

## 2014 Court Decisions

### I. Sales Tax

#### A. Bad Debt Deduction

##### **Chrysler Financial Services Americas, LLC v. Illinois Department of Revenue, 2013 L 050005 (Cir. Ct. Cook County March 14, 2014)**

Plaintiff financed the sale of automobiles from motor vehicle retailers to consumers. On those sales, Plaintiff financed both the purchase price of the automobiles and the Retailers' Occupation Tax due on the sales. The motor vehicle retailers reported and remitted the Retailers' Occupation Tax and contemporaneously assigned to Chrysler Financial all of their rights under the retail installment contracts, without recourse. When some of the consumers defaulted, Chrysler Financial wrote off the remaining balances as bad debts and filed a claim for refund pursuant to 86 Ill. Admin. Code § 130.1960. In this action, Chrysler Financial sought review of the Administrative Decision upholding the denial of its refund claim.

The circuit court affirmed the Administrative Decision, finding that Chrysler Financial was not entitled to a refund. The court noted that for a retailer to obtain a refund, it must show that tax was paid but not due. Because the agreements between the retailers and Chrysler Financial were without recourse, there was no tax paid in error. Moreover, Chrysler Financial was not a retailer who made the sales at issue. Accordingly, Chrysler Financial was not entitled to a refund under the bad debt regulation.

#### B. Manufacturing Equipment

##### **Brandenburg Industrial Service Co. v. Hamer, No. 2013 MR 001292 (Cir. Ct. DuPage County May 22, 2014)**

Brandenburg is both a manufacturer of steel and metal products and a provider of demolition, environmental remediation and site clean-up services. Brandenburg uses much of the demolished materials, scrap and waste products as materials for its manufacturing operations. The issue in dispute is whether equipment used at Illinois job sites qualifies for the manufacturing, machinery and equipment exemption. The circuit court of DuPage County ruled that the equipment qualified for exemption.

The Department appealed. The primary basis of the appeal is that Brandenburg's evidence contained insufficient documentation that the equipment in Illinois was used primarily for manufacturing rather than for demolition. Brandenburg's evidence was testimony and documentation based upon Brandenburg's study of its overall operations and the percentages that certain equipment was used for manufacturing. The Department's position is that these studies were merely general information about overall operations and lacked the specificity needed to prove that the actual equipment used in Illinois was used primarily in an exempt manner.

### **C. Aircraft Fractional Ownership**

#### **IPC Aviation, Inc. v. Illinois Department of Revenue, 2008 L 050974 (Cir. Ct. Cook County Feb. 19, 2014)**

Plaintiff IPC Aviation, Inc. (“IPC”), a wholly-owned subsidiary of Terlato Wine Group, filed suit under the Protest Monies Act challenging the assessment of use tax on its purchase of a fractional interest in a business jet under the “Flexjet” program. IPC alleged that it was not subject to use tax because its purchase of a fractional interest in the business jet was not a purchase of tangible personal property, but rather a purchase of transportation services. IPC further alleged that it was not subject to use tax because there had been no use of the property in Illinois and that imposition of use tax violates the Commerce Clause.

The court granted summary judgment in favor of the Department and IPC did not appeal. The court held that the purchase of the fractional interest was a purchase of tangible personal property in that IPC exercised rights over the business jet that were incident to ownership. The court came to this conclusion by relying on IPC’s power to sell its fractional interest, the fact that IPC claimed its pro rata share of depreciation on the aircraft for federal income tax purposes, and by determining that the use of alternate aircraft under the governing agreements of the Flexjet program constituted an exercise of ownership rights as IPC essentially traded the use of the aircraft in which it had a fractional interest for alternate planes. The court determined that IPC had used the business jet in Illinois by relying not only on flights that it flew on the specific jet at issue, but on all flights it flew on from the Flexjet fleet. Finally, the court concluded that the imposition of use tax did not violate the Commerce Clause. It determined that IPC established a substantial nexus with Illinois by flying the business jet in the state and using its ownership interest to summon substitute planes.

### **D. Cigarette Floor Tax**

#### **Casey’s Marketing Co. v. Hamer, 2012 L 050991 (Cir. Ct. Cook County Oct. 16, 2014)**

Casey’s sought a refund of monies paid pursuant to the “floor tax” provisions of the Illinois Cigarette Tax act passed in 2012. Casey’s challenged both the Department’s interpretation of the statute and the constitutionality of the Act due to alleged violations of the uniformity provisions of the Illinois constitution. The circuit court of Cook County ruled in favor of the Department on both issues. Casey’s has appealed.

The court held that the Department’s interpretation of the statute and its subsequent Information Bulletin and tax forms were consistent with the legislative intent to tax surplus inventory in the distributor’s possession so that tax was not avoided. The court also held that the Act did not violate the uniformity provisions of the Illinois Constitution.

## II. Income Tax

### A. Residency

#### **Lewis Linn v. Department of Revenue, 2013 IL App (4th) 121055 (Dec. 18, 2013)**

Plaintiff is the trustee of a number of *inter vivos* trusts that filter down from the P.G. Trusts established by A.N. Pritzger in 1961. Plaintiff filed suit under the Protest Monies Act challenging the assessment of income tax against Autonomy Trust 3. The Illinois Income Tax Act defines resident, in part, as an “irrevocable trust, the grantor of which was domiciled in this State at the time such trust became irrevocable.” Autonomy Trust 3 filed its 2006 Illinois income and replacement tax return on a nonresident basis. Given that the original grantor was an Illinois resident when the P.G. Trusts became irrevocable, the Department assessed a deficiency, which Autonomy Trust 3 paid under protest.

Plaintiff argued that imposing an income tax on Autonomy Trust 3 violated due process because Illinois lacked sufficient connection with the trust. The trustee, beneficiaries and protector were all domiciled out of state. The trust administration occurred in Texas, and none of the assets were located here. The Department argued that Autonomy Trust 3 benefitted from a range of legal benefits supporting the trust’s existence. The appellate court found that the activities surrounding the trust creation were too attenuated to assert taxing jurisdiction in the tax year at issue. The appellate court held that imposing income tax on Autonomy Trust 3 would violate due process due to insufficient contacts.