

UT 11-14

Tax Type: Use Tax

Issue: Use Tax On Out-of-State Purchases Brought Into Illinois

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

THE DEPARTMENT OF REVENUE)	Docket No.	10-ST-0303
OF THE STATE OF ILLINOIS)	Account No.	19734-72768
v.)	NTL No.	CNXX XX29 2X69 5688
JOHN DOE,)	John E. White,	
Taxpayer)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared *pro se*; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves the Illinois Department of Revenue's (Department) issuance of a Notice of Tax Liability (NTL) to John Doe (John Doe or Taxpayer), regarding his purchase of an all terrain vehicle (ATV) in Michigan in 2004. The issue is whether John Doe owes Illinois motor vehicle use tax (VUT) regarding the ATV.

The hearing was held at the Department's offices in Chicago. John Doe offered documents into evidence, and he and his father testified. After considering the documentary evidence and testimony offered at hearing, I conclude that Taxpayer has not rebutted the Department's determination that he owes VUT. However, the evidence shows that the amount of the tax assessed should be reduced, to coincide with Illinois' VUT regulations.

Findings of Fact:

1. In January 2004, John Doe purchased a 2004 Honda ATV, model number TRX350FE4, and bearing a vehicle identification number (VIN) of XXXXXX (hereafter, the Honda), from Motorsports, Inc. d/b/a Honda. *See* Department Taxpayer Ex. C (copy of front and back of a check, dated January 28, 2004, made payable to Honda in the amount of \$3,600); Hearing Transcript (Tr.) p. 42 (John Doe). The seller is located in Anywhere, Michigan. Taxpayer Ex. C.
2. Taxpayer is an Illinois resident. Tr. pp. 43-44 (John Doe).
3. John Doe's father, William John Doe (William), signed a check drawn on an account at a Wisconsin bank, and that check was tendered to the seller, as partial payment for the Honda. Taxpayer Ex. C; Tr. p. 41 (William). The check was written in the amount of \$3,600. Taxpayer Ex. C. William testified that other vehicles were traded in to the seller when the Honda was purchased. Tr. p. 41 (William).
4. The Department initiated an audit of John Doe's purchase of the Honda, and Department auditor Tammy Hill (Hill) conducted the audit. Taxpayer Ex. A, pp. 1-2 (copies of, respectively: a letter from William to Hill, dated October 7, 2009; and a letter from Hill to John Doe regarding his purchase of the Honda, dated September 25, 2009). The audit was initiated after the Department determined that John Doe purchased the Honda from a Michigan seller, and did not register the Honda in Illinois or pay Illinois use tax or VUT regarding that purchase. *Id.*, pp. 2-3.
5. John Doe insured the vehicle with a Michigan insurance company. Taxpayer Ex. A (pp. 3-5), E (copies of insurance documents regarding the Honda and other property). The insurance documents identify John Doe's Illinois address as his address. Taxpayer Exs. A, E.

6. John Doe did not have available to offer into evidence a copy of the invoice prepared by the Michigan seller to document the sale of the Honda. Tr. pp. 32-33 (William). Nor did he have available to offer into evidence a copy of any tax return Michigan required to be prepared, by either the Michigan seller or John Doe, to report the sale of the Honda that John Doe claims was purchased for use in Michigan. *See* Tr. pp. 34 (William), 42 (John Doe); Mich. Comp. Laws § 205.52 (General Sales Tax Act) (2003); Mich. Comp. Laws § 205.93 (Use Tax Act) (2003).
7. There was no documentary evidence offered to show that John Doe paid Michigan sales or use tax to the seller, or to the state of Michigan, regarding his purchase of the Honda. Tr. pp. 34 (William), 42 (John Doe).
8. There was no documentary evidence offered to show that John Doe titled or registered the Honda in Michigan.
9. There was no documentary evidence, made contemporaneously with John Doe's purchase of the Honda, offered to show where the seller delivered physical possession of the Honda to John Doe, following John Doe's purchase of it. *See* Tr. p. 33 (William).
10. John Doe did not file an Illinois tax return regarding his purchase of the Honda. *See* Department Exs. 1-2; Tr. p. 42 (John Doe).
11. The Department issued an NTL to John Doe to assess VUT in the amount of \$364, an audit late filing penalty in the amount of \$73, an audit late payment penalty in the amount of \$7, plus statutory interest. Department Ex. 2 (copy of NTL "for Form EDA-95, Auditor Prepared Motor Vehicle Use Tax Report").

Conclusions of Law:

Illinois' VUT is codified as part of the Illinois Vehicle Code (the Code) and it imposes a

tax on "... the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of this Code acquired by gift, transfer, or purchase ...” 625 ILCS 5/3-1001. The Illinois legislature granted the Department the power to administer and enforce the provisions of the Code’s VUT. 625 ILCS 5/3-1003. It also granted to the Department and to persons subject to the Code’s VUT:

... the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act, as now or hereafter amended, which are not inconsistent with this Article, as fully as if provisions contained in those Sections of the Use Tax Act were set forth in this Article.

625 ILCS 5/3-1003.

Section 12 of the Use Tax Act (UTA) incorporates several sections of the complementary Retailers’ Occupation Tax Act (ROTA), including ROTA § 5. 35 ILCS 105/12. Section 5 of the ROTA provides, among other things, “In case any person ... fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination.” 35 ILCS 120/5.

At hearing, the Department entered into evidence a copy of the NTL it issued to Taxpayer, under the certificate of the Director. Department Ex. 2. Pursuant to § 12 of the UTA, and § 3-1003 of the Code, that NTL is prima facie proof of the correctness of the Department’s determination of tax due. 35 ILCS 105/12; 35 ILCS 120/5; 625 ILCS 5/3-1003. The Department's prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department’s assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer must present evidence that is consistent, probable and closely identified with

its books and records, to show that the assessment is not correct. *Id.*

The Department's prima facie case, moreover, extends to all elements of taxability. *See Branson v. Department of Revenue*, 68 Ill. 2d 247, 258, 659 N.E.2d 961, 966-67 (1995) (Department's introduction of Notice of Penalty Liability establishes prima facie proof that taxpayer acted with the required mental state); *Soho Club, Inc. v. Department of Revenue*, 269 Ill. App. 3d 220, 232, 645 N.E.2d 1060, 1068 (1st Dist. 1995) (Department's introduction of Notice of Tax Liability establishes prima facie proof that taxpayer is engaged in the occupation that is subject to taxation). In *Balla v. Department of Revenue*, the court noted that,

Ordinarily, the taxing authority has the burden of proof regarding a taxpayer's liability to the government. [citations omitted] For example, the taxing authority bears the burden of proving that the taxpayer actually received income ..., and that such income is properly subject to taxation The Illinois legislature, in order to aid the Department in meeting its burden of proof in this respect, has provided that the findings of the Department concerning the correct amount of tax due are prima facie correct. When the taxpayer introduces credible evidence to the contrary, the burden is again placed on the Department to prove its contentions by a preponderance of the evidence.

Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981).

The taxpayer in *Balla* was a single mother, who claimed an Illinois income tax exemption for children for whom she testified she provided support. The Department denied the exemption, because Balla could not document that the Internal Revenue Service had granted her the corresponding federal exemption for the tax years at issue. *Balla*, 96 Ill. App. 3d at 296-97, 421 N.E.2d at 239. The court held that, “[u]nder these circumstances, we do not believe that the Department's finding that the petitioner's uncontroverted testimony was insufficient to establish her claim was obviously or clearly wrong.” *Id.* at 297, 421 N.E.2d at 239.

Here, John Doe claims that he should not be subject to Illinois VUT regarding his purchase of the Honda, since he never brought the Honda into Illinois for use. Tr. p. 42 (John

Doe). John Doe testified that the Honda has always remained in Michigan, where he purchased it. *Id.* But as was the case in Balla, John Doe’s claim here is based solely on testimony, and there is no documentary evidence that corroborates such testimony. Illinois law is clear that mere testimony is insufficient to rebut the Department’s presumptively correct determination that a particular tax is due. Balla, 96 Ill. App. 3d at 297, 421 N.E.2d at 239.

Michigan imposes, and at the time of purchase imposed, a tax on sales and/or purchases of motor vehicles, such as John Doe’s Honda, for use in Michigan. Mich. Comp. Laws § 205.52 (General Sales Tax Act) (2003); Mich. Comp. Laws §§ 205.93 (Use Tax Act) (2003). Like Illinois, Michigan tax law also grants certain statutory exemptions regarding such sales. Mich. Comp. Laws §§ 205.54a-205.54cc (sales tax act exemptions) (2003); Mich. Comp. Laws §§ 205.94a-205.94z (use tax act exemptions) (2003). Michigan tax law presumes “[t]hat tangible personal property purchased is subject to the [use] tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.” Mich. Comp. Laws § 205.93(1)(a) (2003).

At hearing, however, William testified that the seller incurred no Michigan sales tax liability regarding its sale to Taxpayer. Tr. p. 34 (William). But neither he nor John Doe offered documentary evidence of the sort that reasonable persons retain when they purchase a motor vehicle, and which many states, including Michigan, require sellers and/or purchasers to keep regarding purchases of vehicles for use in the state. *See* Mich. Comp. Laws § 205.62 (section in Michigan’s general sales tax act titled, “Obligations of seller and purchaser with respect to documentation of claims for exemptions; liability for tax in event of improperly claimed exemptions; proof that transaction exempt from tax, time; blanket exemptions; certified service provider deemed seller”); Mich. Comp. Laws § 205.104b (section in Michigan’s use tax act

titled, “Obligations of seller and purchaser with respect to documentation of claims of exemptions; liability for tax in event of improperly claimed exemptions; proof that transaction exempt from tax, time; blanket exemptions”).

When taking the evidence into account, therefore, it is entirely possible that the Michigan tax collector has been told that the Honda was purchased by an Illinois resident for use in Illinois, while the Illinois tax collector is being told that the Honda was purchased for use, and used, solely in Michigan. I do not mean to suggest that the evidence definitely shows that John Doe made such a claim to the Michigan tax collector, nor have I found that such facts were established by the evidence. *See supra*, pp. 2-3 (findings of fact). Taxpayer, or the Honda’s seller, may well have filed a written report or tax return with the Michigan tax collector notifying it that John Doe purchased the Honda for use in Michigan, and that some statutory exemption applied to John Doe’s purchase and use of the vehicle in that state. Mich. Comp. Laws § 205.62 (2003); Mich. Comp. Laws § 205.104b (2003). But no such documentary evidence was offered at hearing.

John Doe has the burden to produce documentary evidence to show that Illinois tax was not due. Documentary evidence consisting of, for example, a report to the Michigan tax collector notifying it that John Doe purchased the Honda for use in Michigan would have been probative evidence of that fact. That is, it would have provided documentary evidence that he purchased the Honda for use in Michigan. It would have also provided some documentary corroboration of his hearing testimony that he did not purchase the Honda for use, or use the Honda, in Illinois.¹ Similarly, a Michigan certificate of title for the Honda would have provided

¹ When describing examples of documentary evidence that might have corroborated Taxpayer’s testimony at this hearing, I want to stress that such documents would not constitute conclusive evidence of whether Illinois VUT is due in all circumstances. That is because Illinois requires VUT to be paid for

circumstantial evidence of where John Doe intended to use the Honda, and documentary corroboration of his testimony. But, again, no such documentary evidence was offered at hearing. Therefore, John Doe has not rebutted the Department's presumptively correct determination that Illinois tax is due.

While John Doe did not rebut the Department's determination that Illinois VUT was due, the documentary evidence that was offered clearly shows that the Honda is an ATV. Department Ex. 2; Taxpayer Ex. A, pp. 2-3. By regulation, the correct amount of VUT due on the purchase and use of an ATV is \$25. 86 Ill. Admin. Code § 151.105(g). Thus, the NTL should be revised to identify the correct amount of tax due.

Conclusion:

I recommend that the Director revise the NTL to show tax due in the amount of \$25. I recommend that the penalties assessed also be revised, to correspond to the correct amount of tax due. I recommend that the NTL be finalized as so revised, with interest to accrue pursuant to statute.

October 3, 2011

John E. White
Administrative Law Judge

motor vehicles required to be titled in Illinois, even if the owner first used the vehicle in another state. 625 ILCS 5/3-1001; 86 Ill. Admin. Code § 151.110. But there is no claim that that is what happened here.