

UT 13-08

Tax Type: Sales Tax

Tax Issue: Use Tax On Watercraft Purchase

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

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN DOE

Taxpayer

**Docket # XXXX
Acct ID: XXXX
Letter ID: XXXX**

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

John Doe (“taxpayer”) purchased a boat on April 28, 2011 from an individual who lives in Kentucky. The taxpayer is an Illinois resident, and he completed Form RUT-75, Aircraft/Watercraft Use Tax Transaction Report, which he filed with the Department of Revenue (“Department”) on May 19, 2011. On Form RUT-75, the taxpayer claimed that the boat was exempt from the watercraft use tax, so the taxpayer did not pay the tax when he filed the form. The Department conducted an office audit of the transaction and determined that the taxpayer owed the watercraft use tax pursuant to the Watercraft Use Tax Law (35 ILCS 158/15-1 *et seq.*). The Department issued a Notice of Tax Liability (“NTL”) to the taxpayer that assessed the watercraft use tax, penalties, and interest on the purchase of the boat. The taxpayer filed a timely

protest to the NTL, and an evidentiary hearing was held. After reviewing the evidence and testimony, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer and his wife live in Anywhere, Illinois. (Dept. Ex. #1, pp. 2-5; Taxpayer Ex. #1, p. 1; Tr. p. 9)
2. On April 28, 2011, the taxpayer purchased a boat from Jack Black, who lives in Kentucky. (Taxpayer Ex. #1, p. 1)
3. On May 6, 2011, the taxpayer brought the boat into Illinois in order to perform maintenance on it, clean it, and title it in Illinois. (Taxpayer Ex. #1, p. 1; Tr. pp. 7, 18-19)
4. The taxpayer titled the boat and trailer in Illinois because that was his state of residence. He said he could not title the vehicles in Kentucky because he was not a resident of Kentucky. (Dept. Ex. #1, p. 3; Tr. pp. 9, 17)
5. After he cleaned it, titled it, and performed maintenance on it, the taxpayer took the boat back to Kentucky and kept it there. The boat was stored at ABC Business in Kentucky beginning in April 2011. (Taxpayer's Ex. #1, pp. 3, 5-6)
6. On May 19, 2011, the taxpayer filed Form RUT-75, Aircraft/Watercraft Use Tax Transaction Report, with the Department. On the RUT-75, the taxpayer marked two boxes indicating that the purchase is exempt from tax. (Taxpayer Ex. #1, p. 1)

7. The first box marked was “d,” which states “Item was acquired outside of Illinois and brought into and stored temporarily in Illinois. It will be removed and never returned to Illinois.”¹ (Taxpayer Ex. #1, p. 1)
8. On December 26, 2012, the Department issued a Notice of Tax Liability to the taxpayer that shows tax due in the amount of \$XXXX, plus interest and penalties, for the purchase of the watercraft on April 28, 2011. A copy of the NTL was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Watercraft Use Tax Law (“WUTL”) imposes a tax upon the privilege of using in Illinois any watercraft acquired by gift, transfer, or purchase after September 1, 2004. 35 ILCS 158/15-10. The watercraft use tax is imposed on the use of watercraft in this State regardless of whether the watercraft is actually registered under the Boat Registration and Safety Act (625 ILCS 45/1-1 *et seq.*). The WUTL does not contain an exemption for isolated or occasional sales.²

Section 15-35 of the WUTL incorporates by reference the provisions of the UTA (except for the provisions of section 3-70³) to the extent that they are not inconsistent with the WUTL. 35 ILCS 158/15-35. Section 12 of the UTA incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department shall determine

¹ The second box marked was “f,” which states “Watercraft exempt under the Watercraft Use Tax Law, Section 15-10(v).” (Taxpayer Ex. #1, p. 1) This section exempts watercraft if it is exempt from some of the numbering provisions of Section 3-12 of the Boat Registration and Safety Act (625 ILCS 45/1-1 *et seq.*). 35 ILCS 158/15-10(v). This provision does not apply in this case.

² Under the Use Tax Act (“UTA”) (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a “retailer.” 35 ILCS 105/3. The term “retailer” excludes a person who does not hold himself out as being engaged in selling tangible personal property at retail and who makes an “isolated or occasional sale.” 35 ILCS 105/2; see also 86 Ill. Admin. Code §150.101(d). Even though an isolated or occasional sale transaction may not result in a use tax liability under the UTA, a purchaser may still incur an Illinois use tax liability if he or she purchases a specific type of tangible personal property, such as a watercraft, aircraft, or vehicle, in an isolated or occasional sale transaction. See Watercraft Use Tax Law (35 ILCS 158/15-1 *et seq.*); Aircraft Use Tax Law (35 ILCS 157/10-1 *et seq.*); Vehicle Code (625 ILCS 5/3-1001 *et seq.*).

³ Section 3-70 of the UTA allows an exemption for property acquired by a nonresident. 35 ILCS 105/3-70.

the amount of tax due “according to its best judgment and information.” 35 ILCS 105/12; 120/4. A certified copy of the Department’s determination of the amount of tax due is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due as shown therein. *Id.*

Pursuant to these provisions, the Department determined the amount of tax due; the Department’s determination and the Notice of Tax Liability were admitted into evidence under the certificate of the Director of the Department. Once the Department established its *prima facie* case by the admission of these documents, the burden of proof shifted to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). “If the taxpayer offers no countervailing evidence, the Department’s *prima facie* case stands un rebutted and becomes conclusive.” Branson v. Department of Revenue, 168 Ill. 2d 247, 260 (1995). To prove its case, a taxpayer must present more than his 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 his claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

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). All facts are construed and all doubts are resolved in favor of taxation. *Id.* The taxpayer has the burden of proving by clear and convincing evidence that he is entitled to the exemption. *Id.*

Section 15-10 of the WUTL includes exceptions to the watercraft use tax and states, in relevant part, as follows:

This tax does not apply if: ...

(iii) the use of the watercraft is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), or (e) of Section 3-55 of that Act dealing with the prevention of actual or likely multi-state taxation; ... 35 ILCS 158/15-10.

Subsection (e) of Section 3-55 of the Use Tax Act provides as follows:

Sec. 3-55. 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:

...

(e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State. 35 ILCS 105/3-55(e).

The taxpayer presented sufficient evidence to show that the purchase of the boat meets the temporary storage exception to the watercraft use tax. At the time the NTL was issued in December 2012, the taxpayer had brought the boat into Illinois only once, and it was shortly after he purchased it. He brought it into Illinois in order to do maintenance on it, clean it, and title it in Illinois because his residence was in Illinois. After that, he took the boat to Kentucky and kept it there. He provided the storage receipts to show that he stored the boat in Kentucky during the time period in question. The taxpayer has, therefore, met the temporary storage exception for the watercraft use tax.

Recommendation:

For the foregoing reasons, it is recommended that the NTL be dismissed.

Linda Olivero
Administrative Law Judge

Enter: November 13, 2013