

ST 97-34

Tax Type: SALES TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket #
v.)	IBT #
)	NTL #
)	
TAXPAYER/TAXPYER)	Linda Olivero
)	Administrative Law Judge
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Homer J. Tice of Grosboll, Becker, Tice & Smith for TAXPAYER/TAXPAYER/TAXPAYER

Synopsis:

TAXPAYER/TAXPAYER/TAXPAYER ("taxpayer") filed two use tax returns with the Department of Revenue ("Department") for vehicles that it purchased in 1989 and 1991. On the returns, the taxpayer indicated that the vehicles qualified for the rolling stock exemption. The Department requested additional information to support the claim to the exemption. The Department subsequently denied the exemption and issued a Notice of Tax Liability ("NTL") to the taxpayer for the two vehicles. The taxpayer timely protested the NTL. The only issue in this case is whether the two vehicles, a 1989 GMC tractor and a 1991 GMC tractor, qualify for the rolling stock exemption under the Use Tax

Act. A hearing was held during which the taxpayer presented documentary evidence and testimony from witnesses. After considering the evidence presented, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. TAXPAYER ("TAXPAYER") is engaged in the business of wholesale and retail sales of farm implements and equipment. TAXPAYER was initially incorporated in 1964 and is located in Assumption, Illinois. (Taxpayer Ex. #6).

2. TAXPAYER ("TAXPAYER") is a manufacturer of grain bins and feeding equipment for poultry and livestock. TAXPAYER was initially incorporated in 1972 and is located in Assumption, Illinois. (Taxpayer Ex. #6, 7; Tr. pp. 15; 21).

3. TAXPAYER and TAXPAYER operated as separate businesses until January 31, 1987, when TAXPAYER and other corporations merged into TAXPAYER. As part of the merger, the name of the surviving corporation was changed from TAXPAYER to TAXPAYER ("GSI"). (Taxpayer Ex. #6; Tr. p. 21).

4. After the merger, GSI operated two separate divisions: (1) the Manufacturing Division, which is also known as the TAXPAYER Division ("GS-Division"); and (2) the TAXPAYER Division ("SI-Division"). (Taxpayer Ex. #7, Tr. p. 39).

5. Although the two divisions kept separate books and records, the financial information was combined at the end of each year in order to prepare the financial statements for GSI. (Tr. p. 20).

6. In March of 1989, GSI purchased a 1989 White GMC tractor and filed a use tax return indicating that no tax was owed on the purchase

because the vehicle qualified for the rolling stock exemption. (Dept. Ex. #2, pp. 3-4, 39).

7. In January of 1991, GSI purchased a 1991 White GMC tractor and filed a use tax return indicating that no tax was owed on the purchase because the vehicle qualified for the rolling stock exemption.¹ (Dept. Ex. #2, pp. 1-2, 39).

8. Although GSI was the legal owner of the vehicles at the time of the purchases, the taxpayer referred to the SI-Division as the purchaser of the vehicles. Both vehicles were used to transport various items, and each vehicle made several interstate trips. (Tr. pp. 28-29, 39, 42).

9. For the 1989 tractor, trip reports identifying the trips made by this vehicle in 1989 and from 1991 to 1995 were admitted into evidence. The taxpayer could not locate the trip reports for 1990. (Taxpayer Ex. #2; Tr. pp. 13-14).

10. The taxpayer summarized all of the interstate trips made by the 1989 tractor, and the summary was admitted into evidence. All of the interstate trips made by the 1989 tractor were to haul grain bins or equipment for the GS-Division. The SI-Division charged the GS-

¹. Although the taxpayer admitted that GSI purchased both vehicles, the use tax return that was filed for the 1989 vehicle shows "TAXPAYER Associates, Inc." as the purchaser. The return was signed, however, by an employee of TAXPAYER, and the affidavit in support of the return was signed by an employee of TAXPAYER. The return that was filed for the 1991 vehicle shows "TAXPAYER Associates/TAXPAYER dba TAXPAYER Co." as the purchaser. This return and the affidavit in support of it were also signed by an employee of TAXPAYER. The NTL was issued to "TAXPAYER/TAXPAYER," presumably because these were the names on the tax returns. Nothing in the record identifies TAXPAYER, and the taxpayer has not argued that the NTL was issued to the wrong party.

Division for each of these trips, and the GS-Division paid the SI-Division for the charges. (Taxpayer Ex. #1, 2; Tr. pp. 15-16).

11. The percentage of interstate miles driven by the 1989 vehicle for the GS-Division are as follows: 15.7% in 1989, 10.2% in 1991, 8.4% in 1992, 7.8% in 1993, 6.6% in 1994, and 7.1% in 1995. (Taxpayer's Ex. #5, Tr. pp. 23-25).

12. For the 1991 tractor, trip reports identifying the trips made by this vehicle from 1991 to 1995 were admitted into evidence. (Taxpayer Ex. #4; Tr. p. 17).

13. The taxpayer summarized all of the interstate trips made by the 1991 tractor, and the summary was admitted into evidence. All of the interstate trips made by the 1991 tractor through 1994 were to haul grain bins or equipment for the GS-Division. The SI-Division charged the GS-Division for each of these trips, and the GS-Division paid the SI-Division for the charges. (Taxpayer Ex. #3, 4; Tr. p. 18).

14. The percentage of interstate miles driven by the 1991 vehicle for the GS-Division for the years 1991 through 1994 are as follows: 12.3% in 1991, 28.7% in 1992, 17.9% in 1993, and 9.1% in 1994. (Taxpayer's Ex. #5, Tr. pp. 23-25).

15. For the year 1995, eleven of the seventeen interstate trips made by the 1991 tractor were for a third party known as Warren Transport. The total interstate miles driven for Warren Transport was 10,759, which is 12.7% of the miles (84,792) driven by this vehicle in 1995 and 2.3% of the total miles (477,454) driven by this vehicle during the periods for which evidence was presented. The total interstate miles driven for the GS-Division in 1995 was 2,344, which

is 2.8% of the miles driven by this vehicle in 1995. (Taxpayer Ex. #4; Tr. p. 18).

16. The Interstate Commerce Commission issued permits to "TAXPAYER d/b/a TAXPAYER Co." to engage in transportation as a contract carrier by motor vehicle. (Taxpayer's Ex. #8, #9).

17. After the use tax returns were filed, the Department performed an office audit and on July 27, 1992 issued a corrected return for the taxpayer for the two vehicles in question showing use tax due in the amount of \$7,335 and a penalty in the amount of \$734. The corrected return was admitted into evidence under the Director's Certificate. (Dept. Ex. #1).

18. In May of 1994, the companies separated, and TAXPAYER Company was incorporated as a separate organization again. (Taxpayer Ex. #7; Tr. p. 21).

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 corrected 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 corrected 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.

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 taxpayer must establish that (1) it is an interstate carrier for hire and (2) the vehicles in question moved in interstate commerce.

The Department argues that the taxpayer has not met the first element of this exemption because the taxpayer is not an interstate carrier "for hire." The Department contends that the only evidence concerning whether the taxpayer is an interstate carrier for hire is the evidence involving the two vehicles at issue, and these two

vehicles were almost exclusively used to transport the taxpayer's own goods. The Department claims that a taxpayer cannot carry its own goods "for hire."

The taxpayer argues that from January 1987 until May of 1994, the GS-Division and the SI-Division were, for all intents and purposes, separate businesses. The taxpayer states that the GS-Division and the SI-Division maintained separate books and records, were located at separate facilities, and used separate buildings. In addition, for each trip that the SI-Division did on behalf of the GS-Division, the SI-Division issued a bill to the GS-Division, and the GS-Division paid the bill to the SI-Division. This "income" was included in the SI-Division's financial records. The taxpayer notes that the GS-Division and the SI-Division were run by brothers who were very competitive with each other, and they compared their respective "bottom line figures" at the end of each year from the different books that they kept.

The taxpayer claims that because the hauling of the goods was a "profit-generating activity" for the SI-Division, the taxpayer was operating as an interstate carrier "for hire." The taxpayer states that "hire" is defined as "compensation for the use of a thing, or for labor or services," citing Black's Law Dictionary, 656 (1979). The taxpayer argues that the term "for hire" as used in section 3-55(b) of the Use Tax Act simply means using rolling stock "for moving interstate commerce with payment for the services." (Taxpayer's brief p. 6). The taxpayer further argues that the statute does not prohibit the application of the exemption to this factual situation.

As previously stated, exemption provisions are strictly construed in favor of taxation, and the burden is on the taxpayer to establish its entitlement to the exemption. Although the statute does not define the term "for hire," a State may narrow the scope of its rolling stock exemption. See First National Leasing & Financial Corporation v. Zagel, 80 Ill.App.3d 358, 360 (4th Dist. 1980). The Department's regulations state that the term "Rolling Stock" does not include "vehicles which are being used by a person *** 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, §130.340(b). Notwithstanding the taxpayer's claim that the GS-Division and the SI-Division were effectively two separate businesses, only one legal entity, GSI, existed from January of 1987 to May of 1994. GSI used the vehicles to deliver its own property to its own customers, and therefore the vehicles do not qualify for the exemption.

In Square D Co. v. Johnson, 233 Ill.App.3d 1070 (1st Dist. 1992), the court rejected a constitutional challenge to the "carrier for hire" requirement of the rolling stock exemption. In Square D, the taxpayer purchased an airplane that was used solely by the taxpayer's employees for trips to meetings, other company locations, and sales calls. The taxpayer argued that the portion of the statute limiting the rolling stock exemption to "carriers for hire" violates the Illinois constitutional requirement for uniformity in taxation. The court rejected this argument, finding that there are substantial differences between carriers for hire and private carriers. The court stated that "carriers for hire carry passengers and goods as a profit-

generating activity, whereas private carriers, though most likely to facilitate or increase the profits of their business, do not fly solely to generate a profit." Square D Co. at 1082.

The taxpayer argues that Square D is distinguishable because the employees of Square D were not paying to use the company-owned airplane, and therefore, unlike the instant case, it was not a "profit-generating activity." In the present case, however, GSI did not "profit" from the hauling. Although the GS-Division paid the SI-Division for the hauling, the financial records were combined at the end of the year to complete GSI's financial statements. Because GSI did not benefit financially from the hauling at issue, it cannot be considered a profit-generating activity.

The taxpayer also argues that the regulation previously cited, §130.340(b), goes beyond the statute to the extent that it disallows the exemption on the basis that the vehicle, as opposed to the carrier, is not "for hire." The taxpayer correctly states that the statute does not require that the vehicle, per se, be used "for hire." Nevertheless, this argument is irrelevant because the taxpayer has failed to present evidence showing that it is an "interstate carrier for hire."

Finally, although the companies separated in 1994 and the taxpayer did a small percentage of hauling for hire for Warren Transport in 1995, the vehicles at issue were purchased in 1989 and 1991. The period from 1989 to 1994 is a reasonable period of time for determining whether the purchases qualified for the exemption, and the evidence presented for that time period indicates that the vehicles do not qualify.

Because the taxpayer has not met the first element of the rolling stock exemption, it is not necessary to address whether the taxpayer has established the second element concerning whether the vehicles in question moved in interstate commerce.

Recommendation

The taxpayer has failed to present sufficient evidence to show that the vehicles in question qualify for the rolling stock exemption. It is therefore recommended that the corrected return be upheld in its entirety.

Linda Olivero
Administrative Law Judge

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