

**UT 16-06**

**Tax Type: Use Tax**

**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  
OF THE STATE OF ILLINOIS**

**v.**

**ABC BUSINESS LLC,  
TAXPAYER**

**No. XXXX  
Vehicle Use Tax**

**Kelly K. Yi  
Administrative Law Judge**

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Gary Kanter of Dale & Gensburg, P.C., appeared on behalf of ABC Business; Mr. Daniel Edelstein, Special Assistant Attorney General, appeared on behalf of the Illinois Department of Revenue.

**SYNOPSIS:** This matter arose when ABC Business, LLC (“Taxpayer” or “company”), a Montana limited liability company, protested the Notice of Tax Liability the Illinois Department of Revenue (“Department”) issued to it to assess use tax on the purchase of a motor home. On December 17, 2014, a formal administrative hearing was held before Administrative Law Judge Ken Galvin<sup>1</sup> with Mr. John Doe (“John Doe”), the sole managing member of Taxpayer, testifying. The issues to be determined are: 1) whether Taxpayer has rebutted the Department’s *prima facie* correctness of a taxable use of the motor home in Illinois; 2) whether Taxpayer qualifies for exemption as a non-resident purchaser pursuant to 35 ILCS 105/3-55; 3) whether Taxpayer purchased the motor home at retail; and 4) whether the Department’s valuation of the

---

<sup>1</sup> This Recommendation is written by undersigned Administrative Law Judge Kelly K. Yi and is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witness is at issue only to the extent that the testimony is unsupported by the documentary evidence in the record.

motor home was incorrect. Following a careful review of the testimony and evidence, it is recommended that the Department's determination of the liability be upheld, but be revised to assess use tax in the amount of \$XXXX plus penalty and interest for the purchase of the motor home, vehicle identification number XXXX.

**FINDINGS OF FACT:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence, under the certificate of the Director, of the Department's Notice of Tax Liability showing a liability due and owing under the Use Tax in the amount of \$XXXX including penalties and interest for the period through July 23, 2012. Dept. Ex. 1, p. 2.
2. Taxpayer is a Montana Limited Liability Company with John Doe as the sole managing member. Tr. pp. 15, 44-45
3. John Doe owns homes in Illinois, and Florida. John Doe was not a Florida resident during the relevant times. Tr. pp. 11-12, 45.
4. A purchase agreement dated August 4, 2010 shows that Taxpayer purchased a motor home, vehicle identification number XXXX ("motor home"), from Happy Superstores, a motor home vehicle dealer, located in Florida. The purchase agreement shows Taxpayer as the buyer with a Montana P.O. Box address; Happy Superstores as the seller; a unit price of \$XXXX; clerical and closing costs of \$XXXX; and Florida county tax of \$XXXX, for a total of \$XXXX due on delivery. It is a cash transaction with "HOUSE DEAL" written on the line for "Salesman." Taxpayer's Ex. A.
5. John Doe has owned three motor homes, mostly for private travel. Tr. p. 13.

6. John Doe testified that he used an agent, Jack Black of XYZ Business, to purchase the motor home that was consigned to Happy Superstores by Mr. Gene Green (“Gene Green”) of Missouri. Tr. pp. 16-17.
7. John Doe testified that he was 100% certain that he did not bring the motor home to Illinois during the dates at issue. Tr. p. 30.
8. John Doe testified that he wire transferred \$XXXX on July 30, 2010 to a bank that he could not recall the name of and the balance of the total purchase price was charged to Gene Green as clerical costs. Tr. pp. 20-21.
9. John Doe testified that on the date of the wire transfer he picked up the motor home from Gene Green’s home in Missouri. Tr. pp. 21, 28.
10. John Doe testified that during the summer and fall of 2010, he drove the motor home to visit his family in Colorado, Iowa, and Texas. Tr. pp. 29-31, 37.
11. John Doe testified he then drove the motor home to Florida at or around December 2010. Tr. p. 32.
12. John Doe testified that in late January 2011, he again drove the motor home to Texas to visit family; at the end of March 2011, John Doe drove the motor home to Indiana for repairs; after the repairs, he drove it back to Florida and kept it there until he drove it again to Indiana in October 2011 to be sold; and the motor home was kept in Indiana until it was sold in March 2012. Tr. pp. 34-37.
13. On April 29, 2011, Ms. Theresa Churchill (“Churchill”), an auditor for the Department, sent a letter to Taxpayer notifying it of the audit initiation covering its purchase of the vehicles during 07/1/09 through 12/31/10. In the letter, Churchill requested additional documentation to complete the audit. Dept. Ex. 1, p. 3.

14. On June 1, 2011, Churchill sent a second request to Taxpayer for additional documentation on its purchase of the motor home. Dept. Ex. 1, p. 5.
15. Upon completion of her audit, Churchill issued a Notice of Proposed Liability (“NPL”) on June 29, 2011, notifying Taxpayer that the Department intended to issue a Notice of Tax Liability (“NTL”) for a proposed amount of \$XXXX including penalty and interest accrued as of the letter date. The NPL states that Taxpayer did not respond to the requests for additional information and that the Department used the best available price to reach an audit finding. Dept. Ex. 1, p. 7.
16. On May 16, 2012, the Department issued a Notice of Audit Results declaring the value of the motor home at \$XXXX based on the Department’s Informal Conference Board’s decision. Dept. Ex. 1, p. 9.
17. The Auditor-prepared Vehicle Use Tax Transaction Report (RUT-25) shows a vehicle use tax assessment of \$XXXX including penalty and interest as of June 15, 2012. Dept. Ex. 1, p. 10.
18. On July 23, 2012, the Department issued an NTL in the amount \$XXXX based upon Taxpayer’s failure to file and pay tax on its purchase of the motor home. The NTL notes August 1, 2010<sup>2</sup> as the “Date brought into IL,” and an audit tax in the amount of \$XXXX, an audit late payment penalty of \$XXXX, an audit late filing penalty of \$XXXX, and interest of \$XXXX. Dept. Ex. 1, p. 2.

### **CONCLUSIONS OF LAW:**

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. Under the UTA,

---

<sup>2</sup> There is conflicting evidence as to the exact purchase date of the motor home. The purchase agreement indicates 8/4/10 as the purchase date but John Doe testified that he paid for and picked up the motor home on 7/30/10.

“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. Some uses are excluded from taxation but none of the exceptions apply in this case. A “retailer” is defined as a person “engaged in the business of making sales at retail as defined in the Section. 35 ILCS 105/2. A “sale at retail” is defined as “any transfer of the ownership or title to tangible personal property to a purchaser, for the purpose of use, and not for resale.” *Id.* An isolated or occasional sale of tangible personal property at retail by someone who does not hold himself out as a retailer or who does not habitually sell such property at retail does not make such a person a retailer under the statute. *Id.* The Department regulations state that an occasional or isolated sale of tangible personal property by persons who are not engaged in the business of selling tangible personal property is not subject to the tax. 86 Ill.Admin.Code Ch. I, §130.110(a).

The Illinois General Assembly incorporated into the UTA certain provisions of the complementary Retailers’ Occupation Tax Act (“ROTA”). 35 ILCS 105/12. Among them is Section 4 of the ROTA, which provides that the Department’s determination of tax due constituted *prima facie* proof that tax is due in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4. In this case, the Department established its *prima facie* case when it introduced Department Exhibit 1, consisting of a copy of the Notice of Tax Liability at issue under the certificate of the Director. Dept. Ex. 1. That alone establishes *prima facie* correctness that the Department has personal and subject matter jurisdiction over the parties and that Taxpayer owes Illinois use tax in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4.

With the Department’s *prima facie* case, the burden shifts to the Department to prove its case, only after 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, 157-158 (1968). Additionally, when a taxpayer claims that a transaction is exempt from a particular tax, the burden of proof is on the taxpayer. 35 ILCS 105/12; 35 ILCS 120/7; Balla v. Department of Revenue, 96 Ill.App.3d 293, 295 (1st Dist. 1981), citing Telco Leasing, Inc. v. Allphin, 63 Ill.2d 305 (1976); Bodine Electric Co. v. Allphin, 81 Ill.2d 502 (1980).

**Taxpayer's contentions:**

Taxpayer contests the Department's determination of liability on four grounds. First, it claims the motor home was never brought into Illinois, and therefore not subject to Illinois use tax. Second, it claims that as a Montana limited liability company, it qualifies for exemption as a non-resident purchaser pursuant to 35 ILCS 105/3-55. Third, if there is a finding that the motor home was brought into Illinois by an Illinois resident, Taxpayer claims that it would be limited to a tax assessment of \$XXXX under the Illinois Vehicle Code. 625 ILCS 5/3-1001. Fourth, if there is a finding that the motor home was purchased at retail, Taxpayer claims that the NTL was based on the incorrect value of \$XXXX, not based on the actual purchase price of \$XXXX, excluding the clerical and closing costs purportedly charged to Gene Green. Tr. pp. 20, 38-40, 58.

**Whether Taxpayer has rebutted the Department's *prima facie* correctness of a taxable use of the motor home in Illinois:**

Taxpayer's first contention is that it did not engage in a taxable use of the motor home in Illinois, so it cannot be subjected to the Illinois use tax. John Doe testified that he was 100% certain that the motor home was never brought to Illinois during the times at issue. John Doe

testified of his travels on the motor home visiting family in Colorado, Iowa, and Texas, and finally leaving it in Indiana until it was sold in March 2012.

Pursuant to 35 ILCS 120/4, the NTL issued by the Department is *prima facie* evidence of the amount of tax due, as shown therein. *Id.* In the present case, the Department's presumed correct determination includes its finding that the motor home was used in Illinois during the times at issue. Taxpayer "must produce competent evidence, identified with...books and records and showing that [the Department is] incorrect" in order to overcome the Department's case. Masini v. Department of Revenue, 60 Ill.App.3d 11, 15 (1<sup>st</sup> Dist. 1978). Oral testimony that is not corroborated by any form of such documentary evidence is insufficient to overcome the *prima facie* correctness of the Department's determination. A.R. Barnes & Co. v. Department of Revenue, 173 Ill.App.3d 826 (1<sup>st</sup> Dist. 1988).

In this case, Taxpayer did not present any documentary evidence to rebut the Department's *prima facie* correctness that the motor home entered Illinois during the times at issue. No documentary evidence such as gas purchase records or travel logs was presented to substantiate John Doe's repeated denials of in-state use. The only documentary evidence presented by Taxpayer merely shows that Taxpayer purchased the motor home, which Gene Green had owned in 2005, from Happy Superstores. There simply is no documentary evidence to support Taxpayer's claim that the motor home never entered Illinois. Accordingly, I find that Taxpayer has failed to show with production of competent evidence, identified with books and records that the Department's determination of in-state use was incorrect.

**Whether Taxpayer's purchase is exempt under 35 ILCS 105/3-55:**

Taxpayer's second argument is that the motor home was exempt from tax because it was a Montana limited liability company, a non-resident of Illinois to which exemptions contained in

Section 3-55(h) of the UTA apply. Tr. pp. 55-57. Section 3-55 of the UTA provides a variety of exemptions from use tax. 35 ILCS 105/3-55. One of the subsections of the provision governing sales to non-residents states 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:

\*\*\*

(h) Except as provided in subsection (h-1), the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. The issuance of the drive-away permit or having the out-of-state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State. 35 ILCS 105/3-55(h).

Subsection (h) of 35 ILCS 105/3-55 requires that 1) the sale occur in Illinois to a non-resident of Illinois; and 2) a drive-away permit or an out-of-state vehicle registration plate. Taxpayer does not meet these requirements. The evidence establishes that the sale did not occur in Illinois. With respect to residency, Taxpayer failed to rebut the Department's *prima facie* correctness of its Illinois residency through its sole managing member John Doe. John Doe owns homes in Illinois and Florida, but he admitted at hearing that he was not a Florida resident at the time of the motor home purchase. There is no evidence that a drive-away permit for the vehicle was issued or that Taxpayer had a vehicle registration plate to transfer upon returning to Montana. For these reasons, I find that the non-resident exemption stated in Section 3-55(h) of the UTA does not apply in the case.

**Whether Taxpayer's purchase is governed by 625 ILCS 5/3-1001:**

Taxpayer maintains that the motor home was purchased from an occasional seller in Missouri who had consigned it to a retailer in Florida. John Doe testified that he used an agent named Jack Black of XYZ Business to locate and purchase the motor home that was consigned

to an RV retailer, Happy Superstores, but the purchase was between two private parties, not through a retailer. Tr. pp. 16-17. If indeed the documentary evidence supports a finding that the purchase was from an occasional seller, the Illinois Vehicle Code, 625 ILCS 5/3-1001, would apply here.

Taxpayer did not present any books and records, neither to the auditor nor at hearing, to corroborate John Doe's denials of purchase at retail. As of April 2011, Taxpayer had notice that its purchase of the motor home was being audited and it was given opportunities to substantiate its claim that it was exempt from Illinois use tax. Prior to issuing the NTL, the Department sent requests for additional information on two occasions, 4/29/11 and 6/1/11. Among the requested documents were Taxpayer's LLC operating agreement with all resolutions; 2009 and 2010 LLC business tax returns filed; purchase invoices or agreements; government forms filed and payment records for tax, titling and registration; insurance policies, warranty information, maintenance and storage receipts; member's driver license; member's 2009 and 2010 U.S. 1040 with supporting schedules; and member's real estate property inside and outside Illinois. Dept. Ex. 1, pp. 4-6. Taxpayer failed to submit any of the requested documents except the evidence of wire transfer of \$XXXX but without the bill of sale. Dept. Ex. 1, pp. 8, 11.

Taxpayer submitted three documents at hearing: 1) a purchase agreement by Happy Superstores dated 8/4/10; 2) two photographs of a motor home purportedly of the motor home at issue, taken at Gene Green's home in Missouri at the time of the alleged delivery; and 3) a certificate of title issued to Gene Green on 10/3/05 by Montana Title and Registration Bureau, which was faxed to John Doe from "Happy Finance" on 8/7/10. Taxpayer's Exs. A-C. These documents raise more questions than answers. While Taxpayer maintains that the motor home was purchased from a private seller who had consigned it to Happy Superstores, the purchase

agreement clearly shows Happy Superstores as the seller. Taxpayer claims that the phrase “HOUSE DEAL” written on the purchase agreement is evidence of a transaction between two individual parties, but this alone is insufficient to overcome the Department’s *prima facie* correctness. The two undated photos, purportedly of the motor home parked at Gene Green’s driveway when it was picked up, bear no identification marks, such as the vehicle identification number and street signs. Given these deficiencies in the photographs, no weight can be given to them. The Certificate of Title issued to Gene Green by Montana on 10/03/05 was faxed from Happy Superstores on 8/7/10, three days after the purchase date shown on the purchase agreement or 8 days after the delivery per John Doe’s testimony. There is no evidence that Gene Green had actually owned the motor home at the time of the sale in 2010 or that Happy Superstores was required by Florida law to get a new title under its own name to complete this transaction. Absent such evidence, and given that the purchase agreement shows Happy Superstores as the seller, I do not give much evidentiary weight to the title.

With the issue of the agency relationship, Taxpayer failed to present any documentary evidence to demonstrate that the agency relationship between Jack Black and Taxpayer existed at the time of the purchase. John Doe testified that emails attest to the agency relationship but he did not produce them to substantiate his assertions. Tr. p. 41. Taxpayer did not produce an agency agreement or any documentary evidence of payment of commission to Jack Black. John Doe testified that “HOUSE DEAL” written on the purchase agreement was evidence that Gene Green and Taxpayer were represented by agents, and that John Doe’s eventual receipt of the title to the motor home was proof of payment of commission to Jack Black. Tr. pp. 42, 46. No documents of record support John Doe’s claims. On cross examination, John Doe admitted that he had no documentary evidence corroborating his testimony that a wire transfer of \$XXXX was

made to Gene Green for the purchase of the motor home. Tr. pp. 43-44. Because there are no books or records to corroborate John Doe's testimony, I find that Taxpayer has failed to overcome the Department's *prima facie* correctness that motor home was purchased at retail. Accordingly, the Illinois Vehicle Code, 625 ILCS 5/3-1001, governing private party vehicle sale transactions, is not applicable here. Instead, Taxpayer is subject to use tax under the UTA. 35 ILCS 105/3.

**Whether the Department's valuation of the motor home was incorrect:**

The final issue is whether the Department's valuation of the motor home was incorrect. Taxpayer asserts that the NTL was based on the incorrect value of \$XXXX, when the actual purchase price was \$XXXX, excluding the clerical and closing costs purportedly charged to Gene Green. Section 5 of the ROTA provides that if a tax return is not filed, "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 105/12; 5 ILCS 120/5.

In the present case, the Department's auditor did not have the benefit of having a copy of the purchase agreement and determined the motor home's value based on the limited information then available to her, mainly, the year and make of the motor home. Dept. Ex. 1, p. 9. Taxpayer has now presented a copy of the purchase agreement showing the purchase price of \$XXXX,<sup>3</sup> and rebutted the Department's *prima facie* correctness of the valuation of the motor home. The burden then shifted to the Department to rebut Taxpayer's evidence in this regard but it did not

---

<sup>3</sup> As there is no documentary evidence that \$XXXX was paid by Gene Green, as Taxpayer asserts, the sales price depicted in the purchase agreement excluding the Florida county tax of \$XXXX stands as the purchase price.

present additional evidence. Therefore, I find that Taxpayer be assessed vehicle use tax on the purchase price of \$XXXX plus penalty and interest, pursuant to statute.

**Recommendation:**

For the foregoing reasons, it is recommended that the NTL be revised to assess use tax plus penalty and interest on the purchase price of \$XXXX for the motor home, vehicle identification number XXXX, and that such revised NTL be finalized.

Kelly K. Yi  
Administrative Law Judge

January 6, 2016