

UT 04-3

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
OF THE STATE OF ILLINOIS**

v.

JOHN DOE,

Taxpayer

**No. 03-ST-0000
IBT #: 0000-0000
SSN 000-00-0000**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

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

Synopsis:

This matter involves a timely protest to a Notice of Tax Liability the Department of Revenue (“Department”) mailed to John Doe (“Taxpayer”) on July 3, 2003. The Notice of Tax Liability assessed Illinois use tax on goods purchased by Taxpayer in Turkey that he and his wife brought into Illinois. An evidentiary hearing was held on March 1, 2004. The only witness to testify at the hearing was Taxpayer.

I recommend that the Notice of Penalty Liability be adjusted to give Taxpayer credit for the use tax he paid previously on the items brought into Illinois that he gave to his daughter, and, that as so adjusted, it be made final.

Findings of Fact:

1. While on vacation in Turkey, Taxpayer purchased tangible personal property including books, clothing antiques, jewelry and rugs that he brought home with him on a flight that landed at O'Hare International Airport on May 22, 2001. Tr. pp. 6, 14, 20.
2. The Department issued a Notice of Tax Liability to Taxpayer based on a Department Form SC-10-K—Audit Correction and/or Determination of Tax Due (12/1993 to present) (the “Audit Correction”) prepared by a Department auditor. The Audit Correction assessed use tax under the Illinois Use Tax Act¹ on the value of tangible personal property purchased by Taxpayer in Turkey that he brought into Illinois on May 22, 2001. Dept. Ex. No. 1.
3. The goods in question were valued by Taxpayer at \$4,827, and the Department assessed use tax at the rate of 6.25% for a total of \$302. *Id.*
4. Taxpayer calculated use tax on the value he attributed to the items that he gave to his daughter, a resident of Illinois. (\$567) He calculated the tax at the rate of 6.25% (\$35.44). He added late filing penalty (\$6.00) and interest of \$1.00 and tendered a check to the Department for the total amount of \$42.44. Tr. pp. 6-15, Taxpayer Ex. No.2.
5. On March 31, 2001, Taxpayer and his wife signed a Residential Resale Real Estate Purchase Contract for a residence located at Anywhere, Arizona. Tr. p. 18, Taxpayer Ex. No. 4.
6. On May 31, 2001, a deed was recorded in Anywhere Arizona transferring title to the Arizona property to Taxpayer and his wife. Tr. p. 20, Taxpayer Ex. No. 5.

¹ Unless otherwise noted, all statutory references are to the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*

7. On September 7, 2001, Taxpayer and his wife signed a GMAC Real Estate Exclusive Sales Agreement granting the firm the exclusive right to sell their residence located at Anywhere, Illinois for the terms specified therein. This agreement was cancelled on October 21, 2002. Tr. p. 21, Taxpayer Ex. No. 6.
8. The storm that occurred in December 2000 caused considerable ice damage to the Taxpayer's Anywhere, IL residence making it necessary for Taxpayer and his spouse to have the roof of the house replaced and the house painted. Tr. p. 21.
9. On April 7, 2003, buyers of the Anywhere, IL property signed the contract of sale, and on April 9, 2003, Taxpayer and his wife signed the contract. On this contract, Taxpayer and his wife listed their address as being the Anywhere, Arizona. Taxpayer Ex. No. 7.
10. The transaction for the sale of the IL property closed on May 21, 2003 and the RESPA statement for that transaction shows the current address of Taxpayer and his wife as being the IL property. Taxpayer Ex. No. 8.
11. Taxpayer and his wife filed a joint Illinois income tax return, Form IL-1040, for the year 2001 showing their Arizona Address as their mailing address, but they filed as full year residents of Illinois for that year. Dept. Ex. No. 2.
12. Taxpayer registered to vote in Arizona on April 15, 2002 and he obtained an Arizona driver's license on April 15, 2002. Dept. Ex. No. 3.

Conclusions of Law:

The issue in this matter is whether the entire value of the property Taxpayer brought into Illinois from Turkey is subject to tax under the UTA or only that portion that Taxpayer admits as being taxable in Illinois.

Taxpayer asserts that he and his wife had a vacation home in Arizona beginning in 1996, and that they decided to make Arizona their primary residence after the severe winter of 2000-2001. Tr. p. 27. At the end of 2001, he and his wife still owned the house in Illinois. On the advice of their accountant, they made the transfer of their taxable residence effective at the end of 2001. *Id.* at p. 28. On their Illinois income tax return for 2001, they listed their new address in Arizona as their mailing address, but their filing status was that of full-year residents of Illinois. *Id.*, Dept. Ex. No. 2. Taxpayer was issued both an Arizona driver's license and an Arizona voter registration card on April 15, 2002. Dept. Ex. No.3.

Taxpayer testified that he brought the items purchased in Turkey into Illinois when he and his wife returned to Illinois through the O'Hare International airport terminal in Chicago, Illinois on May 22, 2001. Tr. pp. 6-8. He testified that he paid tax on \$567 worth of goods that he gave to his daughter who lives in Illinois. *Id.*, *Id.* at p. 30. On March 31, 2001 he and his wife closed on the purchase of their new residence in Arizona, and shortly thereafter, they brought the rest of the goods to his new residence in Arizona. Tr. p. 20. He argues that the goods he brought to Arizona were never used in Illinois. Tr. pp. 16, 29. For that reason, he argues that they are not subject to tax under the UTA. *Id.*

I find that the value of the entire amount is subject to tax under the UTA. I recommend that the Notice of Tax Liability be made final after being adjusted to give Taxpayer credit for the \$42.44 he paid previously.

The language of the UTA imposing the tax, insofar as it is relevant to this matter, is as follows:

A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer35ILCS 105/3

The UTA is complementary to the Retailers' Occupation Tax. *Chicago Tribune Co. v. Johnson*, 106 Ill.2d 63, 477 N.E.2d 482 (1985). "Functionally, the Use Tax Act serves to tax property purchased out of State by Illinois residents that is not taxable under the Retailers' Occupation Tax Act and at the same time attempts to eliminate the competitive disadvantage of in-State businesses." *Id.* at 69. The tax applies when a resident of Illinois acquires property and uses it in Illinois. *Time, Inc. v. Department of Revenue*, 11 Ill.App.3d 282, 295 N.E.2d 529 (1st Dist. 1973) (holding that taxable use occurs upon the exercise of powers or rights incident to ownership).

The UTA contains a provision to prevent multiple state taxation in the case of property purchased outside of Illinois that is brought into Illinois for temporary storage on its way to an out-of-state location for usage. In relevant part, it provides as follows:

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:

(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). See also 86 IL. Admin. Code § 150.310(a)(4).

The law is clear that in applying the statute to the facts of this case, the burden of proof is on the taxpayer. The Department is required to correct Retailers' Occupation Tax returns

according to its best judgment and information. 35 ILCS 120/4², *Central Furniture Mart v. Johnson*, 157 Ill.App. 3d 907 (1st Dist. 1987). The admission into evidence of the records of the Department under the certification of the Director at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. 35 ILCS 120/8. *Id. Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 242 N.E.2d 205 (1968).

When a taxpayer claims that it is exempt from a particular tax, or where it seeks to take advantage of deductions or credits allowed by statute, it has the burden of proof. This derives from the fact that deductions and exemptions are privileges created by statute as a matter of legislative grace. Statutes granting such privileges are to be strictly construed in favor of taxation. *Balla v. Dept. of Revenue*, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

The Department's *prima facie* case in this case was established when it introduced into evidence the Department's Audit Correction under the certificate of the Director. To overcome the Department's *prima facie* case the taxpayer must present consistent, probable evidence identified with his books and records. *Copilevitz v. Department of Revenue, supra; Central Furniture Mart v. Johnson, supra*. Testimony alone is not enough. *Mel-Park Drugs, Inc. v. Department of Revenue*, 218 Ill.App.3d 203, (1st Dist. 1991), *A.R. Barnes & Co. v. Department of Revenue*, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988), 86 Admin. Code ch. I, § 130.1405 (a).

In this case, Taxpayer failed to provide documentation, such as a listing of the items purchased in Turkey and brought to Illinois showing their individual values. Nor did he produce any documentation or listing showing this information for the items that were given to his daughter, or for the items that he testified were temporarily stored in Illinois and then brought to

² The Use Tax Act makes numerous sections of the Retailers' Occupation Tax Act (120 ILCS 120/1 *et seq.*) applicable to the Use Tax. 35 ILCS 105/12.

Arizona. There is simply no documentary evidence of record to establish the value of the items the Taxpayer testified as being taken unused to Arizona.

In conclusion, Taxpayer has failed provide documentary evidence sufficient to overcome the Department's *prima facie* case.

Recommendation:

Therefore, I recommend that the Notice of Penalty Liability be adjusted to give Taxpayer credit for the use tax he paid previously on the items in issue, and, that as so adjusted, it be made final.

Date: 4/13/2004

Charles E. McClellan
Administrative Law Judge