

UT 10-02

Tax Type: Use Tax

Issue: Use Tax on Aircraft Purchase

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS) No.:	00-ST-0000
) NTL No.:	00 0000000000000
) IBT No.:	0000-0000
)	
v.) Aircraft Use Tax	
)	
JOHN DOE,) Julie-April Montgomery	
Taxpayer.) Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe *pro se*; Paula M. Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter arose from a protest filed by John Doe (“Taxpayer”) of the “Notice of Tax Liability” (“NTL”) dated July 7, 2008 and issued to him by the Illinois Department of Revenue (“Department”). The NTL was issued pursuant to the provisions of the Illinois Aircraft Use Tax Act (“AUTA”), 35 ILCS 157/10-1 *et seq.*, with respect to the purchase of an airplane for which no tax was paid. An evidentiary hearing was held on December 7, 2009 at which the Department presented documentary evidence and the Taxpayer presented only his testimony. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, are made the following findings of fact and conclusions of law.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the NTL which reflects aircraft use tax due of \$875, a late filing penalty of \$18, a late payment penalty of \$175, and interest of \$192 for a total amount due of \$1,260. Department Ex. No. 1; Tr. p. 8.
2. Taxpayer completed his purchase and assumed ownership of the airplane in 2004. *Id.*; Tr. pp. 12-13.
3. Ownership of the airplane was transferred to Taxpayer in Illinois. Tr. pp. 12, 15.

Conclusions of Law:

The AUTA imposes a tax upon the “privilege of using, in this State, any aircraft...acquired by gift, transfer or purchase after June 30, 2003.” 35 ILCS 157/10-15.

Section 35 of the AUTA incorporates by reference the Use Tax Act (“UTA”) (35 ILCS 105/1 *et seq.*), except for the provisions of section 3-70 regarding the nonresident exemption. 35 ILCS 157/10-35. Section 12 of the UTA, in turn, incorporates sections 5 and 8 of the Retailers’ Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*). 35 ILCS 105-12. These ROTA sections provide that the admission into evidence of Department records under a certificate of the Director establishes the Department’s *prima facie* case and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/5, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Once the Department’s *prima facie* case is established, the burden of proof is shifted to the taxpayer to overcome the

Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

To overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with his books and records that show the Department's records are incorrect. Copilevitz, supra. Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of tax deemed due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4th Dist. 1990).

The Department's NTL was entered into evidence under the certificate of the Director of Revenue, and as such, the Department's *prima facie* case was established, and the burden of proof shifted to Taxpayer to overcome the Department's *prima facie* case.

Taxpayer stated that he had "no argument that the tax technically was valid at the time of the purchase of the airplane." Tr. p. 18. Taxpayer testified that he felt that he should not be subject to the tax because he was unaware of the tax at the time of the purchase and received notification of the tax liability more than three years after the purchase. Tr. pp. 10-11, 16, 19. The law however does not provide relief for these reasons.

Taxpayer failed to introduce legally sufficient evidence to overcome the Department's *prima facie* case.

Recommendation:

For the reasons stated above, it is recommended that the Department's NTL be affirmed.

February 2, 2010

Julie-April Montgomery
Administrative Law Judge