

UT 96-1

Tax Type: USE TAX

Issue: Use Tax On Purchases, Fixed Assets, or Consumables  
Disallowed Resale Deduction (No Valid Certificates)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS )

versus )

Docket # )  
IBT # )

TAXPAYER )

Taxpayer )

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

THE ILLINOIS DEPARTMENT OF REVENUE (THE "DEPARTMENT") ISSUED A NOTICE OF TAX LIABILITY ON OCTOBER 5, 1990 TO TAXPAYER (THE "TAXPAYER") IN THE AMOUNT OF \$877.00 OF WHICH \$825.00 WAS FOR TAX AND \$52.00 FOR INTEREST. THE TAXPAYER PAID THE TAX DUE AND THEN FILED A PROTEST TO THE NOTICE REGARDING THE AMOUNT ATTRIBUTABLE TO A FORKLIFT. HE REQUESTED A HEARING. THE HEARING WAS HELD PURSUANT TO THE REQUEST AND IT IS RECOMMENDED THAT THE DECISION OF THE DIRECTOR OF THE DEPARTMENT BE THAT THE NOTICE OF TAX LIABILITY SHOULD BE UPHELD IN ITS ENTIRETY.

FINDINGS OF FACT:

1. THE DEPARTMENT'S PRIMA FACIE CASE WAS ESTABLISHED BY ADMISSION INTO EVIDENCE OF DEPT. EX. NOS. 1- 5.
2. TAXPAYER'S BUSINESS IS A TOOL AND DIE MACHINE SHOP COMBINATION. TR. P. 8
3. THE FOCUS OF THE AUDIT WAS USE TAX ON THE PURCHASE OF A FORKLIFT IN THE AMOUNT OF \$873.67. DEPT. EX. NOS. 1, 3; TR. PP. 8-9

4. THE FORKLIFT IS USED FOR UNLOADING REPAIR WORK AND NEW MATERIALS. IT IS ALSO USED IN THE MACHINING PROCESSES AND TO MOVE BIG PARTS AROUND IN THE WELDING AREA. DEPT. EX. NO. 3

5. IT IS ALSO USED TO TURN PIECES OF EQUIPMENT TO REPLACE WORN BEARINGS. THIS IS DONE ON WHAT IS CALLED A STOCK RACK. TAXPAYER'S EX. NOS. 1-17; TR. PP. 10-11

6. THE FORKLIFT IS BEING USED AT THE BEGINNING AND THE END OF THE DIFFERENT PROCESSES THAT THE TOOL AND DIE COMPANY CONDUCTS. TR. P. 18

7. THE DEPARTMENT ASSESSED USE TAX AGAINST THE TAXPAYER FOR THE ELECTRIC FORKLIFT PURCHASED ON DECEMBER 1, 1989. TR. P. 10

8. AT THE HEARING, THE TAXPAYER ASSERTED THAT HE HAD TWO FORKLIFTS AT THE TIME OF THE AUDIT. TR. P. 8; TAXPAYER EX. NO. 17

9. THE TAXPAYER ASSERTED THAT AN OSHA COMPLAINT PRECIPITATED THE PURCHASE OF AN ADDITIONAL FORKLIFT, THE FORKLIFT IN QUESTION. TR. P. 9

10. PRIOR TO THE HEARING THERE WAS NO ASSERTION OF TWO FORKLIFTS. TR. PP. 13-14

11. THE RECORD WAS LEFT OPEN FOR 30 DAYS FOR THE TAXPAYER TO SUBMIT ADDITIONAL AFFIDAVITS AND THE OSHA COMPLAINT TO SUBSTANTIATE HIS CLAIM THAT THERE WERE TWO FORK-LIFTS AT HIS BUSINESS DURING THE PERIOD IN QUESTION. TR. P. 15

12. FIVE NOTARIZED STATEMENTS WERE SUBMITTED BY EMPLOYEES OF THE TAXPAYER STATING THAT THE TAXPAYER PURCHASED AN ELECTRIC FORKLIFT IN 1989. TAXPAYER'S POST-HEARING GROUP EX. NO. 1

#### CONCLUSIONS OF LAW:

THE ILLINOIS CONSTITUTION PROVIDES FOR THE IMPOSITION OF THE RETAILERS OCCUPATION TAX AND RELATED TAXES PURSUANT TO ARTICLE IX SECTIONS ONE AND TWO OF THE ILLINOIS CONSTITUTION OF 1970. THEY STATE:

#### § 1. State Revenue Power

THE GENERAL ASSEMBLY HAS THE EXCLUSIVE POWER TO RAISE REVENUE BY LAW EXCEPT AS LIMITED OR OTHERWISE PROVIDED IN THIS CONSTITUTION. THE POWER OF TAXATION SHALL NOT BE SURRENDERED, SUSPENDED, OR CONTRACTED AWAY.

#### § 2. Non-Property Taxes-Classification, Exemptions, Deductions, Allowances and Credits

IN ANY LAW CLASSIFYING THE SUBJECTS OR OBJECTS OF NON-PROPERTY TAXES OR FEES, THE CLASSES SHALL BE REASONABLE AND THE SUBJECTS AND OBJECTS WITHIN

EACH CLASS SHALL BE TAXED UNIFORMLY. EXEMPTIONS, DEDUCTIONS, CREDITS, REFUNDS AND OTHER ALLOWANCES SHALL BE REASONABLE.

THE ILLINOIS COMPILED STATUTES HAVE PROVISIONS FOR EXEMPTIONS FROM TAX LIABILITY. IN PARTICULAR, 35 ILCS 105/3-5, DEALS WITH SOME EXEMPTIONS FROM THE TAX IMPOSED BY THE USE TAX ACT. IT STATES IN PART:

USE OF THE FOLLOWING TANGIBLE PERSONAL PROPERTY IS EXEMPT FROM THE TAX IMPOSED BY THIS ACT:...

- (18) MANUFACTURING AND ASSEMBLING MACHINERY AND EQUIPMENT USED PRIMARILY IN THE PROCESS OF MANUFACTURING OR ASSEMBLING TANGIBLE PERSONAL PROPERTY FOR WHOLESALE OR RETAIL SALE OR LEASE, WHETHER THE SALE OR LEASE IS MADE DIRECTLY BY THE MANUFACTURER OR BY SOME OTHER PERSON, WHETHER THE MATERIALS USED IN THE PROCESS ARE OWNED BY THE MANUFACTURER OR SOME OTHER PERSON, OR WHETHER THE SALE OR LEASE IS MADE APART FROM OR AS AN INCIDENT TO THE SELLER'S ENGAGING IN THE SERVICE OCCUPATION OF PRODUCING MACHINES, TOOLS, DIES, JIGS, PATTERNS, GAUGES, OR OTHER SIMILAR ITEMS OF NO COMMERCIAL VALUE ON SPECIAL ORDER FOR A PARTICULAR PURCHASER.

FOR USE TAX PURPOSES, THE TERM MANUFACTURING PROCESS IS DEFINED BY THE LEGISLATURE AT 35 ILCS 105/3-50 AS:

- (1) "MANUFACTURING PROCESS" MEANS THE PRODUCTION OF AN ARTICLE OF TANGIBLE PERSONAL PROPERTY, WHETHER THE ARTICLE IS A FINISHED PRODUCT OR AN ARTICLE FOR USE IN THE PROCESS OF MANUFACTURING OR ASSEMBLING A DIFFERENT ARTICLE OF TANGIBLE PERSONAL PROPERTY, BY A PROCEDURE COMMONLY REGARDED AS MANUFACTURING, PROCESSING, FABRICATING, OR REFINING THAT CHANGES SOME EXISTING MATERIAL OR MATERIALS INTO A MATERIAL WITH A DIFFERENT FORM, USE, OR NAME. IN RELATION TO A RECOGNIZED INTEGRATED BUSINESS COMPOSED OF A SERIES OF OPERATIONS THAT COLLECTIVELY CONSTITUTE MANUFACTURING, OR INDIVIDUALLY CONSTITUTE MANUFACTURING OPERATIONS, THE MANUFACTURING PROCESS COMMENCES WITH THE FIRST OPERATION OR STAGE OF PRODUCTION IN THE SERIES AND DOES NOT END UNTIL THE COMPLETION OF THE FINAL PRODUCT IN THE LAST OPERATION OR STAGE OF PRODUCTION....

PURSUANT TO POWER GRANTED BY THE LEGISLATURE, THE DEPARTMENT HAS PROMULGATED RULES THAT STATE THAT FOR A PIECE OF EQUIPMENT TO QUALIFY FOR THE MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION IT MUST BE USED PRIMARILY WITHIN THE MANUFACTURING PROCESS OF THE BUSINESS. THE BURDEN IS ON THE TAXPAYER TO PROVE THAT THE MACHINERY IS, IN FACT, USED THE MAJORITY OF THE TIME WITHIN THE MANUFACTURING PROCESS. IN THE INSTANT CASE, THE TAXPAYER HAS FAILED TO DO SO. THE OSHA COMPLAINT WAS REQUESTED BUT NOT PRODUCED. THE AFFIDAVITS FROM TAXPAYER'S EMPLOYEES ARE SELF-SERVING. THE LANGUAGE IN EACH IS IDENTICAL EXCEPT FOR THE DATE EACH AFFIANT STARTED TO WORK FOR THE TAXPAYER. THE AFFIANTS WERE NOT UNDER OATH.

I THEREFORE RECOMMEND THAT THE NOTICE OF TAX LIABILITY NUMBER XXXXX ISSUED IN THIS MATTER BE UPHELD IN ITS ENTIRETY.

RESPECTFULLY SUBMITTED,

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BARBARA S. ROWE  
ADMINISTRATIVE LAW JUDGE

DECEMBER 28, 1995