

MV 98-4

Tax Type: MOTOR VEHICLE USE TAX

Issue: Rolling Stock (Vehicle Used Interstate For Hire)

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

“KADIDDLEHOPPER” BUS COMPANY,
Taxpayer

Case No. 92 ST 0000
IBT No. 0000-0000
NTL No. 0000000000000000

Administrative Law Judge
Mary Gilhooly Japlon

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

“RUFUS” SCHOOL
BUS LINES, INC.,

Case No. 92 ST 0000
IBT No. 0000-0000
NTL No. SF 0000000000000000

Law Judge
Mary Gilhooly Japlon

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney John Alshuler, on behalf of the Department of Revenue of the State of Illinois; Collins & Collins, by Michael R. Collins, on behalf of “Kadiddlehopper” School Bus Company and “Rufus” School Bus Lines, Inc.

SYNOPSIS:

These matters come on for hearing pursuant to the timely protest by “Kadiddlehopper” School Bus Co. (hereinafter "taxpayer" or "Kadiddlehopper") and “Rufus” School Bus Lines, Inc. (hereinafter "taxpayer" or "Rufus") of Notice of Tax Liability ("NTL") No. SF-0000000000000000

and NTL No. SF-0000000000000000 issued to “Kadiddlehopper” and “Rufus”, respectively. The NTL issued to “Kadiddlehopper” on January 29, 1992 was in the amount of \$323,451 for state Use Tax, penalty and interest for the period of July 1, 1981 through August 31, 1990. The NTL issued to “Rufus” on February 11, 1992 was in the amount of \$616,022 for state Use Tax, penalty and interest for the period of July 1, 1981 through August 31, 1990.

At hearing, Messrs. “C. Ajax” and “D. Comet” testified on behalf of the taxpayers. Mr. Angelo Lolis was called by the taxpayer and testified as an adverse witness. Specifically at issue is whether the rolling stock exemption is applicable to “Rufus’s” purchases of bus repair parts, and whether “Rufus” and “Kadiddlehopper’s” purchases of fuel are tax-exempt. The parties filed a Stipulations of Fact and Issues (Joint Ex. No. 1). Subsequent to the hearing, they filed memoranda of law in support of their respective positions.

Following the submission of all evidence and a review of the record and briefs filed herein, it is recommended that this matter be resolved in favor of the Department of Revenue as to “Rufus”’s purchase of bus parts and “Kadiddlehopper”’s fuel purchases, and in favor of the “Rufus” regarding its fuel purchases.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing for “Rufus” School Bus Co. in the amount of \$267,832 for Use Tax delinquencies, and penalty in the amount of \$70,855, for a total of \$338,687 for the period of July 1, 1981 through August 31, 1990. (Dept. Group Ex. No. 1; Tr. pp. 8, 10-11).
2. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and

owing for “Kadiddlehopper” School Bus Co. in the amount of \$140,629 for Use Tax delinquencies, and penalty in the amount of \$37,203, for a total of \$177,832 for the period of July 1, 1981 through August 31, 1990. (Dept. Group Ex. No. 1; Tr. pp. 8, 10-11).

3. “Rufus” is an Illinois corporation with its principal place of business in “Anyplace”, Illinois. (Joint Ex. 1, par. 1).
4. “Rufus” is located about two miles from the Indiana border. (Tr. p. 17).
5. “Kadiddlehopper” School Bus Co. is an Illinois corporation that operates as a school and charter bus business with operations in “Someplace”, Illinois. (Joint Ex. 1, par. 9).
6. On February 11, 1992 the Department issued Notice of Tax Liability No. SF 0000000000000000 to “Rufus” School Bus Co. for the period of July 1, 1981 through August 31, 1990 in the amount of \$616,022. (Dept. Group Ex. No. 1; Joint Ex. 1, par. 4; Tr. pp. 8, 10-11).
7. On January 29, 1992 the Department issued Notice of Tax Liability No. SF 0000000000000000 to “Kadiddlehopper” School Bus Co. for the period of July 1, 1981 through August 31, 1990 in the amount of \$323,451. (Dept. Group Ex. No. 1; Joint Ex. 1, par. 10; Tr. pp. 8, 10-11).
8. “Rufus” filed a timely protest to the NTL. (Joint Ex. 1, par. 5; Tr. p. 14).
9. “Kadiddlehopper” filed a timely protest to the NTL. (Joint Ex. 1, par. 11; Tr. p. 14).
10. On July 18, 1985 the Interstate Commerce Commission granted “Rufus” authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, transporting passengers, in charter and special operations, between points in the United States. (Joint Ex. 1, pars. 2, 3; Tr. p. 14).
11. On September 20, 1993 an Agreed Order was entered dismissing that part of the NTL relating to “Rufus”’s purchase of buses. (Joint Exhibit 1, par. 7; Stip. Ex. 19; Tr. p. 14).

12. On April 4, 1995 an Amended Order was entered granting “Rufus”'s Motion to Dismiss Tax Assessed Against and Paid by Retailer. The effect of this Order is that “Rufus”'s purchases of bus parts for the period 1986 through 1988 are no longer at issue herein. (Joint Ex. 1, par. 8; Stip. Ex. 20; Tr. p. 14).
13. On September 20, 1993 an Agreed Order was entered dismissing that portion of the NTL pertaining to “Kadiddlehopper”'s purchase of buses. (Joint. Ex. 1, par. 13; Stip. Ex. 19; Tr. p. 14).
14. Stipulation Exhibit 17 is a copy of Flower Township High School District 111’s exemption letter issued by the Department which Flower Township gave to “Rufus” for “Rufus”'s purchases of fuel as its agent. (Joint Ex. 1, par. 24; Stip. Ex. 17).
15. Stipulation Exhibit 18 is a copy of a letter sent by Southwest Cook County Cooperative Association for Special Education to the Department of Revenue on March 12, 1987. (Joint Ex. 1, par. 25; Stip Ex. No. 18).
16. On each school day since 1981, “Rufus” crossed the Illinois state line to enter Indiana to pick up school children and take them to the Lansing Christian Elementary School, which is located in Illinois. (Tr. p. 20).
17. Lansing Christian is located in Illinois, approximately 300 yards from the Indiana state line, and draws students from a radius that extends into Indiana. (Tr. p. 21).
18. “Rufus” operates about ten daily regular school routes in its service of Lansing Christian Elementary School. (Tr. pp. 21, 26).
19. Approximately three of the routes operate exclusively in Indiana; that is, all of the students picked up in the morning and dropped off in the afternoon reside in Indiana. (Tr. p. 21).

20. Two of the routes operate in both Indiana and Illinois, with five of the routes operating totally within Illinois. (Tr. p. 22).
21. With respect to the Lansing Christian account, all of "Rufus"'s buses are available for those routes; the buses that service this account change from time to time. (Tr. p. 22).
22. Lansing Christian Elementary School is invoiced by "Rufus" on a monthly basis. (Tr. p. 23; Stipulation Exhibit 6).
23. "Rufus" performs "charter" work; i.e. excursion, or one-time trips. (Tr. p. 26).
24. "Rufus" provides charter services for all of the school districts for which it provides regular school route transportation services; i.e. about 32 school districts. (Tr. p. 27).
25. In addition, "Rufus" provides charter services for certain non-school organizations on a regular basis. (Tr. p. 27).
26. Most of the out-of-state charter work performed by "Rufus" involves Michigan, Indiana and Wisconsin. (Tr. p. 32).
27. "Rufus" advertises its out-of-state charter services in the yellow pages that cover Illinois and Indiana. (Tr. pp. 34-41; Taxpayer's Ex. Nos. 1, 2, 3).
28. Each charter trip is billed to the customer via the "trip ticket" or "trip invoice". (Tr. pp. 46-47).
29. People charter "Rufus" to transport them to the airport or train station. (Tr. p. 62).
30. When "Rufus" purchases a bus, it intends that it can be used in interstate commerce. (Tr. p. 82).
31. "Rufus" purchases most of the parts for its buses from a sister company, Anonymous, by placing a purchase order for a specific item with the supplier. (Tr. p. 82).
32. All of the parts "Rufus" purchases are eventually put into its fleet at its own repair shop facility. (Tr. p. 82).

33. It is possible to trace the parts into particular buses through work tickets or repair orders which reflect what particular part(s) were used on what particular bus. (Tr. pp. 82-83).
34. “Rufus” has not paid sales or use taxes to a state other than Illinois regarding the purchase of any bus, nor has it ever been approached by another state in an attempt to collect sales or use tax on the purchase of a bus. (Tr. p. 95).
35. Of the interstate work engaged in by “Rufus”, the vast majority of it stems from charter work, rather than from regular school route transportation. (Tr. p. 100).
36. Stipulation Exhibit No. 9 consists of a sample of “Rufus”’s part purchases traced to buses; the sample periods of part purchases are 1985 and 1990. (Tr. p. 110).
37. “Rufus” maintains an inventory of parts. (Tr. p. 114).
38. When “Rufus” orders a part, it is used to replace the identical part that was withdrawn from inventory for use on a particular bus. (Tr. p. 115).
39. It is difficult for the parts supplier, “Anonymous” Bus Sales, to trace the insertion into buses of small parts such as washers, nuts, bolts, light bulbs and fuses. (Tr. pp. 117-118).

CONCLUSIONS OF LAW:

The Department prepared corrected returns for both “Rufus” and “Kadiddlehopper” for Use Tax liability pursuant to section 5 of the Retailers' Occupation Tax (hereinafter ROT) Act (35 ILCS 105/5). Said section is incorporated by reference in the Use Tax Act via section 12 thereof (35 ILCS 105/12). Section 5 of the ROT Act provides in pertinent part as follows:

In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination. ... Proof of

such determination by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy or computer print-out of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue. ... Such certified reproduced copy or certified computer print-out shall, without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein. (35 ILCS 120/5).

In the case at bar, the taxpayers are challenging the assessments by the Department of Use Tax, penalty and interest on the purchase of buses, repair parts for buses, fixed assets and consumable supplies. The taxpayers assert that the bus and repair part purchases are exempt from Use Tax based upon the "rolling stock exemption" as set forth in sections 3-55 and 3-60 of the Use Tax Act as follows:

Sec. 3-55. 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:

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce... . (35 ILCS 105/3-55).

Sec. 3-60. Rolling stock exemption. The rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois. (35 ILCS 105/3-60).

To be considered an interstate carrier for hire, the taxpayer must either possess an Interstate Commerce Commission Certificate of Authority, an Illinois Commerce Commission Certificate of Authority, or be a carrier recognized by the Illinois Commerce Commission. (See, 86 Ill. Admin. Code ch. I, Sec. 130.340). In the instant case, the parties stipulated that on July 18, 1985 the Interstate Commerce Commission granted “Rufus” a certificate of authority. (Joint Ex. 1, par. 2; Stip. Ex. 1). No evidence was proffered concerning “Kadiddlehopper” School Bus Co. in this regard.

Regarding the requirement that the interstate carriers must be "for hire", the administrative rules provide that “[t]he term ‘rolling stock’ includes the transportation vehicles of any kind of interstate transportation company for hire (... bus line, ...)”, but the exemption does not contemplate vehicles:

used by a person to transport its officers, employees, customers or others not for hire (even if they cross State lines) or to transport property which such person owns or is selling and delivering to customers (even if such transportation crosses State lines). 86 Ill. Admin. Code ch. I, Sec. 130.340(b).

In sum, the taxpayers must prove by documentary evidence that they are interstate carriers for hire using rolling stock that transports persons or property moving in interstate commerce. The Certificate of Public Convenience and Necessity which was issued to “Rufus” School Bus Lines on July 18, 1985 is, by itself, not sufficient to prove that “Rufus” is an interstate carrier for hire. In First National Leasing & Financial Corporation v. Zagel, 80 Ill.App.3d 358, 360 (4th Dist. 1980), the Court specifically held that "... the certificate of temporary authority, by itself, is insufficient evidence of interstate activity." In the case at bar, there was testimony regarding the taxpayer's adherence to the rules and regulations of the Interstate Commerce Commission. However, as the

testimony in First National Leasing & Financial Corporation, *id.*, was not sufficient to prove interstate activity, testimony by the taxpayer's witness, likewise, is not adequate to establish that the taxpayer is an interstate carrier for hire. Rather, documentary evidence in the form of books and records is necessary.

I will consider the trip tickets tendered on behalf of “Rufus” as part of the stipulation exhibits as adequate substantiation of taxpayer's claim that it is an interstate carrier for hire, as the information thereon supports this assertion. There are no trip tickets in evidence pertaining to “Kadiddlehopper”. This taxpayer, therefore, has not established that it was an interstate carrier for hire. However, as the only issue regarding “Kadiddlehopper” is whether its fuel purchases are exempt, it need not establish that it qualifies for the rolling stock exemption.

Even though “Rufus”'s purchase of buses is not at issue, but rather its purchase of parts (other than for the period of 1986 through 1988), as well as its fuel purchases, this taxpayer must establish that it qualifies for the rolling stock exemption. That is, the taxpayer must prove with competent evidence that the parts it purchased were incorporated into rolling stock (i.e., vehicles) that transported, for hire, "persons whose journeys or property whose shipments originate or terminate outside Illinois".¹

Several questions arise, such as (1) what types of trips constitute interstate commerce and qualify for the rolling stock exemption; and (2) how much interstate movement is necessary for an otherwise qualifying taxpayer to be entitled to the exemption. The regulations pertaining to the

¹ Chapter I, Section 130.340(a) of 86 Ill. Admin. Code provides that “... the Retailers’ Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce... .” Subsection (d) provides in essence that in order for the rolling stock to be moving in interstate commerce, it must transport, for hire, “... persons whose journeys or property whose shipments, originate or terminate outside Illinois on other carriers. ...” Therefore, the rolling stock exemption itself is explicative of the phrase “interstate commerce”.

statutes at issue do not directly address these questions, but do shed some light on the issues. 86 Ill. Admin. Code ch. I, Sec. 130.340 provides in relevant part as follows:

(c) The rolling stock exemption cannot be claimed by a purely intrastate carrier for hire as to any tangible personal property which it purchases because it does not meet the statutory tests of being an interstate carrier for hire.

(d) The exemption applies to vehicles used by an interstate carrier for hire, even just between points in Illinois, in transporting, for hire, persons whose journeys or property whose shipments, originate or terminate outside Illinois on other carriers. The exemption cannot be claimed for an interstate carrier's use of vehicles solely between points in Illinois where the journeys of the passengers or the shipments of property neither originate nor terminate outside Illinois.

It is important to note that there is a distinction between a vehicle traveling interstate, or across the state line, and "rolling stock moving in interstate commerce". The exemption is accorded to stock, carrying persons or property, the journeys of which originate or terminate outside Illinois. A state can tax the instrumentalities of interstate commerce, as long as two conditions are met: (1) an obvious nexus exists between the taxing state and the object(s) taxed; and (2) the tax is fairly apportioned, so that there is no unreasonable taxation. (First National Leasing & Financial Corp. v. Zagel, *supra*).

"Rufus" provides regular school route transportation services for 32 school districts, all of which are located in Illinois. Lansing Christian Elementary School, however, is located about 300 yards from the Indiana border and draws students from a radius that extends into Indiana. Of the ten routes servicing Lansing Christian, three operate entirely within Indiana, and two operate within

both Illinois and Indiana. Stipulation Exhibit 6 consists of the monthly invoices from “Rufus” to Lansing Christian during the taxable years. However, no evidence was proffered to indicate what specific buses were involved in the servicing of this account. For the year 1981, the invoices mention bus no. 624. The problem, however, is that it is not at all evident what particular route(s) this bus serviced, and whether it entered into Indiana at all. Furthermore, invoices are missing for January, February, March, July, August and November of that year.

There was also testimony regarding “Rufus”’s work for the City of Munster Park District and the Drifting Dunes Girl Scout Council of Valparaiso, Indiana. The taxpayer's witness testified that “Rufus” performed substantial amount of work for these entities entirely within the state of Indiana. However, absolutely no documentary evidence was proffered to support these assertions. Again, oral testimony concerning a taxpayer's interstate activities is insufficient to prove its claim of entitlement to the rolling stock exemption. (First National Leasing & Financial Corporation v. Zagel, supra). Without documentary evidence to support “Rufus”’s claims, its assertions cannot be considered.

Stipulation Exhibit 2 consists of “Rufus”’s trip tickets for the period at issue (July 1981 through 1985, and 1989 through August 1990). Stipulation Exhibits 3 and 4 are summaries of the trip tickets set forth by bus and year. However, all of the trip tickets and summaries thereof deal with interstate trips. There is no exhibit setting forth intrastate charter trips, as well as interstate charter trips. It is not possible to determine, therefore, how many interstate trips any bus took in any year compared to the total number of trips taken by the same bus in the same year. There was testimony that some of the charter trips involved overnight stays, as well as trips to and/or from the airport. Again, without ability to compare these types of excursions with all trips engaged in by

“Rufus”, it is not possible to make the determination that the taxpayer did move in interstate commerce to a degree sufficient to warrant the applicability of the exemption.

Even only considering the interstate trips taken by the buses at issue, Stipulation Exhibit No. 4 is demonstrative in reflecting a negligible number of interstate trips taken by a substantial number of buses during the taxable period. Stipulation Exhibit No. 4 is a summary of the interstate trips taken by each bus in the fleet for each year during the taxable period. There are 376 buses listed on the exhibit. However, the exhibit reflects that the greatest number of buses used interstate in any particular year (1984) was only 134; the fewest number of buses used in taking interstate trips was 43 in 1988.. The exhibit reveals that there were a substantial number of buses that made zero interstate trips during one or more of the taxable years. A total of 41 buses made only one interstate trip during the entire taxable period.

In First National Leasing and Financial Corporation v. Zagel, *supra*, Justice Green opined that the oral evidence elicited at the administrative hearing indicated that the equipment at issue crossed on an "infrequent and irregular basis". There was no bona fide risk of multistate taxation, and therefore, no commerce clause requisite for the apportionment of Use Tax to use in Illinois. In the instant case, the evidence presented is insufficient to determine the percentage of trips taken by each bus at issue with passengers in route across state lines, or to conclude that the trips taken by each bus were at all conducted on a fixed schedule or with any degree of regularity. It is impossible, therefore, to accord the repair parts the rolling stock exemption when the buses into which they were placed are not eligible for the same.

In addition to the foregoing, there are further considerations pertaining to the issue of repair parts. It is clear that in order for the parts to be considered exempt, a determination would have to be made that the parts were used on buses which were exempt as rolling stock moving in interstate

commerce. It is of serious concern if the taxpayer claims the exemption at the time it is purchased, but only uses the part, by happenstance, on vehicles that may move as rolling stock until six months, eight months or one year after purchase. There is evidence, in fact, that “Rufus” maintains an inventory of parts. When it orders a part from its supplier, the part is used to replace the identical part removed from inventory for use on a particular bus. How long the part remains in inventory prior to installation in the bus is an unanswered question. As a result, the parts do not qualify for the exemption.

The intent behind the rolling stock exemption is the avoidance of multistate taxation. The case of Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) allows a state to impose a tax on interstate commerce under certain qualifying conditions. In enacting section 3-55 of the Use Tax Act (35 ILCS 105/3-55), the Illinois legislature was reiterating that in order to prevent actual or likely multistate taxation, certain situations are exempted from the application of tax. Herein, there is no suggestion that any other state was in a position to impose its own Use Tax on the rolling stock, nor is there any likelihood of multistate taxation due to the very limited utilization of the buses in other states. As sparse as they may be, given the facts of the case, it is highly improbable that another state could constitutionally impose a tax on the buses. Irregardless, the taxpayer presented no evidence that multistate taxation was actual or probable. (*See, Complete Auto Transit, Inc. v. Brady, supra*). In fact, the taxpayer's witness testified that to his knowledge, “Rufus” has not been subjected to a sales or use tax with respect to the purchase of any bus by any state other than Illinois.

The taxpayer cites the case of Burlington Northern, Inc. v. Department of Revenue, 32 Ill.App.3d 166 (1st Dist. 1975), in support of its position that the rolling stock exemption is to be liberally construed in order to avoid placing any possible burden on interstate commerce. In

Burlington Northern, the court was concerned with whether the imposition of state Use Tax upon the purchase of various transportation vehicles would unduly burden interstate commerce. The court could not find any legislative history or intent regarding the enactment of the rolling stock exemption, and therefore, utilized general principles of statutory construction in rejecting the “original intent and primary purpose” standard employed by the Department in determining whether the rolling stock exemption was applicable to the vehicles at issue. The court found that the application of this standard may make it administratively easier for the Department to decide whether the exemption applies, but it has no basis in statute or regulation, nor was it apparently within the contemplation of the legislature. The court, therefore, found that Burlington Northern’s physical movement across state lines 13 percent of the time, combined with the interstate movement accorded to said taxpayer as a carrier of interstate traffic, was sufficient to allow various transportation vehicles to qualify for the “rolling stock” exemption.

The Burlington court seems to ignore the preamble to the exemptions set forth in section 3-55 of the Act, which provides that “[t]o 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” This appears to stem from the court’s determination that the Illinois legislature intended to exempt rolling stock moving in interstate commerce regardless of the potentiality of multiple taxation. Because the intent of the legislature is so clearly provided in the statute, I respectfully disagree with the Burlington court’s determination that the preamble is meaningless and, therefore, merely superfluous. (*See, also*, Judge John A. Ward’s findings in his Order of September 4, 1997 in the case of National School Bus Service, Inc. v. Illinois Department Revenue, 96 CH 13424).

The Burlington case is factually distinguishable from the instant case. The court in Burlington determined that the purchases of various types of equipment by the railroad company were excepted from Use Tax pursuant to the rolling stock exemption due to the intertwining of taxpayer's intrastate and interstate business. In finding passenger cars exempt, the court held that when considering Burlington's 13 percent of actual physical movement across state lines, combined with the interstate movement "conferred on" the railroad by reason of its transportation of interstate traffic consisting of mail and express packages, it can be concluded that Burlington's "interstate use and involvement is ... intertwined with its intrastate use... ." (32 Ill.App.3d 166, 176). The same reasoning was applied when finding switching engines to be exempt. That is, the railroad company's interstate use and involvement of the equipment was so intertwined with its intrastate use that to discontinue its intrastate business would in great measure negatively affect its interstate business. In the instant matter, I do not find that "Rufus"'s business taken as a whole intricately intertwines intrastate and interstate movement, except for the Lansing Christian Elementary School trips.

The taxpayer takes issue with the fact that the Department assessed "Rufus"'s purchases of parts made prior to January 1, 1989, claiming that said purchases are barred by the statute of limitations as set forth in 35 ILCS 105/12. At the time the Department issued the assessment, Section 5 of the Retailers' Occupation Tax Act, incorporated by reference into the Use Tax Act via section 12 thereof, allowed the issuance of an assessment under certain circumstances back to July 1, 1981, well beyond the three and one-half year limitation period. (Sargent & Lundy v. Sweet, 207 Ill.App.3d 888 (1990)). These circumstances include failure to file returns.²

² A six year limitation period was effectuated subsequent to the issuance of the assessments at issue. (*See*, P.A. 88-660, eff. Sept. 16, 1994).

In arguing its position in its post-hearing brief, the taxpayer assumes facts not in evidence. For example, the taxpayer asserts that ““Rufus” purchases its parts in Illinois from an Illinois retailer who is required to and did file a monthly return on its receipts for the previous month...”. (Taxpayer’s Hearing Brief, p. 37). There is no such evidence of record. The taxpayer also sets forth arguments that the Department allegedly made regarding when Use Tax returns are due to be filed. However, the record substantiates no such argument. Furthermore, the taxpayer asserts that there was no “failure to file” on its part because there was no requirement for it to file a return, as a return was filed by the retailer. There is also no evidence of record that the retailer reported these sales to “Rufus”.

What is of record is that the taxpayer has not filed returns and paid the tax imposed by the Use Tax Act. The determination by the Department that the rolling stock exemption is not applicable necessitates the determination that the taxpayer has not complied with the filing requirements set forth in section 10 of the Use Tax Act. The taxpayer, therefore, is a non-filer and the statute of limitations is extended beyond the three and one-half year period. The same reasoning applies to the extension of the limitations period on the purchases of motor fuel by “Rufus” and “Kadiddlehopper” during the taxable period.

As set forth in the Stipulation as to Facts and Issues (Joint Ex. 1), an issue raised by the parties is whether “Rufus” and “Kadiddlehopper” purchased fuel as agents of government units or educational institutions, and are thereby entitled to an exemption from tax pursuant to 35 ILCS 120/2-5(11) on the fuel identified in the Notices of Tax Liability. The Use Tax Act provides for the same exemption applicable to purchases of personal property by a governmental body or corporation or institution organized and operated exclusively for educational purposes. (35 ILCS 105/3-5(4)). There is stipulated evidence that “Flower” Township High School District 111 was

issued an exemption number by the Department, and that “Flower” Township gave the exemption letter to “Rufus” for “Rufus”’s purchases of fuel as its agent. (Joint Ex. 1, par. 24, Stip. Ex. 17). As to fuel purchases made by “Rufus” on behalf of “Flower” Township subsequent to November 25, 1985 (the date of the exemption letter), said purchases are therefore exempt.

On the other hand, “Kadiddlehopper”’s purchases of fuel on behalf of the Southwest Cook County Cooperative Association for Special Education are not exempt. Paragraph 25 to Joint Ex. 1 references and incorporates stipulation exhibit 18, a letter sent by Southwest Cook County Cooperative Association for Special Education. Said letter to the Department provides, *inter alia*, that “Kadiddlehopper” is the contract carrier for the Cooperative, which is part of the public school system and a tax exempt entity. The letter further states that gas purchased is used in fulfillment of this contract. There is no evidence of record indicating that “Kadiddlehopper” is the agent of the Southwest Cook County Cooperative Association for Special Education. “Kadiddlehopper”, therefore, was simply purchasing fuel on its own behalf in fulfillment of its contract with the Cooperative. Thus, it is my determination that purchases of fuel by “Kadiddlehopper” on behalf of the Southwest Cook County Cooperative Association for Special Education made during the taxable period are not exempt.

In an effort to show that the Department’s differential tax treatment of “Rufus”’s purchases of buses over the years, the taxpayer attempts to rely upon a previous Departmental determination wherein “Rufus”’s purchases were allegedly held to be exempt. The taxpayer relies upon this evidence in support of its position that it detrimentally relied upon this ruling since 1974, and therefore, penalties should be abated. However, it must be noted that the Rehearing Disposition (Taxpayer’s Ex. 5) has no relevance even as to the issue of penalties because it does not pertain to “Rufus”. The Brief of Facts and Law (Taxpayer’s Ex. 6) which was offered into evidence along

with the Rehearing Disposition does relate to “Rufus”, but reflects a hearing date that is different than that relating to the Rehearing Disposition. In other words, the Brief does not correspond to the Rehearing Disposition. Therefore, these exhibits have no bearing and lend no support to taxpayer’s argument that penalties should be abated due to detrimental reliance upon a previous departmental ruling.³

As noted previously, when granting exemptions from tax, the burden is on the taxpayer to prove clearly and conclusively its entitlement thereto. Statutes which exempt property or entities from taxation must be strictly construed in favor of taxation and against exemption. (Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455 (2nd Dist. 1995)). In the case at bar, “Rufus” School Bus Lines, Inc. has failed to carry its burden of proof regarding its purchases of bus parts. It is my determination, therefore, that this taxpayer is not entitled to the rolling stock exemption, and that Use Tax was properly assessed on the purchases of parts for the taxable period. It is my determination that the purchase of fuel by “Rufus” on behalf of “Flower” Township High School District 111 is exempt. However, the purchase of fuel by “Kadiddlehopper” School Bus Company on behalf of the Southwest Cook County Cooperative Association for Special Education is not exempt from tax.

RECOMMENDATION

³ On pages 26-27 of its post-hearing brief, the taxpayer argues that the Administrative Law Judge “improperly refused to admit evidence showing that the Department’s application of the Rolling Stock exemption is arbitrary, capricious and unreasonable. First, the Department has refused to recognize its own ruling as to “Rufus”’s purchase of buses granting the exemption. (See: IDOR v. Superior Coach Sales & Service, Inc., Rg. No. 185-364-3). ... The ALJ’s refusal to admit this evidence was a violation of Taxpayer’s due process rights. ...”

It is to be noted, however, that I did in fact admit into evidence Taxpayer’s Exhibit Nos. 4, 5 and 6, which consists of a Rehearing Disposition, a Brief of Facts and Law and a Final Assessment. (See, Tr. 75). These exhibits were expressly admitted for the limited issue of penalties. Upon review of the exhibits in writing this recommendation, it is clear that the Rehearing Disposition does not pertain to “Rufus”, and therefore, is not relevant. The Brief pertains to “Rufus”, but in reference to a hearing other than that described in the Rehearing Disposition, and therefore, is likewise not relevant.

It is my recommendation that NTL No. SF 0000000000000000 as modified by prior Order regarding “Kadiddlehopper” School Bus Company be finalized as issued. Furthermore, it is my recommendation that NTL No. SF 0000000000000000 as modified by prior Order regarding “Rufus” School Bus Lines, Inc. be finalized as issued, except as to “Rufus”’s fuel purchases on behalf of “Flower” Township High School District 111.

Enter:

Administrative Law Judge