

UT 98-1
Tax Type: USE TAX
Issue: Private v. Retail Sale

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Case No.
)	NTL No.
v.)	
)	Administrative Law Judge
JOHN DOE,)	Mary Gilhooly Japlon
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Alan Osheff on behalf of the Illinois Department of Revenue; Mr. JOHN DOE, *pro se*.

SYNOPSIS:

This matter comes on for hearing pursuant to the timely protest by JOHN DOE (hereinafter “taxpayer”) of Notice of Tax Liability (“NTL”) No. XXXXX issued by the Illinois Department of Revenue (hereinafter “Department”) on the taxpayer’s purchase of an aircraft. The taxpayer protested the assessment and requested a hearing thereon. At hearing, JOHN DOE appeared *pro se*, and testified on his own behalf.

Following the submission of all evidence and a review of the record herein, it is recommended that the penalty assessed on the tax at issue be waived for reasonable cause.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of a certified copy of the Correction of Returns, showing a liability due and owing in the amount of \$5,558 for state Use Tax delinquencies, and penalty for late filing in the amount of \$278, for a total amount of \$5,836. (Dept. Ex. No. 2; Tr. pp. 7-8).
2. The Department issued Notice of Tax Liability No. XXXXX to the taxpayer on May 15, 1997 for the period of February 1994 in the amount of \$5,558 for tax, penalty in the sum of \$278 and interest in the amount of \$1,503, for a total due of \$7,339. (Dept. Ex. No. 1; Tr. pp. 6, 8).
3. An Aircraft Purchase Agreement was executed on February 28, 1994 by the purchaser, JOHN DOE, and the seller, XYZ CORP., Inc. for the amount of \$85,500.00. (Taxpayer's Group Ex. No. 1).
4. Delivery of the aircraft was to take place on or about March 1, 1994. (Taxpayer's Group Ex. No. 1).
5. The taxpayer kept the plane in Florida for approximately three weeks, until he was able to get an instructor to fly it to Wisconsin for him. (Tr. pp. 18, 21).
6. The plane was flown from Florida directly to FICTITIOUS CITY, Wisconsin. (Tr. p. 10).
7. At the time of purchase, the taxpayer was only able to fly the plane dual with an instructor, due to the fact that the taxpayer did not have enough flight instruction and was unable to get insurance. (Tr. pp. 11-12).

8. As taxpayer resides in Illinois, but only ten feet from the Wisconsin state line, he intended to hangar the aircraft in Wisconsin. (Tr. p. 10).
9. Immediately upon purchase, the taxpayer registered the aircraft with the Federal Aviation Authority (FAA). (Tr. p. 19).
10. The dealer from whom the taxpayer purchased the plane advised the taxpayer that tax would be due to some state. (Tr. p. 22).
11. The taxpayer registered the plane in Wisconsin in spring 1995. (Tr. pp. 10, 18).
12. On February 2, 1995 he received information from the state of Illinois that he needed to register the aircraft with Illinois, which he did in fact do. (Tr. pp. 23, 25; Taxpayer's Group Ex. No. 2).
13. In the first two years of use, there were ten hours of actual flying time over Illinois air space, according to the taxpayer. (Tr. p. 12).
14. The taxpayer provided various documents to the Department of Revenue to assist in the determination whether Use Tax was due. (Tr. pp. 12-13).
15. The Department informed the taxpayer that he could choose a four-month period for which to provide logbooks. (Tr. p. 13).
16. The taxpayer decided to provide the logbooks for a two-year period so as to not "sway" the Department in its determination regarding liability. (Tr. p. 13).
17. When the Department of Revenue notified him that he did owe tax on his aircraft purchase, he paid the tax. (Tr. pp. 14, 24).
18. The taxpayer paid the tax portion of the assessment, but not the interest or penalty. (Tr. p. 14-16).

19. The taxpayer paid the tax because he realized that the Use Tax would be due to either Wisconsin where the plane was hangared, or to Illinois, where he resides. (Tr. pp. 16, 22-23).

20. The taxpayer merely wanted to be certain that he paid tax to the “right” state. (Tr. p. 14).

CONCLUSIONS OF LAW:

The Department issued a corrected return to the taxpayer based upon his use in this state of an aircraft purchased in Florida and registered in Illinois. The taxpayer acknowledges that a Use Tax is due to some state; i.e., either Wisconsin where the plane is hangared, or in Illinois, where the taxpayer resides. He was made aware of the fact that Use Tax would be due to some state when he purchased the plane in Florida. It was not clear to the taxpayer where the aircraft should be registered, so he ultimately registered it in both Wisconsin and in Illinois.

The taxpayer felt that the State of Wisconsin was the likely state to impose Use Tax, as the plane was hangared in Wisconsin, and due to the minimal amount of time the plane spent in Illinois air space. However, as the Illinois Department of Revenue assessed a Use Tax, the taxpayer paid the State of Illinois. The taxpayer realizes and accepts the fact that a Use Tax is due to some state; therefore, he does not contest the tax portion of the assessment. However, he takes issue with the penalty and interest corresponding to the tax assessment. It is his position that the delay in issuing the assessment was not caused by any action on his part. Furthermore, it was unclear to him as to which state a Use Tax was properly due.

At the outset it must be noted that an administrative law judge has no authority to waive interest. Statutory interest relates to the tax; if the tax is due, so is the interest. There is no provision in either the statute at issue or the regulations which allow for the waiver or abatement of interest by the administrative law judge. In the case at bar, the taxpayer accepts that the tax is due to some state. He merely wanted to pay the “right” state. As the taxpayer paid the tax, thereby agreeing to its imposition, the interest is also due and owing and cannot be waived.

The penalty, however, is another issue. Section 3-8 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 *et seq.*) specifically provides for the waiver of penalties if reasonable cause exists for the taxpayer’s failure to file a return or pay tax at the required time. Said section states that “[r]easonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.”

The issue of reasonable cause as it pertains to late filing and late payment is discussed in 86 Ill. Admin. Code, ch. I, Sec. 700.400. Said section provides in pertinent part as follows:

- (b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.
- (c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor

does reliance on incorrect facts such as an erroneous information return.

- (d) The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability....

It is my determination that the instant taxpayer did, in fact, make a good faith effort to determine his proper tax liability. It appears that the taxpayer felt that he was obligated to register the plane. As he was not certain as to which state in which to register it, he registered it in both Wisconsin and Illinois. He assisted the Department in its determination of whether tax was due by producing documentation that he felt might shed light on the issue. In fact, rather than provide logbooks for only four months, he provided two years worth of logbooks. The taxpayer did not want to appear to be selecting months in his favor. When the State of Wisconsin notified the taxpayer that it intended to assess tax if it had not been paid elsewhere, the taxpayer notified the Illinois Department of Revenue, which promptly issued the Notice of Tax Liability at issue. The taxpayer thereupon paid the tax without delay.

It is certainly understandable that the taxpayer was not able to determine the extent of his obligation regarding Use Tax. It was not even clear in which state he should register the aircraft. He lives ten feet from the Wisconsin state border. The plane was flown directly to Wisconsin from Florida, and kept in Wisconsin. However, the taxpayer resides in Illinois. He had very limited flying time over Illinois due to the fact that he was still a student pilot and needed further instruction before being able to obtain insurance. The taxpayer's exhibits demonstrate his numerous attempts to clarify the situation with the Illinois Department of Revenue. In addition, the taxpayer does not appear to have a blemished filing history.

Based upon the facts and circumstances set forth herein, it is my determination that the taxpayer acted in good faith in determining and paying his tax liability. It is therefore my determination that the penalties relating to the assessment at issue herein be waived based upon reasonable cause.

RECOMMENDATION:

It is my recommendation that NTL No. XXXXX be affirmed as to tax and interest, but that the penalties relating thereto be waived based upon reasonable cause.

Enter:

Administrative Law Judge