

UT 95-1

Tax Type: USE TAX

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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|--------------------------|---|----------|-------|
| DEPARTMENT OF REVENUE    | ) |          |       |
| OF THE STATE OF ILLINOIS | ) | Case No. | XXXXX |
| v.                       | ) | Reg. No. | XXXXX |
| XXXXX,                   | ) | NTL No.  | XXXXX |
| Taxpayers                | ) |          |       |
|                          | ) |          |       |

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RECOMMENDED DECISION

APPEARANCES: XXXXX, Chicago, Illinois, appeared on Taxpayers' behalf.

SYNOPSIS: This matter involves the issue whether Taxpayer's purchase of a boat was exempt from Use Tax pursuant to the Multistate Exemption provisions of Illinois' Use Tax Act, 35 ILCS 105/3-55, and whether Taxpayers used the boat in Illinois.

The hearing in this matter was held on XXXXX at the Department's Administrative Hearings Division in Chicago. Taxpayer was represented by counsel at hearing. XXXXX("XXXXX") was Taxpayers' only witness. At the hearing, Taxpayers introduced evidence via Mr. XXXXX's testimony and via documents consisting of, inter alia, Taxpayers' books and records. After considering the evidence adduced at that hearing, I am including in this recommendation specific findings of fact and conclusions of law. I recommend that the issue be resolved in favor of the Department, and that the Director finalize the NTL as previously issued.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by admitting, under the certificate of the Director of the Department of Revenue, the Correction of

Returns prepared by Department Auditor L. Griffin on August 31, 1993, showing use tax deficiencies and penalties in the aggregate of \$3,462.00, interest to accrue pursuant to statute. See Department Exhibit ("Dept. Ex.") 1; Hearing Transcript ("Tr.") p. 5.

2. XXXXX ("Taxpayers") purchased a boat, to wit: a XXXX, in October 1992. See Dept. Ex. 2.

3. Taxpayers are Illinois residents. See e.g., Taxpayer's Exhibits ("TP's Ex.") 1.

4. Taxpayers purchased the boat from an Illinois retailer of boats. Tr. p. 32.

5. The sales invoice the Illinois retailer prepared, which bears XXXXX's signature, reflected that delivery of the boat was to be made "In the water at North Point". Dept. Ex. 2; Tr. pp. 46-47.

6. North Point is located in Illinois. Tr. p. 41 (testimony of XXXXX), p. 46 (testimony of Department audit supervisor James Harris).

7. Taxpayers introduced no documentary evidence showing that the boat was delivered in Wisconsin.

8. The boat was delivered to Taxpayers in Illinois. See Dept. Ex. 2.

9. After Taxpayer XXXXX ("Mr. XXXXX") took delivery of the boat in 1992, he never saw the boat again until May 1993. Tr. pp. 28-29.

10. XXXXX agreed to make certain repairs to the boat as part of the sales contract for the boat. Tr. pp. 13-15; TP's Ex. 4.

11. XXXXX performed some of the repairs in Illinois. Tr. pp. 17-18.

12. The Harbor Occupancy Agreement, which allowed Taxpayers to moor the boat in their Illinois slip, was signed by XXXXX XXXXX on October 3, 1992. See Dept. Group Ex. 3; Tr. pp. 60-62.

13. Taxpayers paid to have the boat moored in their Illinois slip. Dept. Group Ex. 3; Tr. pp. 60-62.

14. Taxpayers moored their boat in their Illinois slip after they

purchased it. Tr. p. 58.

15. Taxpayers contracted to have the boat dry-docked in Illinois beginning October 15, 1992. See Dept. Group Ex. 3.

16. Taxpayers introduced no documentation showing an agreement to dock the boat in Wisconsin from October 2, 1992 to October 15, 1992.

17. The boat is titled in Wisconsin. TP's Ex. 6.

18. The boat is currently moored in Racine, Wisconsin, during the boating season. TP's Ex. 5.

19. Mr. XXXXX was unsure whether he ever used the boat in Illinois for pleasure in 1993. Tr. p. 40.

20. Taxpayers introduced no evidence that the boat was used solely outside Illinois after it was titled in Wisconsin.

21. Taxpayers paid tax to the State of Wisconsin when titling the boat there. Tr. p. 55.

22. The Department credited Taxpayers for the full amount of the tax they paid to Wisconsin. Tr. pp. 51, 54.

#### CONCLUSIONS OF LAW

I. Taxpayers Used The Boat In Illinois By Purchasing It In Illinois, And By Having It Moored In Their Illinois Slip

To begin the determination of whether Use Tax was properly applied here, and consistent with the issues presented by this matter, I must first determine whether Taxpayers used the boat in Illinois, as the term "use" is defined by the Illinois Use Tax Act ("UTA"), 35 ILCS 105/1 et seq. (1992). Section 2 of the UTA defines "use" broadly.

'Use' means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to the use for which it was purchased . . . .

35 ILCS 105/2 (emphasis added). When a statute defines terms, those terms

must be given the meaning articulated in the statute. *Modern Dairy v. Department of Revenue*, 413 Ill. 55, 66, 108 N.E.2d 8, 14 (1952).

Here, Taxpayers used the boat in Illinois. Taxpayers used the boat in Illinois when they took delivery of it in Illinois. Delivery of tangible personal property in Illinois is prima facie evidence that such property was purchased for use in Illinois. 35 ILCS 105/4 (1992). Additionally, the documentary evidence showed that Taxpayers arranged, and paid, to have the boat moored at their Illinois slip beginning on or about October 3, 1992. Mr. XXXXX testified that the boat was, in fact, moored in his Illinois slip after being purchased. Tr. p. 58. Taxpayers need not actually be on the boat in order to use it under the statutory definition of use. Use means 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 (emphasis added). When Taxpayers, who are Illinois residents, had or allowed others to bring their boat to be moored in their Illinois slip after they purchased the boat, those actions, even though performed by others, were an exercise of rights and power over the boat, in Illinois, incident to Taxpayers' ownership of the boat. That exercise was a "use" of the boat as that term is defined in the UTA.

Taxpayer's argument, which must be rejected, is that purchasers of tangible personal property in Illinois do not owe use tax on their purchases if the property is not used for its intended purposes. See Taxpayers' Memorandum of Law at 3. It is clear from a reading of the UTA's definition that "use" means something different than the interpretation Taxpayers ascribe to that term. Contrast Taxpayers' Memorandum of Law at 3 ("Use is the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include a use of property that is different from the use for which it is purchased.") with 35 ILCS 105/2 ("use . . . does not include

the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to the use for which it was purchased") (emphasis added). Under Taxpayer's interpretation of "use", a gun purchased for hunting but shot only during target practice would not be subject to use tax. Such an argument is wholly inconsistent with the legislature's unambiguous intent to uniformly tax the use, in Illinois, of all tangible personal property purchased at retail. See, e.g., *Square D Co. v. Johnson*, 233 Ill. App. 3d 1070, 1080, 599 N.E.2d 1235 (1st Dist. 1992).

Here, Mr. XXXXX's testimony that he never used the boat in Illinois is an insufficient basis for me to find that no use occurred in Illinois. The documentary evidence reflects that the boat was delivered in Illinois, then moored at Taxpayers' Illinois slip. Conclusory testimony on the question of use does not overcome evidence of acts which constitute use under the Act. I conclude that Taxpayers used the boat in Illinois.

## II. Taxpayers Have Not Shown That the Multistate Exemption Applies To Their Purchase of the Boat

As a statutory provision exempting property or an entity from taxation, 3-55 of the UTA must be strictly construed against exemption. *Board of Education of School District No. 150 v. City of Peoria*, 76 Ill. 2d 469, 473, 394 N.E.2d 399, 401 (1979). All debatable questions should be resolved in favor of taxation. *People ex rel. Nordland v. Home for the Aged*, 40 Ill. 2d 91, 99-100, 237 N.E.2d 533 (1968); *Gas Research Institute v. Department of Revenue*, 154 Ill. App. 3d 430, 434, 507 N.E.2d 141, 144 (1st Dist. 1987). Taxpayers here have the burden to show that they come under the protection of the Multistate Exemption.

### A. Taxpayers Have Not Shown That The Boat Was Acquired Out-of-State

In order to determine whether Taxpayers' purchase is exempt under the multistate exemption, it must be determined whether Taxpayers acquired the

boat outside Illinois. While the Use Tax Act does not interpret that phrase, Department regulations provide an interpretation. Specifically, section 150.320 of the Department's regulations provides:

'Acquired outside this State', as used in the various tax exemption and tax credit provisions in the Use Tax Act, in addition to its usual and popular meaning, shall include the delivery, outside Illinois, of tangible personal property that is purchased in this State and delivered from a point in this State to the point of delivery outside this State. 86 Ill. Admin. Code 150.320.

I understand the usual and customary meaning of "acquired outside this State" to mean, inter alia, the purchase, outside Illinois, of tangible personal property from an out-of-state retailer. That does not describe the situation that occurred here. I could only conclude that Taxpayers acquired this boat outside Illinois if I could find as a fact that the boat was delivered from a point in Illinois to a point out of State.

On this question, the evidence conflicts. The books and records of the Illinois retailer who sold Taxpayers the boat reflect that delivery was to take place in Illinois. Documentary evidence consisting of a copy of the retailer's sales invoice, see Dept. Ex. 2, has the words "In the water at North Point" typed into a box bearing the printed heading "Delivery Instructions". That invoice, which bears Mr. XXXXX's signature, was admitted into evidence at hearing. It is uncontested that North Point is located in Illinois. In contrast to this documentary evidence, Mr. XXXXX testified that he took delivery of the boat in Wisconsin, see Tr. p. 62, and counsel for Taxpayers argue that the retailer's books and records are "in error." See Tr. p. 70.

Illinois law is clear that a taxpayer's mere testimony that the records relied upon by the Department are erroneous is insufficient to rebut the Department's prima facie case. *A.R. Barnes v. Department of Revenue*, 173 Ill. App. 3d 826, 835 (1st Dist. 1988). Not only is Mr. XXXXX' testimony regarding a Wisconsin delivery uncorroborated by

documentary evidence, it is also inconsistent with the documentary evidence admitted at hearing by both the Department and Taxpayers. The evidence admitted at hearing reflect that the Taxpayers intended that the boat remain in Illinois from the date of purchase until Taxpayer brought it to Wisconsin the following season.

To begin, and as previously stated, the sales invoice, see Dept. Ex. 2, called for delivery in Illinois. Additionally, Mr. XXXXX testified that after Taxpayers took delivery of the boat, they contracted to have the boat moored in their slip in Illinois. Tr. p. 64. The boat was, in fact, moored in Illinois after they purchased it. Tr. p. 58. The Harbor Occupancy Agreement identifying the change of boats occupying Taxpayers' Illinois slip is dated October 3, 1992. See Dept. Group Ex. 3. The dry dock agreement, see TP's Ex. 1, was authorized by the company providing dry dock space -- the same company which sold the boat to Taxpayers -- on October 2, 1992. Id. Taxpayers knew, therefore, that they would be dry-docking the boat in Illinois on the date they purchased it. And until the boat was dry-docked, Taxpayers moored the boat at their Illinois slip. Dept. Group Ex. 3; Tr. pp. 60-62. I conclude that Taxpayers have not shown that the boat was delivered from a point in Illinois to a point outside Illinois.

B. Even If The Boat Were Acquired Out-of-Illinois, Section 3-55(d), And Not Section 3-55(e), of the Multistate Exemption Would Apply to the Facts Presented Here.

The UTA's Multistate Exemption 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:

\* \* \*

(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other state.

\* \* \*

(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.

Even if Taxpayers' boat were acquired out of state, the temporary storage exemption, see 35 ILCS 105/3-55(e), would not apply to Taxpayers' purchase and use of the boat here. In order to show an entitlement to the temporary storage exemption, Taxpayers must introduce evidence showing that the boat was used solely outside Illinois. *Id.*; *Time v. Department of Revenue*, 10 Ill. App. 3d 1053, 295 N.E.2d 529, 533 (1st Dist. 1973) ("the claimed [temporary storage] exemption would still not apply unless it were also shown that the property . . . had been used solely outside this State").

Mr. XXXXX testified that the boat was slipped in Racine, Wisconsin. While Taxpayers' boat is registered and titled in Wisconsin, and is also currently slipped there, those facts do not require me to find also that Taxpayers used the boat solely outside Illinois. At hearing, when specifically asked by counsel whether the boat was ever used for pleasure in Illinois during 1993 (the season after it was purchased), Mr. XXXXX replied, "I don't recall." Tr. at 40.

I find it reasonable to infer, based primarily on the proximity of Taxpayers' current Wisconsin slip to Illinois, the state in which Taxpayers reside, that Taxpayers at least occasionally brought (and continue to bring) their boat into Illinois waters. Taxpayers have introduced no evidence whatever that the boat was used solely outside Illinois after its purported temporary storage here. Therefore, I conclude that Taxpayers have not shown that their use of the boat was subject to the UTA's



temporary storage exemption.

Finally, and if the boat were acquired out of state, I conclude that only the multistate use exemption, i.e., 35 ILCS 105/3-55(d), would apply to Taxpayers' use here. The Department has assessed only the amount of Illinois use tax due, and has fully credited Taxpayers for the amount of tax they paid in Wisconsin. Tr. pp. 51, 54. Because the multistate exemption applies only "to the extent of the amount of the tax properly due and paid in the other state", see 35 ILCS 105/3-55(d), and to the extent that the exemption may be applicable here, Taxpayers have already received the full degree of its protection.

RECOMMENDATION: For all the reasons stated above, I recommend that the Director finalize the Department's issuance of the Notice of Tax Liability as originally issued.

Administrative Law Judge

Date: