

UT 05-3

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 & JANE DOE,
TAXPAYERS

)
) No. 04-ST-0000
) IBT 0000-0000
) NTL 00 0000000000000000
)
) Kenneth J. Galvin,
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe, appearing *pro se*; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing pursuant to John and Jane Doe’s (hereinafter “taxpayers”) protest of Notice of Tax Liability No. 00 0000000000000000 issued May 26, 2004. The basis of the assessment was the Department’s determination that taxpayers had not paid use tax due to the Department for watercraft purchased on or about February 17, 2003. Mr. Doe protested the assessment claiming that the watercraft was exempt from use tax. An evidentiary hearing was held in this matter on January 4, 2005 with Mr. Doe testifying. Following a review of the testimony and the evidence submitted by the taxpayers, it is recommended that the Notice of Tax Liability be

finalized as issued. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

Findings of Fact:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of Notice of Tax Liability No. 000000000000000000 issued May 26, 2004, which shows use tax due of \$446 plus penalty and interest. Tr. p. 7; Dept. Ex. No. 1.
2. Mr. Doe rented rack storage for a Hurricane Deck Boat from ABC Marine Service, Inc. (“ABC”) in Anywhere, Illinois for the summer season, May 1 through October 1, 2003. ABC either loaded the boat onto a trailer for Mr. Doe or loaded the boat into the water for Mr. Doe to load onto a trailer himself. Mr. Doe then trailered the boat to Anywhere, Wisconsin, sailed it, and returned the boat to ABC for storage. Tr. pp. 11-12; Dept. Ex. Nos. 2 and 3.

Conclusions of Law:

The Use Tax Act, 35 ILCS 105/1 *et seq.* (hereinafter referred to as the “UTA”) imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer...” *Id.* at 105/3. The UTA was passed to complement and prevent evasion of the Retailers’ Occupation Tax Act. Needle Co. v. Department of Revenue, 45 Ill. 2d 484 (1970). On May 26, 2004, the Department issued a Notice of Tax Liability (“NTL”) assessing use tax upon the taxpayer for the purchase of a boat. Section 12 of the UTA (35 ILCS 105/12) incorporates by reference Section 4 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the NTL issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. *Id.* at 120/4. Once the Department has established its *prima facie* case

by submitting the NTL into evidence, the burden shifts to the taxpayers to overcome the presumption of validity. Clark Oil & Refining v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the NTL, a taxpayer must produce competent evidence, identified with its books and records showing that the NTL is incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Documentary proof of tax-exempt status is required to prevail against an assessment of tax by the Department. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). The only documentary evidence presented by the taxpayers were receipts showing storage of the boat in Indiana, storage in Florida in February and March of 2003 and storage in Wisconsin in July and August of 2004. Taxpayers' Ex. No. 1. These receipts are not relevant to the matter at issue in this case. Accordingly, upon examination of the record, I find that the taxpayers have failed to demonstrate by testimony or through exhibits or argument, evidence sufficient to overcome the Department's determination that use tax is due.

The record shows that the taxpayers purchased the watercraft on or about February 17, 2003 in Indiana. Tr. p. 4; Dept. Ex. No. 1. After purchase, the boat was taken to Florida. The taxpayers were at the time of purchase and are today Illinois residents. Tr. p. 4. The Department introduced into evidence a letter written from ABC Marine Service in Anywhere, Illinois to Mr. Doe with an "In/Out Service Boat Storage Contract" attached. The contract was to provide rack storage for Mr. Doe's "Hurricane Deck Boat" from May 1 through October 1, 2003. Dept. Ex. No. 2. The Department also introduced into evidence a letter from ABC explaining that Mr. Doe's boat was used "very rarely" in Lake Michigan "because of its relatively small size." "Mr. Doe uses our marina primarily for storage and when he does want to use his boat we generally load his boat onto

his trailer for him (or put his boat in the water for him to load onto his trailer) to use in Wisconsin.” Dept. Ex. No. 3. Mr. Doe later decided to permanently store the boat in Wisconsin and subsequently licensed the boat and paid use tax in Wisconsin. In determining the amount of use tax due to the State of Illinois, the Department gave the taxpayers credit for taxes paid to Wisconsin. Tr. pp. 4-5.

Mr. Doe explained at the evidentiary hearing that he did not believe that “storage in Illinois constituted use.” He stated that he had been advised that “regardless of where the boat is stored, it’s where the boat is used [which is] where the boat should be licensed and sales tax should be paid.” Tr. pp. 14-15.

To begin the determination of whether use tax was properly assessed in this case, it must first be determined whether the taxpayers used the watercraft in Illinois as the term “use” is defined in the UTA. Section 2 of the UTA (35 ILCS 105/2) defines “use” broadly as “the exercise by any person of any right or power over tangible personal property incident to the ownership of that property...” The evidence clearly indicates that Mr. Doe “used” the watercraft in Illinois in accordance with the definition of “use” in the UTA. The taxpayer stored the boat in Anywhere, Illinois for a five-month period. Dept. Ex. No. 2. ABC Marine Service in Anywhere loaded Mr. Doe’s boat for him onto a trailer or put his boat in the water for him to load onto his trailer. Dept. Ex. No. 2. Apparently, Mr. Doe then “trailerred” the boat to Anywhere, Wisconsin for sailing. Mr. Doe returned the boat to ABC for storage after sailing. Tr. p. 12.

All of these acts, including storing the boat in Anywhere for a five month period, loading the boat onto a trailer, trailering the boat from Anywhere to Wisconsin and returning the boat to ABC for storage are clear indicia of the exercise of right or power over tangible personal property incident to ownership, constituting a taxable “use” under the UTA. The use tax is not a tax which

arises out of the use or operation of tangible personal property as Mr. Doe argued, but rather it is a tax placed upon the exercise of powers or rights incident to ownership. Time, Inc. v. Dept. of Revenue, 11 Ill. App. 3d 282 (1st Dist. 1973). Mr. Doe's storage of the boat in Anywhere, movement of the boat out of storage, trailering the boat to Wisconsin, and return of the boat to ABC for storage fits exactly into the statutory definition of "use" which triggers the application of the use tax.

WHEREFORE, for the reasons stated above, it is my recommendation that NTL 000 00000000000000 issued May 26, 2004 be finalized as issued.

February 22, 2005

Kenneth J. Galvin
Administrative Law Judge