

UT 15-04

Tax Type: Use Tax

Tax Issue: Use Tax On Out-of-State Purchases Brought Into Illinois and Interstate Commerce (Exemption Issue)

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

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

v.

**ABC BUSINESS, LLC ,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
XXXX
Period XXXX**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Matthew Crain on behalf of the Illinois Department of Revenue; Brian Drew of Drew & Drew, PC on behalf of ABC Business, LLC.

Synopsis:

This cause came on to be heard following a use tax audit performed upon the taxpayer by an auditor of the Illinois Department of Revenue (“Department”) for the period June 10, 2008 through July 1, 2008. After conducting the audit, the Department’s auditor caused to be issued Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Reports which served as the basis for subsequently issued Notices of Tax Liability whose timely protest by ABC Business, LLC (“taxpayer”) has resulted in this contested case.

Prior to the convening of an evidentiary hearing, the parties agreed to certain stipulations, which are enumerated below, and further agreed to forego an evidentiary hearing in this case and

to allow it to be decided based upon the stipulated record. After considering the evidence included in the record, I recommend that this matter be resolved in favor of the Department.

Findings of Fact:¹

I find the facts to be as stipulated between the parties in the “Stipulations of Facts and Motion for Judgments on Filings” filed July 28, 2014 (“Stip.”), which are as follows:

1. On or about May 29, 2008, the taxpayer purchased a recreational vehicle. Stip. 1.
2. On or about September 24, 2012, the Department issued Notices of Tax Liability for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report, Letter IDs XXXX and XXXX. Stip. 2.
3. On or about November 13, 2012, the taxpayer protested said Notices of Tax Liability. Stip. 3. The taxpayer’s protest reflects its position that Illinois Motor Vehicle Use Taxes are not owed. Stip. 4.

In addition to the foregoing facts, based upon the documentary evidence and admissions contained in the record, I further find as follows:

4. Taxpayer is a single member Montana Limited Liability Company in good standing in that State. Taxpayer’s Exhibit (“Ex.”) 1 (Minutes of Special Meeting of ABC Business, LLC approved August 6, 2008).
5. John Doe, a resident of Illinois, is the sole member of the taxpayer. *Id.*; Department Ex. 1 (copy of John Doe’s Illinois driver’s license).
6. On May 29, 2008, the taxpayer acquired a motor home, VIN XXXX from XYZ Business, a motor home retailer having its places of business in Georgia for a purchase price of \$XXXX. Department Ex. 1 (sales agreement between taxpayer and XYZ Business). This vehicle was

¹ Unless otherwise noted, findings of fact apply to 2008.

registered in Montana. Department Ex. 1 (List of vehicles owned by John Doe/Jane Doe). It was brought into Illinois on June 10, 2008 for storage. Department Ex. 1 (Notice of Tax Liability Letter ID number XXXX)²; Department Ex. 2.

7. During July, 2008, the taxpayer purchased a vehicle, VIN XXXX. Department Ex. 1 (List of vehicles owned by John Doe/Jane Doe; Minutes of Special Meeting of ABC Business, LLC approved August 6, 2008). This vehicle was registered in Montana. *Id.* It was brought into Illinois on July 1, 2008 for storage. Department Ex. 1 (Notice of Tax Liability Letter ID number XXXX); Department Ex. 2.
8. On June 27, 2007, approximately a year prior to the acquisition of the aforementioned vehicles by the taxpayer, John Doe, the taxpayer's sole member, entered into an agreement to lease real property designed for use by recreational vehicles located in Montana. Taxpayer's Ex. 1 (Lease Agreement executed by John Doe 6/27/07).
9. On September 24, 2012, the Department issued the Notices of Tax Liability indicated above based upon its determination that the taxpayer engaged in the taxable use of its motor home and its vehicle. Department Ex. 1 (Notices of Tax Liability Letter ID number XXXX and XXXX).
10. The taxpayer timely protested these Notices of Tax Liability. Department Ex. 2.

Conclusions of Law:

At issue in this case is whether the storage of a motor home and a vehicle in Illinois by ABC Business, LLC ("taxpayer") commencing in 2008, subsequent to the purchase of these vehicles in 2008, constituted a taxable use of these vehicles by the taxpayer in this state. The

² The Department's Notices of Tax Liability issued to the taxpayer indicate the date on which vehicles at issue were brought into Illinois. While the basis for the Department's determination that these vehicles were brought into Illinois on the dates indicated in the Notices of Tax Liability is not provided, by law the Department's Notices of Tax Liability are deemed to be correct until rebutted. 35 ILCS 120/4 as incorporated into the Use Tax Act at 35 ILCS 105/12.

record indicates that the taxpayer purchased a motor home, VIN XXXX from XYZ Business, a recreational vehicle dealer located in Georgia on May 29, 2008 for a purchase price of \$XXXX. Department Ex. 1. The record further indicates that, during July, 2008, the taxpayer purchased a vehicle, VIN XXXX. *Id.* The record does not indicate where or from whom this vehicle was acquired or how much the taxpayer paid for it.

Between June 10, 2008 and July 1, 2008, the taxpayer brought both of these vehicles into Illinois for storage. Department Ex. 1, 2. As of November 13, 2012, the date on which the taxpayer filed its protest of the Department's assessments at issue in this case, the taxpayer's motor home remained in storage in this state. Department Ex. 2.

On September 24, 2012, the Department issued Notices of Tax Liability Letter ID number XXXX and XXXX based upon its determination that the taxpayer engaged in the taxable use of both of these vehicles in Illinois commencing in June and July, 2008. Department Ex. 1. Section 12 of the Use Tax Act, 35 ILCS 105/1 *et seq.* ("UTA") incorporates by reference section 4 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*), which provides that a certified copy of notices of tax liability issued by the Department "shall be prima facie proof of the correctness of the amount of tax due, as shown therein." 35 ILCS 105/12; 35 ILCS 120/4. Once the Department has established its *prima facie* case by submitting a certified copy of these notices of tax liability into evidence, the burden shifts to the taxpayer to overcome this presumption that the Department's assessment determinations are valid. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than 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 its claim. *Id.*

Section 3 of the UTA imposes a use tax upon the privilege of using tangible personal property such as a motor vehicle, in Illinois that was acquired in a retail sale transaction from a retailer. 35 ILCS 105/3. The UTA compliments the ROTA which is a tax on persons engaged in the business of selling at retail tangible personal property (35 ILCS 120/2), and is imposed at the same rate as the ROTA. Compare 35 ILCS 105/3-10 and 35 ILCS 120/2-10. The function of the use tax is to prevent the avoidance of the Retailers' Occupation Tax by persons who make purchases in states that do not impose any similar tax on sales and thus protects Illinois merchants from the diversion of business to retailers outside of Illinois. Brown's Furniture, Inc. v. Wagner, 171 Ill. 2d 410, 418 (1996).

As previously noted, the record in this case indicates that the taxpayer stored both a motor home and a vehicle in Illinois during 2008 when these vehicles were brought into this state. The taxpayer's protest states that these vehicles were brought into this state to be stored here. Department Ex. 2. In its protest, the taxpayer indicates that it does not believe the act of storing these vehicles in Illinois constituted a taxable use of these vehicles in this state, stating in its protest as follows: "These vehicles were never intended to be used in Illinois only stored when not in use[.]". *Id.*

The term "use" as used in the UTA is broadly defined to include "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. Evidence contained in the record clearly indicates that the taxpayer "used" the motor vehicles at issue in Illinois in accordance with this definition of "use" under the UTA. With respect to the taxpayer's motor home, the record documents the purchase of this vehicle in Georgia, its registration in Montana and its relocation to Illinois for storage in this state soon after its purchase. While the record contains scant evidence concerning the purchase

of the taxpayer's vehicle, it does indicate that this vehicle was brought into Illinois for storage on July 1, 2008 and stored in this state for an indeterminate period until it was allegedly sold. Department Ex. 2. The act of storing these vehicles in Illinois is clear indicia of the exercise of a right or power over this tangible personal property incident to ownership of it constituting a taxable use as that term is defined in the UTA. Accordingly, the taxpayer's act of storing these vehicles in Illinois fits exactly into the statutory definition of "use" which triggers the application of the use tax pursuant to the UTA.

Contrary to the taxpayer's claim that it did not use the vehicles at issue when it stored them here, the use tax is not a tax which arises only out of the operational use of tangible personal property, but rather is a tax placed upon the exercise of rights or powers of any kind over such property incident to ownership. Time Inc. v. Department of Revenue, 11 Ill. App. 3d 282, 288 (1st Dist. 1973). Accordingly, I must reject the taxpayer's claim that these vehicles were not used in Illinois as the term "use" is defined in the UTA when they were stored here, and I find that they were properly subject to Illinois use tax.

The record indicates that the taxpayer is a single member Montana Limited Liability Company having as its sole member John Doe, an Illinois resident, and that John Doe made arrangements to lease real property upon which to use the vehicles at issue for recreational purposes in that state. Taxpayer Ex. 1 (Lease Agreement executed by John Doe on 6/27/07). It also indicates that, while John Doe and his wife have previously purchased many vehicles as individuals (Department Ex. 1, List of vehicles owned by John Doe/Jane Doe), they elected to establish an out of state Limited Liability Company for the purpose of purchasing the vehicles at issue in this matter. I infer from the establishment and use of an out of state Limited Liability Company, and arrangements to use this property outside of Illinois, that the purchase and use of

the vehicles at issue was structured to take advantage of exemptions from use tax afforded to nonresidents, and to the use of property in Illinois that is incidental to its out of state use, by section 3-55 of the UTA, 35 **ILCS** 105/3-55. However, the instate use of the vehicles at issue having been established by the facts contained in the record, it was incumbent upon the taxpayer to prove that one or more of the exemption provisions contained in this measure applied to the taxpayer's act of storing the motor vehicles at issue in Illinois and rendered this activity exempt from use tax.

Assuming that the taxpayer is a nonresident, the exemption that most closely fits the facts contained in the record is set forth at section 3-55(e) of the UTA, 35 **ILCS** 105/3-55(e), which provides as follows:

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:

(e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.

35 **ILCS** 105/3-55(e)

The foregoing clearly indicates that qualification for exemption pursuant to section 3-55(e) requires a showing that property is acquired outside of Illinois, stored in this state and removed from this state after storage in this state has been completed.

With respect to the taxpayer's vehicles at issue, the purported use of which is the basis for the assessments in controversy, the record in this case contains scant evidence that this

exemption applies to the taxpayer's storage of these motor vehicles in Illinois. While the record indicates that these motor vehicles were purchased by the taxpayer, a purported non-resident of Illinois³, it does not indicate whether the taxpayer's vehicle at issue was purchased outside of Illinois, or whether either of the vehicles at issue were ever removed from this state after being brought into the state for storage.

In this case, as in all cases in which a tax exemption is purported to apply, a taxpayer's claim that it is exempt from tax must be proven by the taxpayer, and doubts regarding the applicability of exemptions resolved in favor of taxation. Accordingly, a party claiming an exemption has the burden to prove clearly and demonstrate conclusively that it is entitled to the exemption. Telco Leasing Inc. v. Allphin, 63 Ill. 2d 305, 310 (1976); LeTourneau Railroad Services Inc. v. Department of Revenue, 134 Ill. App. 3d 638, 642 (1st Dist. 1985). In this case, the taxpayer has cited no authority or facts that directly support any claim to exemption pursuant to section 3-55(e) of the UTA, noted above, or to any other exemption from tax under Illinois law. Accordingly, the taxpayer has failed to show that its taxable use of motor vehicles pursuant to its storage of these vehicles in Illinois did not result in tax liability by virtue of any applicable tax exemption.

As previously noted, section 12 of the UTA, 35 ILCS 105/12, incorporates by reference section 4 of the ROTA, which provides that a certified copy of the Department's determination of the amount of tax due "shall, without further proof, be admitted into evidence ...and shall be *prima facie* proof of the correctness of the amount of tax due, as shown therein." 35 ILCS 120/4. In the instant case, the Department introduced into the record notices of tax liability issued to the taxpayer. The burden shifted to the taxpayer to overcome this presumption of validity once the

³ Although the taxpayer is a Montana Limited Liability Company, the record contains no facts establishing what, if any, activities in Montana the taxpayer actually engaged in that would prove the legitimacy of its claim to be a nonresident of Illinois where its sole member, John Doe, resides.

Department established its *prima facie* case by submitting certified copies of the Department's determination into the record. Clark Oil & Refining Co., *supra*.

Given the Department's unrebutted finding the taxpayer engaged in a taxable use of the motor vehicles at issue in Illinois when it stored them in this state, and in the absence of evidence of any kind showing that the taxpayer's in-state use of these vehicles fell within any exemption under the UTA or any other statute, I find that the taxpayer has failed to rebut the presumed correctness of the Department's assessment determination at issue in this case.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notices of Tax Liability at issue be affirmed in their entirety.

Ted Sherrod
Administrative Law Judge

Date: April 1, 2015