount of \$567 for a total of \$3,403 for the period October 2007. Department Exhibit ("Ex.") 1, 2.
2. The taxpayer, an Illinois corporation located in Anywhere, Illinois, is primarily engaged in the business of transporting equipment and other commodities in loads having weights or dimensions that exceed weight or dimension limitations typically permitted for items transported by truck on state and federal highways. Transcript ("Tr.") pp. 13, 14, 18.¹ States generally require that escort vehicles accompany trucks and trailers carrying such loads (see e.g. 92 Ill. Admin. Code, ch. I, sections 554.407, 554.408). Tr. p. 14.
3. The taxpayer's sole owner and president is John Doe. Tr. pp. 12, 13.

¹ John Doe, the taxpayer's owner and president, testified that 80% of the loads the taxpayer transports exceed state and federal highway limits. Tr. pp. 13, 14.

4. On December 29, 1997, the Federal highway administration granted the taxpayer a permit (Permit #MC 207881 P) authorizing it to operate as a contract carrier of property other than household goods in interstate or foreign commerce. Taxpayer's Ex. 29.
5. On January 1, 1995, the Illinois Commerce Commission granted the taxpayer a Public Carrier Certificate authorizing it to transport commodities by motor vehicle in interstate commerce from points between Illinois and other states. *Id.*
6. On March 20, 2007, the taxpayer purchased a 2006 Chevrolet pickup truck, MV no. 0000000, which the taxpayer subsequently used primarily as an escort vehicle. Tr. pp. 17, 18, 21, 22; Department Ex. 1; Taxpayer's Ex. 3, 4, 31B, 33. The purchase price of this vehicle exceeded \$30,000. Department Ex. 1.
7. On October 31, 2007, the taxpayer purchased a 2008 GMC pickup truck, MV No. 0000000, which the taxpayer subsequently used primarily as an escort vehicle. Tr. pp. 17, 18, 21, 22; Department Ex. 2; Taxpayer's Ex. 1, 2, 31A, 32. The purchase price of this vehicle exceeded \$30,000. Department Ex. 2.
8. The taxpayer purchased the aforementioned vehicles for use as escort vehicles in order to comply with state laws requiring that escort vehicles accompany trucks and trailers carrying loads that exceed state and federal highway weight and size limits for unescorted vehicles. Tr. pp. 14, 18-21.
9. The Department audited the taxpayer's purchases of the 2006 Chevrolet pickup truck and the 2008 GMC pickup truck noted above and assessed tax on these purchases for unpaid use taxes. Department Ex. 1, 2. The tax and penalties that the Department has proposed are attributable to the taxpayer's purchase of the aforementioned vehicles

without paying any state sales or use tax. *Id.* The taxpayer claimed the rolling stock exemption under the Use Tax Act at the time it made these purchases and paid no Retailers' Occupation Tax or Use Tax. Tr. p. 17.

10. Illinois law requires that vehicles used as escort vehicles must have a gross weight of not more than 8,000 pounds. Tr. pp. 18, 20. See also 92 Ill. Admin. Code, ch. I, section 554.408. The 2006 Chevrolet pickup truck and the 2008 GMC pickup truck purchased by the taxpayer in 2007 for use as escort vehicles meet Illinois weight requirements for escort vehicles since neither vehicle has a gross weight of more than 8,000 pounds. Tr. pp. 20, 21, 40, 41, 43.²

11. The taxpayer also owns numerous vehicles and trailers designed to carry loads that are in excess of weight limits for trucks on state and federal highways. Tr. p. 13. Some of these vehicles can carry loads weighing up to 440 tons. *Id.* Examples of items typically transported by the taxpayer include transformers, oversized excavators and road work/earthmoving equipment. *Id.* During the evidentiary hearing, the taxpayer provided documentation showing that these vehicles were used to transport equipment and commodities in interstate commerce during 2007, 2008 and 2009. Taxpayer's Ex. 28, 30.

12. The taxpayer provided invoices showing 18 trips to, through or from Illinois moving across state lines during calendar year 2008 and showing 15 trips to, through or from Illinois moving across state lines in 2009. Taxpayer's Ex. 28, 30.

² While the gross weight shown on the vehicle registration for these vehicles is indicated as 16,000 pounds (see Taxpayer's Ex. 32, 33), John Doe, the taxpayer's owner and president, admitted during testimony that they each weigh less than 8,000 pounds. Tr. pp. 40, 41, 43.

Conclusions of Law:

The Department prepared corrected returns for Use Tax liabilities for ABC Trucking, Inc. (“taxpayer”) pursuant to section 4 of the Retailers’ Occupation Tax Act (the "ROTA"), 35 **ILCS** 120/4. Said section is incorporated into the Use Tax Act (the “UTA”) by section 12 of the UTA, 35 **ILCS** 105/12. Section 4 of the ROTA provides in pertinent part as follows:

As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information ... [which return] ... shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.

Proof of such correction by the Department may be made at any hearing before the Department or any legal proceeding by reproduced copy in the name of the Director of Revenue. ... Such certified reproduced copy ... shall without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein.

35 **ILCS** 120/4.

In the case at issue the taxpayer has challenged the assessment by the Department of Use Tax, penalty and interest on the purchase of two motor vehicles. The taxpayer avers that these purchases are exempt from Use Tax based upon the rolling stock exemption as set forth in sections 3-55, and 3-60 of the UTA, 35 **ILCS** 105/3-55 and 35 **ILCS** 105/3-60. These statutory provisions state as follows:

§ 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:

(b) The Use, in this State, of tangible personal property by an intestate carrier for hire as rolling stock moving in interstate commerce ...

§ 3-60. Rolling stock exemption. Except as provided in Section 3-61 of this Act, the rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside of Illinois.

In order to qualify for exemption from Use Tax and Retailers' Occupation Tax, case law is clear that the burden is always on the taxpayer to show that it is entitled to the exemption. Statutes that exempt property, a transaction, or an entity from taxation must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2d Dist. 1995). Moreover, the party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, with all doubts being resolved in favor of taxation. Heller v. Fergus Ford, 59 Ill. 2d 576 (1975).

Prior to July 2004, in order to qualify for the rolling stock exemption, a claimant had to fulfill three distinct requirements. First, to be considered an interstate carrier for hire, the taxpayer had to either possess an Interstate Commerce Commission Certificate of Authority, an Illinois Commerce Commission Certificate of Authority or a comparable certificate certifying that it is a type of interstate carrier for hire not required by law to have an Illinois Commerce Commission Certificate of Authority. See 86 Ill. Admin. Code, ch. I, section 130.340(g). The taxpayer has produced federal and Illinois certificates of authority to show that this requirement has been fulfilled. Taxpayer's Ex.

29 (copies of the taxpayer's Federal Highway Administration Permit MC 207881P issued December 29, 1997 and its Illinois Commerce Commission Transportation Division Public Carrier Certificate issued January 1, 1995).

The second requirement needed to qualify for exemption prior to July 1, 2004 was that the interstate carrier had to be "for hire" when providing transportation services. 35 **ILCS** 105/3-60. The taxpayer has produced voluminous invoices showing that it billed unrelated third parties for the transportation of equipment and other commodities within Illinois and between points in Illinois and other states. Taxpayer's Ex. 28, 30. I find this evidence sufficient to establish that the taxpayer is engaged in interstate transportation of commodities "for hire."

The third requirement necessary to qualify for exemption prior to July 1, 2004 was that the taxpayer proves by documentary evidence that it transported persons or property for hire moving in interstate commerce. 35 **ILCS** 105/3-55. With respect to this requirement, section 3-61 of the UTA, 35 **ILCS** 105/3-61 as in effect prior to July 1, 2004 provides as follows:

§3-61. Use as rolling stock definition. "Use as rolling stock moving in interstate commerce" in subsections (b) and (c) of Section 3-55 means for motor vehicles ... when on 15 or more occasions in a 12-month period the motor vehicle ... has carried persons or property for hire in interstate commerce, even just between points in Illinois, if the motor vehicle ... transports persons whose journeys or property whose shipments originate or terminate outside Illinois.

The record in this case includes invoices showing that the taxpayer engaged in the transportation of equipment and commodities for hire during trips across state lines involving journeys between points in Illinois that originated or terminated outside of Illinois on 18 occasions during 2008 and on 15 occasions during 2009. Taxpayer's Ex.

28, 30. I find this evidence sufficient to show that the taxpayer engaged in an adequate number of trips in interstate commerce during these years to meet the statutory requirements for determining that it transported property in interstate commerce pursuant to section 3-61 as in effect prior to July 1, 2004.

While the three requirements to qualify for the rolling stock exemption as in effect prior to July 1, 2004 have been shown to be met,³ in 2004 Governor Rod Blagojevich signed into law P.A. 93-1033. Section 10 of this Act amends section 3-61 of the UTA as indicated below:

(c) Beginning July 1, 2004, “use as rolling stock moving in interstate commerce” in paragraphs (b) and (c) of Section 3-55 occurs for motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, when during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method. Persons who purchased motor vehicles prior to July 1, 2004 shall make an election in their books and records. If no election is made under this subsection to use the trips or mileage method, the person shall be deemed to have chosen the mileage method. Any election to use either the trips or mileage method will remain in effect for that motor vehicle for any period for which the Department may issue a notice of tax liability under this Act.

For purposes of determining qualifying trips or miles, motor vehicles that carry persons or property for hire, even just between points in Illinois, will be considered used for hire in interstate commerce if the motor vehicle transports persons whose journeys or property whose shipments originate or terminate outside of Illinois. The exemption for motor vehicles used as rolling stock moving in interstate commerce

³ Prior to the enactment of P.A. 93-1033 discussed herein, the Department issued Private Letter rulings indicating that escort vehicles accompanying vehicles meeting the statutory requirements for qualification as rolling stock could qualify for exemption. See e.g. Department of Revenue Private Letter Ruling No. ST 91-0849-PLR, Department of Revenue Private Letter Ruling No. 92-0369-PLR. In Letter Ruling ST 91-0849-PLR, the Department states that these requirements would be deemed to be met “even though [the escort vehicle] may be an escort vehicle for loads you haul and not the vehicle that actually transports the loads you haul.”

may be claimed only for motor vehicles whose gross vehicle weight rating exceeds 16,000 pounds. This definition applies to all property purchased for the purpose of being attached to those motor vehicles as a part thereof. (Emphasis added)

As is readily apparent from the above, P.A. 93-1033, as in effect July 1, 2004, adds a new requirement to pre-existing requirements necessary to qualify for rolling stock exemption by providing, in pertinent part, that "the exemption for motor vehicles used as rolling stock moving in interstate commerce may be claimed only for motor vehicles whose gross vehicle weight rating exceeds 16,000 pounds." 35 ILCS 105/3-61, as in effect July 1, 2004. This change to section 3-61 of the UTA had the effect of eliminating all motor vehicles other than those with a gross weight rating in excess of 16,000 pounds from the class of motor vehicles for which a purchaser could claim the statutory exemption for rolling stock. See also 86 Ill. Admin. Code, ch. I, section 130.340(i)(1)(B) ("Beginning on July 1, 2004, the exemption for motor vehicles used as rolling stock moving in interstate commerce cannot be claimed for motor vehicles whose gross weight rating is 16,000 pounds or less."). Accordingly, taxpayers purchasing motor vehicles having a gross weight of less than 16,000 pounds that heretofore had qualified for the rolling stock exemption by meeting the three requirements noted above lost the benefit of the rolling stock exemption with respect to vehicles purchased after July 1, 2004 when the UTA was amended to limit the application of the rolling stock exemption to vehicles having a gross weight exceeding 16,000 pounds.

As noted above, this new weight requirement for qualification for the rolling stock exemption became effective July 1, 2004. The taxpayer's vehicles at issue in this

case were purchased after July 1, 2004, on March 20, 2007 and on October 31, 2007 and, by the taxpayer's own admission, have a weight of less than 8,000 pounds. Tr. p. 43. Consequently, the taxpayer's purchases are clearly governed by the amended version of section 3-61 effective July 1, 2004, and are, therefore, precluded from qualifying for the rolling stock exemption by the plain language of section 3-61 of the UTA as amended.

The taxpayer contends that the escort vehicles are actually "attached" to the vehicles they escort and therefore should have the weight of the vehicles they accompany aggregated with the escort vehicles in determining if the weight specifications set forth in section 3-61 of the UTA are satisfied. Tr. pp. 49-53. However, it has presented no proof establishing any manner of physical attachment between the escort vehicles at issue and any other vehicles the taxpayer uses to transport equipment and commodities.

The taxpayer reasons that the term "attached" as used in section 3-61 can be construed to cover vehicles whose primary purpose is to be used in conjunction with other vehicles moving in interstate commerce whether or not they are physically attached to such vehicles. *Id.* This construction of the term "attached" must be analyzed applying the rule of statutory construction that words used in statutes are to be given their plain and ordinarily understood meaning unless otherwise indicated by the legislature. Scandron v. City of Des Plaines, 153 Ill. 2d 164 (1992); Niven v. Siqueira, 109 Ill. 2d 357 (1985); United Airlines v. Mahin, 49 Ill. 2d 45 (1971). Accordingly, where words having more than one meaning are used in a legislative provision, they must be given the meaning which comports with the usual and popular meaning ascribed to the words employed. *Id.*

The American Heritage Dictionary defines the verb “attach” (the verb from which the adjective “attached” is derived) as “[T]o fasten or become fastened; connect”. The American Heritage Dictionary 53 (3d ed. 1994). The taxpayer has proffered no authority to support any meaning of the term “attached” that differs from the common dictionary definition of this term noted above. Applying to the word “attached” its ordinarily accepted meaning, it cannot logically be said that an escort vehicle that accompanies other vehicles is “attached” to such vehicles under the commonly understood meaning of that word where no physical connection between these vehicles has been shown. Consequently, I find that the term “attached” cannot be construed in the manner advocated by the taxpayer. Accordingly, in spite of clear evidence that the vehicles at issue in this case are used in connection with interstate commerce for hire and satisfy the requirements for the rolling stock exemption in effect prior to the 2004 legislative changes noted above, the salient fact that both vehicles weigh less than 16,000 pounds precludes the application of the rolling stock exemption to these vehicles in this case.

The amendments to section 3-61 affected by P.A. 93-1033 noted above have also increased the evidentiary burden that must be met to establish that a taxpayer operates in interstate commerce. Prior to July 1, 2004, in order to prove that a taxpayer moved property in interstate commerce for hire the taxpayer was only required to show that its vehicles moved in interstate commerce “on 15 or more occasions in a 12-month period ...[.]” 35 **ILCS** 105/3-61 (as in effect prior to 7/1/04). However, as noted above, P.A. 93-1033 has amended section 3-61 effective July 1, 2004 to provide as follows:

(c) Beginning July 1, 2004, “use as rolling stock moving in interstate commerce” in paragraphs (b) and (c) of Section 3-55 occurs for motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, when

during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period. The person claiming the exemption shall make an election at the time of purchase to use either the trips or mileage method. Persons who purchased motor vehicles prior to July 1, 2004 shall make an election in their books and records. If no election is made under this situation to use the trips or mileage method, the person shall be deemed to have chosen the mileage method. Any election to use either the trips or mileage method will remain in effect for that motor vehicle for any period for which the Department may issue a notice of tax liability under this Act. (Emphasis added)

The taxpayer seeks to meet its burden of showing a sufficient number of interstate trips to qualify for the rolling stock exemption by presenting invoices showing that its equipment was used to transport property on trips between points in Illinois that originated or terminated in other states on 15 or more occasions in both 2008 and 2009. Taxpayer's Ex. 28, 30. This evidence would have been sufficient to establish that the taxpayer engaged in interstate commerce for hire pursuant to section 3-61 of the UTA prior to July 1, 2004. However, after that date, the taxpayer was required to show that "during a 12-month period the rolling stock has carried persons or property for hire in interstate commerce for greater than 50% of its total trips for that period or for greater than 50% of its total miles for that period."

The taxpayer avers that the vehicles at issue were used more than 80% of the time for trips in interstate commerce during 2007, 2008 and 2009. Tr. pp. 15-17, 22. However, the taxpayer has presented neither any documentation to corroborate this claim nor any explanation of how this conclusion was arrived at based upon its books and records. The Illinois Appellate Court has clearly and unequivocally held that proof of exempt status under the rolling stock exemption must be established by documentary

evidence in order to rebut the Department's statutorily mandated *prima facie* case supporting taxation arising from its assessment determination. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). Given the absence of any such documentation in the record, I conclude that the taxpayer has failed to prove that it transported persons or property in interstate commerce for hire in the manner required by the relevant statute.

In sum, the taxpayer has submitted insufficient proof that its vehicles qualify for the rolling stock exemption under the new requirements necessary to establish eligibility for this exemption enacted pursuant to amendments to section 3-61 which were in effect during 2007, the period at issue in this case. Accordingly, it is recommended that the taxpayer's rolling stock exemption claim be denied and that the liabilities imposed pursuant to the Department's SC-10-K determinations noted above be affirmed in their entirety.

Ted Sherrod

Administrative Law Judge

Date: August 12, 2010