

**UT 10-04**

**Tax Type: Use Tax**

**Issue: Private Vehicle Use Tax – Value Exceeds \$15,000**

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

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

v.

**JOHN DOE,**  
Taxpayer.

**No.: 00-ST-0000  
IBT No.: 0000-0000  
NTL No.: 00 000000000000**

**Julie-April Montgomery  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARENCES:** Marc Muchin, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*.

**SYNOPSIS:**

The Department of Revenue (“Department”) issued a “Notice of Tax Liability for Form RUT-50” (“Notice”) to John Doe (“Taxpayer”). The Notice alleged Taxpayer underpaid Illinois Vehicle Use Tax (“VUT”) for a motor vehicle. Taxpayer timely protested the Notice and requested a hearing. A hearing was held on November 30, 2009 where Taxpayer presented testimony and the Department presented documentary and testimonial evidence. At hearing the Department stated that the Notice issued Taxpayer should be revised to reflect a lesser amount of VUT, and as such, the penalty and interest amounts originally assessed would have to have concomitant revisions that reflected the revised and lower VUT amount. 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, was established by the admission into evidence of the Notice reflecting VUT of \$1,000, along with a late payment penalty and interest amount. Dept. Ex. No. 1; Tr. p. 8.
2. The Notice was subsequently revised to reflect the VUT amount of \$750 based upon the vehicle's value as stated in the North American Dealer Association ("NADA") Chart. The late payment and interest amounts were also revised. Tr. pp. 10-11.
3. The Department, pursuant to the NADA chart, determined that the value of the vehicle was \$17,300. *Id.*

**CONCLUSIONS OF LAW:**

The VUT is codified as part of the Illinois Vehicle Code ("Code") and imposes a tax on "the privilege of using, in this State, any motor vehicle as defined in Section 1-146 of the Code acquired by gift, transfer, or purchase." 625 ILCS 5/3-1001. The VUT, which is based upon the vehicle's selling price, is detailed in a schedule set forth in Section 3-1001 of the Code. This schedule states:

Beginning January 1, 1988, the rate of tax shall be as follows for transactions in which the selling price of the motor vehicle is \$15,000 or more:

Selling Price	Applicable Tax
\$15,000-\$19,999	\$ 750
\$20,000-24,999	\$1,000
\$25,000-\$29,999	\$1,250
\$30,000 and over	\$1,500

625 ILCS 5/3-1001.

The Department has issued a regulation which states:

“selling price” means the consideration received for a motor vehicle subject to the tax imposed by this Section valued in money, whether received in money or otherwise, including cash, credits, service or property. In the case of gifts or transfers without reasonable consideration, “selling price” shall be deemed to be the fair market value as determined by the Department or the Department’s vendor. In determining the fair market value, the Department or its vendor shall consider the year, make, model and Vehicle Identification Number. 86 Ill. Admin Code, sec. 151.105(h).

The Illinois legislature has granted the Department power to administer and enforce provisions of the VUT, including the power “to collect all taxes, penalties and interest.” 625 ILCS 5/3-1003. The Department and persons subject to the VUT are granted:

the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of terms, and employ the same modes of procedure, as are prescribed in the Use Tax Act, as now or hereafter amended, which are not inconsistent with this Article, as fully as if provisions contained in those Sections of the Use Tax Act were set forth in this Article. 625 ILCS 5/3-1003.

Section 12 of the Use Tax Act (35 ILCS 105/1 *et seq.*) incorporates by reference section 4 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*) which provides that the Department’s determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 105/12; 120/4. The presumption of correctness that attaches to the Department’s *prima facie* case extends to all elements of taxability. See Branson v. Department of Revenue, 68 Ill. 2d 247, 258, 659 N.E.2d 961, 966-67 (1995) (where Department’s introduction of Notice of Penalty Liability established *prima facie* proof that taxpayer acted with the required mental state to be found a responsible officer); Soho Club, Inc. v. Department of Revenue, 269 Ill. App. 3d 220, 232, 645 N.E.2d 1060, 1068 (1<sup>st</sup> Dist. 1995) (where Department’s

introduction of Notice of Tax Liability established *prima facie* proof that taxpayer was engaged in an occupation subject to taxation).

Once the Department establishes its *prima facie* case, the burden of proof shifts to the taxpayer to prove, by sufficient documentary evidence, that the tax assessed, including penalty and interest, is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978).

To overcome the Department's *prima facie* case, the Taxpayer must present more than testimony denying the accuracy of the Department's assessment. A. R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833-34 (1st Dist. 1988). Taxpayer must present evidence that is consistent, probable, and identified with books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 333; A. R. Barnes at 833-34.

The Department's established a *prima facie* case when its certified copy of the Notice was admitted into evidence. Once this document was admitted into evidence, the Department's position is legally presumed to be correct in its finding that Taxpayer acquired a vehicle subject to VUT for which he failed to pay the appropriate amount of VUT. *See* Branson, supra; Soho Club, supra. In fact, Taxpayer admitted that he acquired the vehicle from another. Tr. pp. 5, 17.

The Department auditor testified that the amounts in the Notice were revised in favor of the Taxpayer from a VUT amount of \$1,000 to \$750. The basis of the revisions was the NADA Chart. Inasmuch as the VUT was revised, the penalty and interest amounts would require a concomitant reduction. This Department revision does not

diminish the Department's determination that there was a transfer subject to VUT for which the appropriate amount of tax had not been paid.

Taxpayer raises four (4) arguments in support of his position that he did not underpay the VUT. Taxpayer's first argument is that there was no retail sale of the vehicle. His second argument was that the amount of VUT initially assessed makes the revised assessment suspect. Taxpayer's third argument was that the car was in terrible condition, and as such, not operational so that it could not be worth even \$10,000. The fourth and last argument asserted was that it would be impossible for Taxpayer to obtain an independent valuation of the car to counter the Department's Notice because the car could not be driven to a dealer for a valuation.

Taxpayer's argument that because there was no sale of the vehicle no VUT was due is without basis in the law. Taxpayer testified that he obtained the car from another as satisfaction of a debt. Tr. pp. 5, 17. The law does not require there be a sale of the vehicle only a transfer of the vehicle from one party to another.

Taxpayer next argued that since the Department admitted that its initial Notice did not contain the correct VUT amount, the subsequent revision cannot be deemed credible. Tr. pp. 18, 25. The auditor testimony refuted Taxpayer's allegation. The auditor testified that his review of the Notice found an "honest mistake made by the processing unit." Tr. p.13. The auditor further testified that based upon the NADA Chart, the value of the vehicle, while less than initially determined by the Department, was \$17,300 and as such, the vehicle was still subject to VUT. Tr. pp. 10-11. Taxpayer offered no basis for his challenge save the question "If the first valuation was not credible, why should I believe the second valuation?" Tr. p. 18. Taxpayer's general questioning of the revision without

more, such as documentary evidence, is of no value. See Vitale v. Department of Revenue, 118 Ill. App. 3d 210, 212 (3<sup>rd</sup> Dist.1983) (To overcome a *prima facie* case requires one “establish by documentary evidence that the hypothetical weaknesses are relevant.”). Taxpayer does not even challenge the NADA Chart the Department utilized as the basis of the revision. Consequently, Taxpayer’s challenge to the Department’s revision of the Notice is unsubstantiated.

Taxpayer testified that the car was not worth \$10,000. Tr. p.17. Taxpayer produced no documentation regarding the car’s value.

Taxpayer’s last argument was that it was impossible for him to obtain an independent valuation of the vehicle. He testified that all the dealers contacted refused to come to the car to make a valuation. Tr. p. 20. Taxpayer further testified that because the vehicle was not “operational” he could not drive the car to a dealer. Tr. pp. 20, 24. However, upon cross examination the Taxpayer failed to offer a clear explanation as to why he did not have the vehicle towed to a dealer for valuation. Tr. p. 21.

The Department presented its case which included both documentary and testimonial evidence. Taxpayer presented only his testimony. Taxpayer presented no documents to refute the Department’s case. Hence, Taxpayer failed to introduce legally sufficient evidence to overcome the Department’s case.

**RECOMMENDATION**

For the reasons stated above, it is recommended that the Notice of Tax Liability for Form RUT-50 be revised to reflect a revised VUT amount of \$750 and that the penalty and interest amounts also be revised to reflect the amounts due for the revised VUT amount of \$750.

March 8, 2010

Julie-April Montgomery  
Administrative Law Judge