

MV 02-2

Tax Type: Motor Vehicle Use Tax

Issue: Occasional Sales – Non-Retail Transactions (Exempt)

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-00
v.)	IBT # 0000-0000
)	NTL # 00-00000000000000
JANE DOE)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Stanley L. Morris of Quinn, Johnston, Henderson & Pretorius for Jane Doe.

Synopsis:

Jane Doe (“taxpayer”) lives in Illinois and purchased an airplane from ABC Aviation, Inc. (“ABC”), which is based in New York. The taxpayer did not pay tax on the purchase of the aircraft. The Department of Revenue (“Department”) sent the taxpayer a Notice of Tax Liability for Illinois use tax based on information that the Department received from the Federal Aviation Administration (“FAA”). The taxpayer filed a timely protest to the Notice, arguing that the tax should not be imposed because

the seller was not a retailer and the sale was an isolated or occasional sale. After reviewing the record, it is recommended that the Notice of Tax Liability be upheld.

FINDINGS OF FACT:

1. On October 21, 1997, the taxpayer purchased a 1974 Mooney M20F aircraft from ABC, which is located in Anywhere, New York. The purchase price of the aircraft was \$56,000. (Dept. Group Ex. #1, pp. 4-5)

2. The taxpayer lives in Anywhere, Illinois. (Dept. Group Ex. #1, pp. 4-5)

3. ABC registered to collect sales tax with the state of New York in September of 1997. On its application with the New York State Department of Taxation and Finance, ABC entered a Standard Industrial Classification (“SIC”) code of 5599, which is for automotive dealers. (Dept. Group Ex. #1, pp. 18, 24)

4. The SIC code 5599 has subcategories, such as 559905, which is for aircraft dealers, and 559908, which is for aircraft equipment parts and supplies. ABC did not specify which subcategory it falls under. (Dept. Group Ex. #1, p. 24)

5. ABC was not registered as a retail seller of aircraft with the FAA. (Taxpayer Ex. #1, ¶4)

6. On September 5, 1997, ABC purchased the aircraft that it sold to the taxpayer from XYZ Corporation. (Dept. Group Ex. #1, p. 2)

7. From February 1997 through April 1999, ABC sold not less than two nor more than four aircraft, including the sale to the taxpayer. (Taxpayer Ex. #1, ¶6)

8. For the years 1998, 1999, 2000, and 2001, ABC has been included on the website XXXX. The website is an “Aircraft Sales and Search Directory” that provides aviation related services. (Dept. Group Ex. #1, p. 19)

9. ABC has an advertisement page on the XXXXX website. Under ABC' name, the ad states "Aircraft Sales and Refurbishment." The ad also states that ABC "offers one stop shopping for all your aircraft needs." The ad continues by providing information concerning the refurbishing work that ABC performs. At the end of the ad, it states: "Looking for a particular aircraft? We'll find it and refurbish it to your specifications." (Dept. Group Ex. #1, p. 23)

10. On April 10, 2001, the Department issued a Notice of Tax Liability to the taxpayer that shows additional tax due in the amount of \$3,500, plus interest and penalties. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Group Ex. #1, p. 31)

CONCLUSIONS OF LAW:

The Use Tax Act ("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. If the tangible personal property is purchased from a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail, then the seller is not a retailer within the meaning of the Act. 35 ILCS 105/2. Sales made by this type of seller are considered to be isolated or occasional sales, and the privilege of using the property purchased from those sellers is not taxable. *Id.*

Section 12 of the Act incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the notice of tax liability issued by the Department "shall be prima facie proof 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 notice 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.

The taxpayer contends that she does not owe the use tax because at the time of the sale ABC did not hold itself out as being engaged in the selling of aircraft and did not habitually engage in selling aircraft. The taxpayer contends that at the time of the sale, ABC primarily provided repair and maintenance services relating to aircraft. The taxpayer notes that there are 18 subcategories within the SIC code 5599, and the fact that one of those categories is aircraft dealer does not necessarily mean that ABC is a dealer. Also, ABC was not listed on the XXXXX website until 1998, which is after the taxpayer purchased the plane. The New York State Department of Taxation and Finance found that two other sales that were made by ABC were exempt. (Dept. Ex. #1, p. 18) From February 1997 to April 1999, ABC sold no more than four aircraft, including the sale to the taxpayer. Because of the lack of volume and the fact that the taxpayer did not maintain an inventory of aircraft, the taxpayer contends that this was an occasional sale.

The Department argues that the taxpayer has not overcome the Department's prima facie case. The Department contends that ABC held itself out as being engaged in selling aircraft. At the time of the audit, the best information that the Department had was that ABC was a retailer of aircraft. The Department provided printouts of the website XXXXX that show that ABC was included on the website and that ABC's advertisement states "Aircraft Sales and Refurbishment." The Department contends that the taxpayer has failed to present evidence indicating that this sale was an isolated or occasional sale.

The evidence supports a finding that ABC is a retailer within the meaning of the Act. The website clearly shows that beginning in 1998, ABC held itself out as a dealer. The name of the website and the advertisement on the site indicate that ABC sold aircraft

starting in 1998. Although the taxpayer notes that the sale took place less than four months before the website began, the taxpayer did not present evidence indicating that there was a change in ABC' business or that the business was in any way different in 1997 than in 1998. The taxpayer presented an affidavit of John Doe, who was an officer of ABC from February 1997 through April 1999. (Taxpayer Ex. #1). Mr. John Doe' affidavit does not indicate that there was a change in the business from 1997 to 1998. In addition, Mr. John Doe' affidavit contains conclusory statements, such as ABC was not an aircraft dealer and ABC' primary business was repair and maintenance of aircraft. The portion of an affidavit that contains unsupported assertions or self-serving, conclusory statements can be stricken. (See Jones v. Dettro, 308 Ill.App.3d 494, 499 (4th Dist. 1999); Steuri v. Prudential Insurance Company of America, 282 Ill.App.3d 753, 763 (1st Dist. 1996).) Mr. John Doe' conclusory statements are not sufficient to overcome the Department's prima facie case.

Mr. John Doe' affidavit states that ABC sold not less than two nor more than four aircraft. The ambiguity of this statement allows the possibility that three or four airplanes were sold in 1997. If this is true, then the sale to the taxpayer was not an occasional sale. Without records from ABC to verify the actual number of sales, Mr. John Doe' statement does not support a finding that this was an occasional sale.

The taxpayer testified that her husband had located the aircraft, and she was not certain how he found it. (Tr. p. 10) Her husband was a pilot; he was making a career transition at the time and needed flight time. (Tr. p. 12) The taxpayer testified that it was cheaper to buy the plane and make monthly payments rather than paying the hourly fee for flight time. (Tr. p. 12) The plane was put in her name because her husband was not working at the time. (Tr. p. 12) She said that she thought she was purchasing it from an individual and did not realize until the point of sale that she was purchasing it from ABC. (Tr. p. 16) Her husband did not testify.

The taxpayer has the burden of showing that the seller did not hold itself out as being engaged in the selling of the aircraft, and without details concerning how the taxpayer discovered the plane, the evidence is insufficient to make this finding. The taxpayer mentioned that she thought she was purchasing the aircraft from an individual until she saw that she was purchasing it from ABC. Apparently at the time of sale, she realized that she was purchasing it from an entity that may be engaged in the selling of aircraft. The record does not support a finding that ABC was not a retailer.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability be upheld.

Linda Olivero
Administrative Law Judge

Enter: October 28, 2002