

Findings of Fact:

1. In December 2009, ABC Business was starting a business that was located in Anywhere, Illinois location. Hearing Transcript (Tr.) p. 9.
2. ABC Business' planned business purpose was to rent small shuttle buses, to others, for hire. Tr. p. 9.
3. ABC Business purchased two buses from a retailer in Pennsylvania, and took delivery of them, in Illinois, in December 2009. Tr. pp. 9-10.
4. Shortly after it took delivery of the vehicles, ABC Business applied for certificates of title and registration for them from the Illinois Secretary of State, and received those title and registration certificates for the vehicle. Tr. pp. 9-10.
5. To obtain titles for the vehicles, ABC Business prepared a separate Illinois motor vehicle use tax return for each vehicle, and paid Illinois use tax to the Department. *See* Department Ex. 1 (copy of Department's Denial and ABC Business' protest); *see also* 625 ILCS 5/3-104(f), 3-106(a).
6. After ABC Business received the vehicles, it kept them at its Anywhere location until approximately May and June of 2010, when ABC Business relocated its business to Tennessee. Tr. p. 10.
7. After relocating its business, and the vehicles, to Tennessee, ABC Business registered them in Tennessee. Tr. p. 11.
8. After relocating its business, and the vehicles, to Tennessee, ABC Business filed amended Illinois use tax returns to seek a refund of the tax it previously paid to Illinois. Department Ex. 1.

9. The Department issued a Notice of Tentative Denial of Claim (Denial) to ABC Business, and ABC Business protested that Denial. Department Ex. 1.

Conclusions of Law:

This matter involves Taxpayer's request for a refund of the Illinois use tax it paid shortly after it took delivery, in Illinois, of two motor vehicles that it purchased from an out-of-state retailer. For the reasons that follow, I conclude that § 19 of the UTA does not authorize any refund under the facts presented in this matter.

The Illinois Use Tax Act (UTA) imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer" 35 ILCS 105/3. The UTA is a compliment to the Illinois Retailers' Occupation Tax Act (ROTA). Together, the UTA and the ROTA make up what is colloquially known as Illinois' sales tax. Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 362, 919 N.E.2d 926, 932 (2009). The ROTA imposes a tax on the privilege of engaging in the occupation of selling tangible personal property, at retail, to persons for use or consumption, in Illinois. 35 ILCS 120/2. The UTA imposes a tax on persons for the privilege of using tangible personal property purchased, at retail, in Illinois. 35 ILCS 105/3. The purpose of the use tax is primarily to prevent avoidance of the ROT by people making out-of-State purchases, and to protect Illinois merchants against such diversion of business to retailers outside Illinois. Brown's Furniture, Inc. v. Wagner, 171 Ill. 2d 410, 418, 665 N.E.2d 795, 800 (1996).

Section 19 of the UTA authorizes the Department to issue a refund of tax that a purchaser paid in error, as a result of a mistake of fact or law. 35 ILCS 105/19. Specifically, it provides, in pertinent part:

If it shall appear that an amount of tax or penalty or interest has been paid in error hereunder to the Department by a purchaser, as distinguished from the retailer, whether such amount be paid through a mistake of fact or an error of law, such

purchaser may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, and 6c of the Retailers' Occupation Tax Act. ***

35 ILCS 105/19.

Section 6 of the ROTA, provides, in pertinent part:

Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such. For purposes of this Section, the tax is deemed to be erroneously paid by a retailer when the manufacturer of a motor vehicle sold by the retailer accepts the return of that automobile and refunds to the purchaser the selling price of that vehicle as provided in the New Vehicle Buyer Protection Act. When a motor vehicle is returned for a refund of the purchase price under the New Vehicle Buyer Protection Act, the Department shall issue a credit memorandum or a refund for the amount of tax paid by the retailer under this Act attributable to the initial sale of that vehicle. Claims submitted by the retailer are subject to the same restrictions and procedures provided for in this Act.

35 ILCS 120/6. Read together, ROTA § 6 makes clear that the phrase “tax ... paid in error,” as used in UTA § 19, means a tax that has been paid but which was not due.

Section 20 of the UTA requires the Department to examine a claim for refund filed by a purchaser, and to notify the purchaser of its tentative determination regarding it. 35 ILCS 105/20. It further provides that the Department's tentative determination of such a claim shall be prima facie correct, and, when offered under the Director's certification of record, the Department's tentative determination to deny a purchaser's claim constitutes prima facie proof that the taxpayer is not entitled to a credit. 35 ILCS 105/20. In this case, the Department established its prima facie case when it introduced Department Exhibit 1, consisting of a copy of its denial, under the certificate of the Director. Department Ex. 1. That exhibit, without more, constitutes

prima facie proof that ABC Business was not entitled to a refund of the Illinois use tax it previously paid to the Department. 35 ILCS 105/20.

The Department's prima facie case is overcome, and the burden shifts to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations were not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157-58, 242 N.E.2d 205, 207 (1968). A taxpayer cannot overcome the statutory presumption merely by denying the accuracy of the Department's determination. 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 has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the Department's determination is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053.

Here, ABC Business offered no books and records into evidence. Instead, it offered the testimony of John Doe, its president and owner. Howard Worthington, Inc. v. Illinois Department of Revenue, 96 Ill. App. 3d 1132, 1134-35, 421 N.E.2d 1030, 1032 (2d Dist. 1981) (testimony offered by corporate officers, but without any corroborating books and records, did not rebut Department's prima facie case). John Doe testified that ABC Business purchased the buses from a retailer in Pennsylvania, and took delivery of them in December 2009. Tr. pp. 9-10. The Illinois Vehicle Code requires owners of untitled motor vehicles in Illinois to have them titled with the State (625 ILCS 5/3-101), and, as a condition of issuing a certificate of title for a vehicle, the Secretary of State requires the owner to either show proof that no Illinois tax is owed, or proof that tax has been paid. 625 ILCS 5/3-104(f), 3-106(a). ABC Business applied for

and obtained certificates of title and registration for the vehicles, and, as required, prepared and filed Illinois use tax returns for the vehicles. *Id.* John Doe said that ABC Business intended to use the buses by renting them to others in Illinois, but that never occurred. Tr. pp. 9-11, 14; Telco Leasing , Inc. v. Allphin, 63 Ill. 2d 305, 309, 347 N.E.2d 729, 731 (1976) (“the owner and lessor of property is the ‘user’ of the property within the meaning of the Use Tax Act.”). Instead, for the six months from the date ABC Business took delivery of them, the buses remained parked at ABC Business’ business location, until it relocated them, and its business, outside of Illinois. Tr. p. 15. In essence, ABC Business’ claim is based on its argument that, since it never used the buses in Illinois for their intended purpose, it paid Illinois use tax in error.

In this respect, it appears that ABC Business wants the term “use” to mean something other than the legislature’s definition of it, as set forth in the UTA. The legislature defined “use” to mean “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; Telco Leasing , Inc., 63 Ill. 2d at 309-10, 347 N.E.2d at 731. In this case, when ABC Business took delivery of the buses in Illinois, and had someone park them at its business location in Anywhere, it was exercising a right or power over the vehicles, in Illinois, incident to its ownership of them. *Id.*; 35 ILCS 105/4 (“Evidence that tangible personal property was sold by any person for delivery to a person residing or engaged in business in this State shall be prima facie evidence that such tangible personal property was sold for use in this State.”). Further, it used the buses in Illinois when it registered and titled them in Illinois. 35 ILCS 105/2, 9; 625 ILCS 5/3-101 (“‘Owner’ means a person who holds legal document of ownership of a vehicle, ...”).

Since ABC Business used the vehicles in Illinois, the use tax it paid was due. Since the tax was due, it was not paid in error. Section 19 does not authorize a refund of any amount of tax

that was paid and which was due. 35 ILCS 105/19; 35 ILCS 120/6.

Conclusion:

I recommend that the Denial be finalized as issued.

August 6, 2013

John E. White

Administrative Law Judge