ST 96-54
Tax Type: SALES TAX
Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
	)	No.
v.	)	IBT No.
	)	
TAXPAYER	)	Charles E. McClellan
	)	Administrative Law Judge
Taxpayer	)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Gary L. Smith, Loewenstein, Hagen, Oehlert & Smith, P.C. for TAXPAYER.

SYNOPSIS:

This matter came on for hearing pursuant to the taxpayers' timely protest of Notice of Department's Tentative Determination of Claim denying a claim for refund of Illinois Use Tax assessed on certain of taxpayer's rolling stock. An evidentiary hearing was held on April 24, 1996, after which the taxpayer filed a brief in support of its position. The issue is whether three International trucks, two dump bodies, two pup trailers and a lowboy trailer qualify for the use tax exemption for rolling stock used in interstate commerce. The taxpayer conceded that a fourth truck which was included in its claim does not qualify for the exemption. The recommendation is to

reduce the taxpayer's claim for refund and, as so reduced, to allow it.

Findings of Fact:

1. The Department audited the books and records of the taxpayer in 1991 for the periods July 1988 through June 1991. (Taxpayer Ex. No. 10).

2. At the conclusion of the audit, the Department denied a rolling stock exemption on certain of taxpayer's motor vehicles and trailers. (Taxpayer Ex. No. 10).

3. Taxpayer filed a claim for refund of $14,392 (Illinois Use Tax of $11,577 and interest of $2,815) assessed on several items of its rolling stock acquired during the audit periods. (Tr. p. 5; Dept. Group Ex. No. 1).

4. The rolling stock, the dates acquired and the related use tax assessments are as follows:

	Date Acquired	Tax
Used '77 International dump truck	5/11/89	$ 438
'84 International truck	5/10/89	938
'86 International truck	5/10/89	1,250
MIT transport trailer with hydraulic	5/23/89	2,044
Heil l4' supreme pup trailer	5/26/89	1,289
Heil l4' supreme pup trailer	5/26/89	1,289
Heil 15' 10/12 yard dump body	6/9/89	540
Heil 15' 10/12 yard dump body	6/9/89	540
'91 Int'l truck with Heil dump body	4/1/91	3,249
Total		$11,577

(Dept. Group Ex. No. 1).

5. At the evidentiary hearing in this case, taxpayer conceded that the first vehicle in the list, *supra*, the used '77

International dump truck, did not qualify for the rolling stock exemption. (Tr. p. 79; Taxpayer's Brief p. 2).

6. Taxpayer is located in Hamilton, Illinois, near the Iowa and Missouri borders, and is in the business of highway and heavy road construction. (Tr. pp. 14, 15).

7. Taxpayer has another business that hauls products and equipment for third parties. (Tr. pp. 14, 15).

8. During the audit period Taxpayer held a Certificate of Public Convenience and Necessity granting it authority to operate as an interstate carrier for hire with authority to "operate as a common carrier, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting fertilizer and road building materials, between points in Illinois, Iowa, Missouri and Wisconsin." (Tr. pp. 14, 16; Taxpayer Ex. No. 2).

9. During the audit period, taxpayer transported road building materials for customers between Iowa, Missouri and Illinois but had no operations in Wisconsin. (Tr. p. 16).

10. The 1984 and 1986 model International trucks were acquired in May of 1989, and are referred to in the taxpayer's exhibits as Units 144 and 145, respectively. (Tr. p. 18, 19).

11. The Heil dump bodies were purchased in June of 1989 and were mounted on Units 144 and 145. (Dept Group Ex. No. 1; Tr. p. 22).

12. The '91 International truck was purchased in April of 1991 and is designated in the taxpayer's exhibits as Unit 154. (Tr. p. 31).

13. The Heil supreme pup trailers were purchased in May of 1989 with Heil bodies already mounted on them and were hooked to Units 144 and 145. (Dept Group Exhibit No. 1; Tr. p. 22).

14. Units 144, 145 and 154 can each haul about thirteen tons per trip and up to 25 tons with a pup trailer hooked on behind. (Tr. pp. 68, 69).

15. The MIT transport trailer, purchased in May 1989, is a three-axle lowboy trailer used to haul heavy equipment such as bulldozers and quarry trucks. (Dept Group Ex. No. 1; Tr. pp.25, 26).

16. During the audit period taxpayer owned three asphalt plants, in Illinois and two in Missouri. (Tr. p. 16)

17. Taxpayer leased the lowboy trailer to Safe Transport, Inc., which used it to move taxpayer's road building equipment, between a variety of destinations in Illinois, Iowa and Missouri, charging the taxpayer for this service. (Tr. pp. 35-41; Taxpayer Group Ex. No. 7).

18. Between mid July and the end of October in 1990, Unit 145, made 68 trips for hire, usually with a pup trailer attached, between Gray Quarries, Inc. in Hamilton, Illinois and the Keokuk Municipal Airport in Keokuk, Iowa hauling porous backfill and concrete stone for the prime contractor, Manatts, Inc. (Tr. pp. 48-57; Taxpayer Group Ex. No. 8).

19. Between mid July and the end of October in 1990, Unit 144 made 47 trips for hire, usually with a pup trailer attached, between Gray Quarries, Inc. in Hamilton, Illinois and the Keokuk Municipal Airport in Keokuk, Iowa hauling porous backfill and concrete stone

for the prime contractor, Manatts, Inc. (Tr. pp. 49- 57; Taxpayer Group Ex. No. 8).

20. During August of 1990, Unit 145 made 21 trips for hire, usually with a pup trailer attached, between Gray Quarries, Inc. in Hamilton, Illinois and Keokuk, Iowa hauling course stone aggregate for the contractor, Love Enterprises, Inc. (Tr. pp. 58- 60; Taxpayer Group Ex. No. 8).

21. During July and August of 1990, Unit 144 made 16 trips for hire, usually with a pup trailer attached, between Gray Quarries, Inc. in Hamilton, Illinois and Keokuk, Iowa hauling course stone aggregate for the contractor, Love Enterprises, Inc. (Tr. pp. 58- 60; Taxpayer Group Ex. No. 8).

22. During April 1991, Unit 154 made three trips between Gray Quarries, Inc. in Hamilton, Illinois and Keokuk, Iowa hauling manufactured sand for the contractor, L.W. Matteson, which was doing work on the riverboat facility's landing in Keokuk, Iowa. (Tr. pp. 61-64; Taxpayer Group Ex. No. 8).

23. During 1989, taxpayers truck fleet, including Units 144 and 145 and the pup trailers, made approximately 500 trips for hire between quarries in Kahoka, Missouri and Wayland, Missouri hauling stone and sand to Great River Ready Mix on Rural Route 2 in Hamilton, Illinois. (Tr. pp. 65-69; Taxpayer Group Ex. No. 8).

24. During April 1991, Unit 144, with a pup trailer attached, made six trips for hire hauling sand from Gray Quarries, Inc. in Hamilton, Illinois to Keokuk, Iowa for L.W. Matteson which was performing construction work on the riverboat facilities located there. (Tr. p. 83; Taxpayer Group Ex. No. 12).

25. On April 5, 1991, on a trip for hire, Unit 145 transported a load of concrete stone from Grays Quarries in Hamilton, Illinois to the Keokuk Junction Railroad in Keokuk, Iowa. (Tr. p. 82, Taxpayer Group Ex. No. 12).

26. On April 18, 1990, and again on October 29, 1990, Unit 145, on trips for hire, delivered road rock to Chem Gro in Alexandria, Missouri. (Tr. p. 83, Taxpayer Group Ex. No. 12).

27. On February 13, 1990, Unit 145, with a pup trailer attached, made a trip for hire hauling half-inch chips from Hamilton, Illinois to Walters Roofing Company in Keokuk, Iowa. (Tr. p. 84, Taxpayer Group Ex. No. 12).

Conclusions of Law:

The testimony and documentary evidence on record in this case are sufficient to overcome the Department's *prima facie* case of tax liability assessed with respect to the following equipment:

	Date Acquired	Tax
'84 International truck	5/10/89	$ 938
'86 International truck	5/10/89	1,250
Heil l4' supreme pup trailer	5/26/89	1,289
Heil l4' supreme pup trailer	5/26/89	1,289
Heil 15' 10/12 yard dump body	6/9/89	540
Heil 15' 10/12 yard dump body	6/9/89	540
'91 Int'l truck with Heil dump body	4/1/91	3,249
Total		$ 9,095

The taxpayer conceded that the used '77 International dump truck does not qualify for the rolling stock exemption. The testimony and exhibits in the record do not overcome the Department's tentative denial of the taxpayer's claim for refund of use tax paid with

respect to the Heil lowboy trailer. Accordingly, by such evidence, and under the reasoning given below, the amount of tax in the refund claim filed by W.L. Miller Company should be reduced to $$9,095 and allowed along with the related interest assessments. The balance of the claim must be denied. In support thereof, the following conclusions are made:

The statute involved in this case is the Illinois Use Tax Act (35 ILCS 105/1 *et seq*.), specifically the rolling stock exemption set forth in § 3-55. That section of the Act exempts tangible personal property used by an interstate carrier for hire as rolling stock moving in interstate commerce. (35 ILCS 105/3-55(b)). Regulation § 130.340 (b) provides that the term "rolling stock" includes transportation vehicles of any kind of an interstate transportation company for hire, including a trucking company, but it excludes vehicles which are being used to haul the company's own property or property which it is selling and delivering to its customers, even if such hauling is done across state lines. (86 Admin. Code ch. I, § 130.340 (b)).

The burden is on the taxpayer to prove that its rolling stock was used by the taxpayer in interstate commerce during the audit period. When a taxpayer claims that it is exempt from a particular tax, or where it seeks to take advantage of deductions or credits allowed by statute, it has the burden of proof. This derives from the fact that deductions and exemptions are privileges created by statute as a matter of legislative grace. Statutes granting such privileges are to be strictly construed in favor of taxation. Balla v. Dept. of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981). To

prove its case, a taxpayer must present sufficient documentary evidence to support its claims for exemption. Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, (1st Dist. 1991).

The Department's auditor disallowed the credit on the vehicles in question stating in his report that the "Dump trucks are used primarily to haul there [sic] own products. Once in a great while they will haul for someone else." (Taxpayer Group Ex. No. 10) In the same report the auditor stated that the primary purpose for this equipment is to haul the taxpayer's "own material." (Taxpayer Group Ex. No. 10) He acknowledged that the taxpayer "may haul for hire across State lines on occasion," but he believed that the exemption only applies if the taxpayer uses the equipment in interstate commerce for hire on regular and frequent occasions. (Taxpayer Group Ex. No. 10) As the taxpayer correctly notes in its brief, there is no primary purpose test in the statute or in the regulations. Burlington Northern, Inc. v. Dept. of Revenue, 32 Ill.App.3d 166 (1st Dist.1975). Therefore, the fact that taxpayer hauled its own equipment and material in the vehicles in question from time to time does not prevent qualification for the rolling stock exemption. In any case, the records admitted into evidence in this matter coupled with taxpayer's testimony prove that, except for the used '77 International truck and the lowboy trailer, the taxpayer used the trucks and trailers in question hauling material for third party customers in interstate commerce for hire on a regular and frequent basis.

The taxpayer in this case was licensed as an interstate carrier for hire during the audit period. At the hearing, taxpayer introduced a large volume of invoices and trip sheets to show that the vehicles in question were in fact used to provide interstate transportation for hire to its customers during the audit period. There are numerous such documents included in Taxpayer Group Exs. No. 8 and 12. One of the documents in No. 8 does show that taxpayer was hauling its own product to a customer. That invoice (M 4769) is an invoice from taxpayer to City of Kohoka, Missouri recording the sale and delivery of 70.35 tons of asphalt road patching material to the customer. That trip alone would not qualify any of the vehicles for the exemption because the taxpayer is delivering a product it sold to a customer. However, Taxpayer Group Exs. No. 8 and 12 also contains numerous trip sheets for Units 144, 145, the pup trailers attached to those units, and Unit 154 which were prepared by Gray Quarries, Inc., for interstate trips in which parties other than the taxpayer are listed as the customer and the taxpayer's trucks are identified as the hauler in each case. Taxpayer's vice president and office manager testified that these trip tickets and invoices were for third parties for hire. These invoices and trip sheets coupled with the relevant testimony show that this equipment was being used in interstate commerce for hire.

Taxpayer's vice president and office manager also testified with regard to the use of the Heil lowboy trailer. He testified that taxpayer leased it to Safe Transport, Inc. which used it during the audit period to move taxpayer's heavy equipment and heavy equipment belonging to third parties for hire across state lines. (Tr. pp.26,

35-41; Taxpayer Group Ex. No. 7). Taxpayer Group Ex. No. 7 consists of 26 invoices of Safe Transport, Inc., in which the lowboy trailer was used to haul various items of heavy road building equipment into or out of Illinois. In each case, the shipper listed is the taxpayer, indicating that the trailer was being used to ship taxpayer's own equipment. Taxpayer did not introduce any documentary evidence showing that the trailer was used to transport equipment belonging to third parties across state lines for hire. Therefore, the only evidence of record that the trailer was used in interstate commerce for hire, is the testimony of taxpayer's vice president and office manager, and that is not enough to prove taxpayer's assertion that the trailer was used during the audit period in interstate commerce. See Mel-Park Drugs, Inc. v. Department of Revenue, *supra*. Accordingly, the refund claimed on the lowboy trailer must be denied.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's denial of taxpayer's claim for refund of the of use tax paid with reference to the '77 International dump truck ($438) and the Department's denial of taxpayer's claim for refund of use tax paid with reference to the transport trailer ($2,044) be sustained, and that the rest of taxpayer's claim be allowed.

Date

Charles E. McClellan
Administrative Law Judge