

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

TCRG SN4057 LLC,)
)
Petitioner,)
)
)
v.) 22 TT 04
) Judge Brian F. Barov
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)

ORDER

The Petitioner, TCRG SN4057 LLC (“Petitioner”), is a wholly owned subsidiary of Texas Capitalization Resource Group, Inc. and is challenging a Department use tax assessment made against it under the Aircraft Use Tax Law, 35 ILCS 157/10-1 *et seq.* (hereinafter “use tax”). The Petitioner alleged that on December 18, 2015, it purchased an aircraft but did not bring the aircraft into Illinois until early 2018. On moving the aircraft to Illinois in 2018, the Petitioner applied for a rolling-stock exemption from use tax. The application for the rolling-stock exemption triggered a Department audit that resulted in the assessment for the aircraft’s use as of March 3, 2016.

The basis for the Department’s March 3, 2016 assessment was that between that date and May 17, 2016, the aircraft had undergone maintenance, repairs and testing at Midway Airport. The Petitioner has challenged this assessment on the ground that bringing the aircraft to Midway Airport for maintenance, repairs and testing in 2016 did not convey taxable nexus with Illinois under the United States Constitution’s Commerce Clause.

The parties have served written discovery on each other, and this discovery is disputed. In an attempt to expedite resolution of the disputed discovery and thus

advance the resolution of this case, the court has not required the parties to engage in the usual Supreme Court Rule 201(k) procedure. Rather, at the court's request, the parties have submitted copies of the outstanding discovery, their respective responses, and have each provided a brief summary of their major objections to the court.

A number of the discovery requests and responses directly or indirectly address the application of the rolling-stock exemption. A review of the petition and its exhibits has raised the question of whether a rolling-stock exemption claim is, can or should be included in this litigation. The parties will be provided additional time to sort out their respective positions regarding the aircraft's treatment as rolling stock. While they do so, the proceedings may continue on the nexus claim and this order will rule on the parties' objections and responses to discovery in the context of the controversy over whether the aircraft had use tax nexus with Illinois from the alleged purchase date of December 18, 2015 through December 31, 2017.

A. The Department's Objections and Response to the Petitioner's Request to Produce.

Production Request 1, 2, 3, 4 & 10: seeks non-privileged documents relied on by the Department in issuing the use tax notice, including the underlying facts, law and calculations. The Department's response to all of these requests is that it has provided the audit file to the Petitioner, and it will seasonably supplement its responses as new information arises. The Department is not required to provide any additional response to production requests 1,2,3,4 & 10.

Production Request 5, 6 & 7: seeks documents regarding a June 1, 2021 email in which the Department stated that only the slightest presence was required under Illinois law to create nexus and a May 18, 2021 letter stating that the Petitioner had operations in Illinois at the time the aircraft was purchased and used in Illinois. The Department responds that it is unclear as to what email and letter the Petitioner is referring to.

The Petitioner will provide sufficient information to allow the Department to respond to production requests 5, 6 & 7.

Production Request 8 & 9: seeks audit manuals, policy statements and any internal memoranda or document relied on in making the assessment regarding the Department's imposition of Aircraft Use Tax for the past 7 years on other taxpayers.

The Department objects on relevancy grounds. The Department's objection is GRANTED, and it is not required to comply with production request 8 & 9.

B. The Petitioner's Objections and Responses to the Department's First Set of Requests for Admission.

Request to Admit 1: admit that the Petitioner registered the aircraft with the FAA using an Illinois address.

The Petitioner objects on relevancy grounds. The Petitioner already pled this fact in Paragraph 6 of the petition.

The fact is effectively admitted; the objection DENIED, but no further response is required.

Request to Admit 2: admit that from December 18, 2015 to December 17, 2016, the aircraft landed in Illinois 22 times.

Admitted, no further response required.

Request to Admit 3: admit that from December 18, 2015 to December 17, 2016, the aircraft departed Illinois 22 times.

Admitted, no further response required.

Request to Admit 4: admit that Petitioner has had a registered address in Illinois for which it receives correspondence by mail.

Denied, no further response required.

Request to Admit 5: admit that the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors had real estate interests in Illinois from December 18, 2015 to the present.

The Petitioner objects on relevancy and overbreadth grounds. The Petitioner has denied that it has had any real estate interests in Illinois, and no further response is required.

Request to Admit 6: admit that TCRG Aviation, LLC, used 227 Monroe St, Suite 4900, Chicago Illinois 60606 as its registered address.

The Petitioner objects to this request as overbroad and irrelevant because TCRG Aviation is not a party to the suit.

The Petitioner's objection is GRANTED, and no further response required.

Request to Admit 7: admit that that the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors were party to an insurance policy covering the aircraft.

The Petitioner objects on overbreadth and relevancy grounds. This objection is DENIED. The Petitioner must respond to this request to admit to the extent that it has this information in its possession, custody or control. See ruling on Interrogatory 9 and Request to Produce 1.

Request to Admit 8: admit that the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors have not paid tax on the aircraft to any other state and/or governmental entity.

The Petitioner objects on relevancy and overbreadth grounds but further states that the request is admitted, and no further response is required.

Request to Admit 9: admit that no other state or governmental entity has sought to assess sales, use or retailer's occupation tax on the aircraft.

Admitted, no further response is required.

Request to Admit 10: admit that the aircraft was present in Illinois during at least 10 calendar days between December 18, 2015 and December 17, 2016.

The Petitioner objects on overbreadth and relevancy grounds and because the request seeks a legal conclusion.

The objection is GRANTED, and no further response is required.

Request to Admit 11: admit that the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors own any other aircraft.

The Petitioner objects on overbreadth and relevancy grounds.

The objection is GRANTED, no further response required.

C. The Petitioner's Objections to the Department's First Set of Interrogatories.

Interrogatory 1: seeks individuals with knowledge of the case.

The Petitioner has answered, and no further response is required.

Interrogatory 2: seeks information on persons who have knowledge of the rolling-stock exemption claim.

The Petitioner objects on overbreadth and relevancy grounds and states that the decision was a legal determination.

This objection is entered and continued pending clarification as to the rolling-stock exemption's role in this case. No response is required to this interrogatory at this time.

Interrogatory 3: seeks the identity of each and every lease involving the aircraft from December 18, 2015 to the present.

The Petitioner objects on overbreadth and relevancy grounds. It further responds that it entered into leases with Executive Jet Management, Guggenheim Capital, LLC and Texas Capitalization Group, Inc.

No further response is required, but the Petitioner is directed to produce copies of the three identified leases to the Department as directed in the ruling on Request to Produce 1.

Interrogatory 4, 5, & 6: seeks information on flights that qualify for a rolling-stock exemption.

See order for Interrogatory 2.

Interrogatory 7: seeks information on whether any tax has been paid associated with purchase of aircraft.

The Petitioner objects on relevancy and overbreadth grounds, but it has responded “None.” The Petitioner is not required to provide any further response to this interrogatory.

Interrogatory 8: seeks information on where the aircraft is registered with the FAA.

The Petitioner states that this information has already been provided to the Department.

No further response is required to this interrogatory.

Interrogatory 9: seeks information on whether there is any insurance policy for aircraft.

Petitioner states that it was insured with Aon but objects on the ground that the details are irrelevant. The Petitioner’s objection is DENIED.

The Petitioner is directed to answer this interrogatory and to provide a copy of any insurance policy in its possession, custody or control that covered the aircraft for the period from December 15, 2015 to December 31, 2017, as directed in the ruling on Request to Produce 1.

Interrogatory 10: seeks the names of all officers, employees, representatives, and agents of the Petitioner, Texas Capitalization Resource Group, and/or its agents,

representatives, and/or contractors that were present on the aircraft from December 18, 2015 to present.

The Petitioner objects on the grounds of relevancy and overbreadth but responds that no officer or employee of the Petitioner has ever been present on the aircraft.

The Petitioner's objection is GRANTED in part and DENIED in part. The Petitioner is directed to provide any additional information in its possession, custody or control as to any officers or employees of Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors that were on the aircraft that traveled to or from Illinois between December 18, 2015 and December 31, 2017. The persons will not be identified by name but by job title and entity by whom they were employed and will include the dates of travel.

Interrogatory 11: seeks information on passengers that were not officers, employees, representatives, and/or agents, and/or contractors for the Petitioner or Texas Capitalization Resource Group.

See order for Interrogatory 10 for any unrelated third-party passengers.

Interrogatory 12: seeks the identify of pilots, crew members, inflight workers on the aircraft from December 18, 2015 to present.

The Petitioner objects on the grounds that on the grounds of relevancy and overbreadth.

The objection is GRANTED on the grounds that the information sought is duplicative, cumulative or irrelevant. No further response is required to this interrogatory.

Interrogatory 13: seeks information on whether the aircraft was present in Illinois for more than 10 days within the first 12 months of purchase.

The Petitioner objects on the ground that the information sought is irrelevant and overbroad and the relevant information has been provided.

No further response is required to this interrogatory.

Interrogatory 14: seeks information on Illinois real estate interests of the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors from December 18, 2015 to the present.

The Petitioner objects on relevancy and overbreadth ground but answers that it has not owned, leased or possessed real property in Illinois before leasing hangar space at Midway in 2018. No further response is required to this interrogatory at this time.

Interrogatory 15 & 16: seeks an Illinois mailing address and phone number for the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors.

The Petitioner objects on relevancy and overbreadth grounds and states that the Petitioner does not have an Illinois mailing address or telephone number with an Illinois area code. No further response is required to this interrogatory.

Interrogatory 17: seeks all agreements between the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors for which the parties are contractually bound that provide for the application of Illinois law.

The Petitioner objects on relevancy and overbreadth grounds but states that the information responsive to this interrogatory is contained in the documents previously provided to the Department. No further response is required to this interrogatory.

Interrogatory 18: seeks information on whether the Petitioner, Texas Capitalization Resource Group and/or its agents, representatives and/or contractors paid any taxes or fees to any Illinois governmental unit.

The Petitioner objects on relevancy and overbreadth grounds and states that it has paid no taxes or fees in Illinois. No further response is required to this interrogatory.

Interrogatory 19: seeks information on whether the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors have been to Illinois to conduct or operate business from December 18, 2015 to the present and the nature, dates and persons involved.

The Petitioner objects on the grounds of relevancy, overbreadth and vagueness, and further states that the response to this information has been provided to the Department in documents reflecting flights to and from Illinois during the relevant time period. No further response is required to this interrogatory.

Interrogatory 20: seeks information on the aircraft's service and maintenance in Illinois from December 18, 2015 to the present.

The Petitioner objects on the grounds of relevancy and overbreadth and states that it has provided documents reflecting repair and maintenance to the aircraft during the break-in period.

The relevant tax period in question is December 18, 2015 to December 31, 2017. If the Petitioner's response is complete for this period, it should so state. If not, it should provide any additional service and maintenance information for the aircraft in Illinois for the tax period in question.

Interrogatory 21: seeks information on whether the Petitioner, Texas Capitalization Resource Group and/or its agents, representatives and/or contractors are in possession of flight logs and/or manifests from December 18, 2015 to the present.

Petitioner objects on the grounds of relevance and overbreadth and states that the information was previously produced in documents to the Department.

The Petitioner's objection is GRANTED in part and DENIED in part. If the information that the Petitioner has provided is complete, it should so state. If not, the Petitioner is directed to disclose any flight logs and/or manifests in its possession, custody or control for the aircraft showing flights to or from Illinois for the period from December 18, 2015 to December 31, 2017. Any personal

information related to passengers on flight logs or manifests disclosed will be redacted as directed in the ruling on Interrogatory 10.

Interrogatory 22: seeks information on where the aircraft was maintained, stored or hangered when not in use from December 18, 2015 to the present.

The Petitioner objects on the grounds of relevance and overbreadth, but states that during the relevant tax period, “if the third-party vendor were not located at Midway Airport, the aircraft would not have been in Illinois during that period of time to be serviced.”

If the Petitioner’s information is complete as to when the aircraft was maintained, stored or hangered in Illinois during the relevant tax period, it should so state. If it was maintained, hangered, stored or located in Illinois for any reason other than service at Midway Airport, as previously disclosed, it is directed to disclose this information to the Department.

Interrogatory 23: seeks information on the relationship between Texas Capitalization Resource Group and TCRG SN4057 LLC, TCRG SN667 LLC, and TCRGSN5108 LLC.

The Petitioner objects on the ground that the interrogatory is irrelevant and overbroad.

The objection is GRANTED, and the Petitioner is not required to respond to this interrogatory.

Interrogatory 24: seeks the identity of each witness.

The Petitioner responds that this information is premature and that it will supplement its answers at the appropriate time. The Petitioner is not required to respond further to this interrogatory at this time.

D. Petitioner's Objections and Responses to Department's First Set of Requests for Production.

Request to Produce 1: seeks the documents used in answering the Department's first set of interrogatories.

The Petitioner is directed to produce the leases identified in response to Interrogatory 3, any flight logs, manifests, or passenger lists, as redacted, as set forth in the ruling on Interrogatories 10 & 11, and as directed in response to Interrogatory 19. It is further directed to produce any insurance policy identified in response to Interrogatory 9 and as directed in the ruling on Request to Produce 17.

Request to Produce 2: seeks documents showing business activities of the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors that relate to Illinois activities for the period from December 18, 2015 to the present.

The Petitioner objects to this request on relevancy, overbreadth and vagueness grounds, and further responds that it has produced documents showing the aircraft's repairs and flights to and from Illinois during the relevant time period.

The Petitioner's relevancy objection is GRANTED, and no further response is required to this request to produce.

Request to Produce 3: seeks documents showing activities of the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors pertaining to arranging or participating in business meetings in Illinois from December 18, 2015 to the present.

The Petitioner objects to this request on relevancy and overbreadth grounds and states that it has produced documents showing aircraft's repairs and flights to Illinois during the relevant time period.

The Petitioner's relevancy objection is GRANTED, and no further response is required to this request to produce.

Request to Produce 4: seeks documents showing the circumstances under which the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors were present in Illinois from December 18, 2015 to the present.

The Petitioner objects to this request on relevancy and overbreadth grounds and states that it has produced documents showing the aircraft's repairs and flights to Illinois during the relevant time period.

The Petitioner is directed to produce documents in its possession, custody or control related to its officers or employee's physical presence in Illinois from December 18, 2015 to December 31, 2017, that are related to the aircraft's physical presence in Illinois. In all other respects the Petitioner's objection is GRANTED. If the Petitioner's response to Request to Produce 4 is complete, it should so state.

Request to Produce 5: seeks agreements and contracts made by the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives, and/or contractors which are governed by Illinois law from December 18, 2015 to the present.

The Petitioner objects to this request on relevancy and overbreadth grounds and states that it has produced documents showing the agreement to purchase the aircraft.

The Petitioner is directed to produce any and all contracts or written agreements in its possession, custody or control related to the aircraft's flights to and from Illinois and repairs, service or maintenance in Illinois from December 15, 2015 to December 31, 2017 that have not yet been produced to the Department. In all other respects the Petitioner's objection is GRANTED. If the Petitioner's response to Request to Produce 5 is complete, it should so state.

Request to Produce 6, 7 & 8: seeks documents showing shipments of merchandise to and from Illinois or delivery of documents to Illinois from December

18, 2015 to the present by the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors.

The Petitioner objects on the ground that these requests are irrelevant, overbroad and overly burdensome and also states that is not aware of any responsive documents.

The Petitioner is not required to respond further to these requests for production.

Request to Produce 9: seeks documents related to real estate holdings and interests in Illinois of the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors.

Petitioner objects on the ground that these requests are irrelevant, overbroad and overly burdensome but states that it provided the Petitioner's lease agreement with Midway Airport from January 2018.

The Petitioner is not required to respond further to this request to produce.

Request to Produce 10: seeks documents showing if the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors derived income from Illinois from December 18, 2015 to the present.

The Petitioner objects on the ground of relevancy and overbreadth but states that it provided Petitioner's flight list for the relevant tax period.

The Petitioner's objection is GRANTED, and it is not required to respond further to this request to produce.

Requests to Produce 11, 12, & 13: seeks documents showing whether the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors have or had Illinois offices.

Petitioner objects on the grounds of relevancy and overbreadth but states that it has no responsive documents because the Petitioner does not have an Illinois office, an Illinois mailing address or Illinois phone number.

The Petitioner's objection is GRANTED, and it is not required to respond further to these requests to produce.

Request to Produce 14: seeks documents showing whether the Petitioner, Texas Capitalization Resource Group, its agents, and/or representatives and/or contractors have paid a tax or fee to any governmental agency for any aircraft for the period December 18, 2015 to the present.

The Petitioner objects on relevancy and overbreadth grounds and states that it is aware of no responsive documents.

The Petitioner is not required to respond further to this request to produce.

Request to Produce 15 & 16: seeks documents showing whether the Petitioner, Texas Capitalization Resource Group, its agents, and/or representatives and/or contractors conducted negotiations for business transactions or traveled to Illinois for corporate business.

The Petitioner objects on relevancy and overbreadth grounds and responds that it produced documents showing repairs to the aircraft in Illinois and a list of flights to and from Illinois in the relevant time period.

The Petitioner's objections are GRANTED, and it is not required to respond further to these requests to produce.

Request to Produce 17: seeks documents showing whether the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors had insurance policies covering the aircraft.

The Petitioner objects on relevancy and overbreadth grounds. The objections are GRANTED in part and DENIED in part. The Petitioner is directed to produce copies of insurance policies in its possession, custody or control that provided any coverage for or on the aircraft during the period from December 18, 2015 to December 31, 2017.

Request to Produce 18: seeks flight logs, flight manifests or any other documents showing if employees, agents, and/or contractors were passengers on the aircraft from December 18, 2015 to the present.

The Petitioner objects on relevancy and overbreadth grounds but states that is aware of no responsive documents.

The Petitioner's objections are GRANTED in part and DENIED in part. If the Petitioner's response is complete, it should so state. If it is in possession, custody or control of other passenger lists, it should produce any existing documents as directed in the ruling on Interrogatories 10 & 11.

Request to Produce 19: seeks documents showing repair, service and/or maintenance to the aircraft from December 18, 2015 to the present.

The Petitioner objects on relevancy and overbreadth grounds and responds that it has produced documents showing repairs to the aircraft in Illinois during the relevant time period.

No further response is required to this request to produce.

Request to Produce 20: seeks information on the assessment against or payment of sales tax by the Petitioner, Texas Capitalization Resource Group, and/or its agents, representatives and/or contractors.

The Petitioner responds that it is not aware of any responsive documents.

No further response is required to this request to produce.

Request to Produce 21: seeks to identify documents showing the purchase of the aircraft.

The Petitioner objects on relevancy and overbreadth grounds and responds that it produced documents showing Petitioner's purchase of the aircraft.

No further response is required to this request to produce.

Request to Produce 22: seeks documents showing the aircraft's FAA registration.

The Petitioner objects on relevancy and overbreadth grounds and responds that it produced documents showing Petitioner's purchase of the aircraft.

No further response is required to this request to produce.

Request to Produce 23: seeks documents showing contracts or storage agreements for the aircraft in any location from December 18, 2015.

The Petitioner objects on relevancy and overbreadth grounds and responds that it will produce responsive documents.

The Petitioner is not required to produce responsive documents for the period after December 31, 2017 or for any location outside of Illinois.

CONCLUSION

IT IS ORDERED THAT:

1. on or before August 5, 2022, the Petitioner will complete its discovery responses and certify that its discovery responses are complete;
2. on or before August 5, 2022, the Department will complete its discovery responses and certify that its discovery response is complete; and
3. the matter is set for a further status conference on August 15, 2022, at 9:30 a.m., by telephone.

s/ Brian Barov
BRIAN F. BAROV
Administrative Law Judge

Dated: July 5, 2022