

ST 97-6  
Tax Type: SALES TAX  
Issue: Interstate Commerce (Exemption Issue)

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

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THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS, )  
 )  
Petitioner ) No.  
 )  
v. ) IBT No.  
 )  
TAXPAYER, )  
Taxpayer ) Linda K. Cliffel,  
 ) Admin. Law Judge

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RECOMMENDATION FOR DISPOSITION

**APPEARANCES:** Jerry W. Kinnan for taxpayer; John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue.

**SYNOPSIS:**

This cause arose by way of a protest dated August 9, 1996 in response to a Notice of Tax Liability ("NTL") issued against TAXPAYER ("TAXPAYER" or "Taxpayer") for tax due on the purchase of an airplane. The partnership is in the business of owning and leasing airplanes, and the airplane at issue was leased in the normal course of taxpayer's business. The Department issued a Notice of Tax Liability (XXXXX) on June 14, 1996 in the amount of \$598,000 plus penalties and interest of \$145,957.

The Correction of Return indicated the tax due was Retailers' Occupation Tax. Since the taxpayer is not subject to ROT, and the Department introduced no evidence regarding liability for use tax, the Department has failed to present sufficient evidence to sustain its burden of proof.

On consideration of this matter it is my recommendation that this matter be resolved in favor of the taxpayer.

**FINDINGS OF FACT:**

1. TAXPAYER is a Delaware general partnership which is engaged in the business of owning and leasing airplanes. (Taxpayer Ex. No. 1)
2. Taxpayer traded in its old airplane (a Falcon 50) in exchange for a newer airplane (a Falcon 900) in 1994. (Taxpayer Ex. No. 1)
3. Taxpayer is not engaged in the business of selling at retail tangible personal property. (Taxpayer Ex. No. 1)
4. The Department issued a Correction of Return on April 12, 1996 with a tax liability of \$598,000 entered on line 1 of the form, which indicates a correction of Retailer's Occupation Tax or Service Occupation Tax. (Dept. Group Ex. No. 1)

**CONCLUSIONS OF LAW:**

Pursuant to 35 ILCS 120/4, the Correction of Returns submitted as Dept. Ex. No. 3 is *prima facie* correct and constitutes *prima facie* evidence of the correctness of the amount of tax due as shown thereon. See also, A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3rd 826 (1st Dist. 1988).

In order to overcome the presumption of validity attached to the Department's corrected returns, the taxpayer must produce competent evidence, identified with its books and records showing that the Department's returns are incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968).

Taxpayer offered into evidence an affidavit from the managing general partner of TAXPAYER. Department's counsel objected to the statements regarding the sale of tangible personal property on the grounds of relevancy since, he argued, the tax at issue was use tax. I sustained his objection likewise believing that the tax at issue was use tax incurred on the purchase of the airplane. It was not until closing argument that taxpayer's counsel raised the mischaracterization of the tax at issue in the Correction of Return. On

reconsideration, taxpayer's assertion that it was not engaged in the retail sale of tangible personal property is clearly relevant and must be considered.

By introducing the Correction of Return, the Department has established its *prima facie* case as regards a Retailers' Occupation Tax ("ROT") liability. Taxpayer's affidavit has rebutted the Department's *prima facie* case. The Department has not introduced any further evidence regarding taxpayer's liability for use tax, and therefore the Department has not met its burden of proof.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Tax Liability No. XXXXX be dismissed.

Date:

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Linda K. Cliffel  
Administrative Law Judge