

ST 97-14

Tax Type: SALES TAX

Issue: Use Tax on Purchases, Fixed Assets, or Consumables  
Books And Records Insufficient

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	)	Docket #
	)	IBT #
v.	)	NTL #
	)	NTL #
	)	
TAXPAYER	)	
	)	Administrative Law Judge
	)	Linda Olivero
Taxpayers	)	

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RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; James Myers of LeFevre, Zeman, Oldfield & Lawinger, Law Group Ltd. for TAXPAYER and TAXPAYER

Synopsis:

On June 28, 1994, the Department of Revenue (Department) issued a Notice of Tax Liability to TAXPAYER for use tax for the audit period of January 1, 1990 to May 31, 1993. On December 7, 1994, the Department issued a Notice of Tax Liability to TAXPAYER for use tax for the audit period of April 1, 1991 to August 31, 1993. (TAXPAYER and TAXPAYER are hereinafter collectively referred to as "the taxpayers.") The taxpayers filed timely protests to the Notices. A hearing was held in which the taxpayers presented documentary evidence and testimony from various witnesses. The issues raised in

this case are the following: (1) whether a 1988 Dorsey flatbed truck and a 1991 Trail King truck qualify for the rolling stock exemption under the Use Tax Act; (2) whether use tax is owed on a truck body that was allegedly built by TAXPAYER. After considering all of the evidence presented, it is recommended that this matter be resolved in favor of the Department.

**FINDINGS OF FACT:**

1. TAXPAYER operated a sole proprietorship known as TAXPAYER until April 1, 1991 when he formed TAXPAYER (Tr. pp. 7-8, 13).

2. TAXPAYER is the president and sole shareholder of TAXPAYER (Tr. p. 6).

3. The taxpayers are in the business of pipeline maintenance; they repair pipelines and transport pipeline equipment. (Tr. pp. 7, 20).

4. The taxpayers are based in Patoka, Illinois. (Tr. p. 7).

5. Various oil companies hire the taxpayers to repair pipelines and to haul pipeline equipment between Kansas, Ohio, Michigan, and Mississippi. (Tr. pp. 7, 15-17, 23-24; Taxpayers' Ex. 1, 2, 5).

6. The taxpayers own several vehicles, two of which are a 1988 Dorsey flatbed truck and a 1991 Trail King truck. (Tr. pp. 27-28).

7. The taxpayers did not submit documentary evidence indicating that the two specific vehicles at issue were used to haul equipment interstate for hire.

8. The taxpayers also own a welding truck body. (Tr. p. 9, 34).

9. The taxpayers did not submit documentary evidence indicating that use tax was paid on the steel that was specifically used to make the welding truck body.

10. The Department audited the books and records of TAXPAYER for the period of January 1, 1990 to May 31, 1993. (Dept. Ex. #1).

11. On April 10, 1994, the Department issued a corrected return (hereinafter "Correction of Return") for TAXPAYER for the audit period in question showing use tax due in the amount of \$8,254 and a penalty in the amount of \$2,476. (Dept. Ex. #1).

12. The Department audited the books and records of TAXPAYER for the period of April 1, 1991 to August 31, 1993. (Dept. Ex. #1).

13. On April 10, 1994 the Department issued a Correction of Return for TAXPAYER for the audit period in question showing use tax due in the amount of \$16,301 and a penalty in the amount of \$4,890. (Dept. Ex. #1).

**CONCLUSIONS OF LAW:**

The Use Tax Act (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 12 of the Use Tax Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Correction of Return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/4. Once the Department has established its *prima facie* case by submitting the Correction of Return into evidence, the burden shifts to the taxpayer to overcome

this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim for an exemption. Id.

#### Rolling Stock Exemption

It is well-settled that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.

The term "rolling stock" typically refers to vehicles. Midway Airlines v. Department of Revenue, 234 Ill.App.3d 866, 869 (1st Dist. 1992). The rolling stock exemption under the Use Tax Act provides in relevant part as follows:

"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(b)).

Thus, in order to qualify for the exemption the taxpayers must establish that (1) they are an interstate carrier for hire and (2) the vehicles in question moved in interstate commerce.

The taxpayers presented evidence indicating that they are an interstate contract carrier for hire. TAXPAYER testified that the taxpayers are hired by various oil companies to transport the

companies' pipeline equipment between states. This was corroborated by testimony from both the treasurer of the corporation and an employee of OIL COMPANY. In addition, the taxpayers produced daily time records from TAXPAYER and TAXPAYER that indicate that the taxpayers have hauled equipment interstate for various customers and charged the customers for the services.

Nevertheless, as to the second element of the rolling stock exemption, the taxpayers have failed to produce evidence indicating that the specific vehicles in question moved in interstate commerce. None of the daily time records indicate that either the 1988 Dorsey flatbed truck or the 1991 Trail King truck, in particular, were used in interstate commerce for hire. As stated earlier, testimony from the parties is insufficient, by itself, to establish entitlement to an exemption. See Sprague, 195 Ill.App.3d at 804. The taxpayers must submit documentary proof that the vehicles in question moved in interstate commerce. Id. The evidence that the taxpayers have submitted is insufficient to meet their burden of proving that these vehicles moved in interstate commerce.

The taxpayers contend that although it is not possible to determine from the taxpayers' records which vehicle was used on a specific job, they are entitled to the exemption because the Department previously determined that the vehicles in question qualified for the exemption. In support of this argument, the taxpayers submitted a letter dated February 23, 1994 from Deborah D. Hennessey, who is a tax analyst for the Department, to TAXPAYER in which Ms. Hennessey states that the two vehicles at issue in this case qualify for the rolling stock exemption. (Taxpayers' Ex. #3).

In response, the Department argues that the letter does not estop the Department from further investigating the taxpayers' books and records in order to determine the correct amount of tax owed.

The doctrine of estoppel is applied against the State only to prevent fraud and injustice. Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410, 431 (1996). This is especially true when public revenues are involved. Id. Generally, estoppel cannot be asserted against a party not having knowledge of all the relevant facts. Id. at 432. In addition, the State is not estopped by any mistakes made or misinformation given by a Department employee with respect to tax liabilities. Id.

In this case, the evidence does not warrant applying estoppel against the Department. The taxpayers did not allege fraudulent conduct on the part of the Department, nor did they present any evidence of fraud. They have also failed to produce evidence indicating the basis upon which the Department's determination in the letter was made. It is not clear that the Department had knowledge of all the relevant facts when it made its determination in the letter. The letter therefore did not preclude the Department from further investigating the taxpayers' records.

#### Truck Body

The taxpayers also argue that they do not owe use tax on a certain welding truck body because the truck body was built by TAXPAYER and use tax was paid on the steel used to make the truck body when the steel was purchased. TAXPAYER and the treasurer of the corporation both testified that TAXPAYER built the truck body. TAXPAYER also stated that he purchased the steel for the truck body

from STEEL SUPPLY and that he paid use tax on the steel when it was purchased. The taxpayers submitted 20 invoices from STEEL SUPPLY that were admitted into evidence for the limited purpose of showing that the taxpayers' customary practice is to pay use tax on purchases of steel from STEEL SUPPLY.

Once again, this evidence is insufficient to support the taxpayer's claim. While the taxpayers presented evidence that they customarily pay use tax on their purchases of steel, they did not present evidence that is identified with their books or records indicating that tax was paid on the steel that was used for the construction of the truck body. Without documentary evidence, the claim is not valid. See Sprague, 195 Ill.App.3d at 803-804; A.R. Barnes & Co. v. Department of Revenue, 173 Ill.App.3d 826, 833-34 (1st Dist. 1988).

Recommendation

Because the taxpayers have failed to present sufficient evidence to overcome the Department's *prima facie* case, it is recommended that the Correction of Returns for TAXPAYER and TAXPAYER be upheld in their entirety.

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Linda Olivero  
Administrative Law Judge

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