

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

HOLZHAUER AUTO & TRUCK)	
SALES, INC.,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-113
)	Conway
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

INTRODUCTION

1. The Notice was issued by the Department on October 29, 2014 and assessed sales tax liability of \$26,720.00, penalties of \$534.40 and interest of \$50.51 on a single sales transaction. A copy of the Notice is attached to this Petition as **Exhibit A**.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department states the Notice speaks for itself and admits the Notice is attached as Exhibit A.

2. Petitioner is a Delaware corporation with its principal place of business in Nashville, Illinois.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 2 and therefore demands strict proof thereof.

3. Petitioner is located at 17933 Holzhauser Automall Dr., Nashville, IL 62263, and its telephone

number is (618) 327-8264. Petitioner's taxpayer account identification number is 0356-2085.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) and (C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the allegations contained in Paragraph 3.

4. The Notice relates to the sale of a 2013 Monterrey Sport Yacht 400 (the "Yacht") in September of 2014 for delivery to Osage Beach, Missouri. The Yacht was shipped directly from the manufacturer in Florida to Missouri via carrier, never to be used in Illinois. As a result, the transaction is exempt from the Retailers' Occupation Tax, pursuant to the interstate commerce exemption. 35 ILCS 120/2-60.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department lacks sufficient information to admit or deny the allegations regarding the Yacht's relationship to the State of Illinois or its shipping history and therefore demands strict proof thereof. To the extent Paragraph 4 requires any further answer, the Department denies the allegations.

JURISDICTION

5. This Tribunal has jurisdiction over this matter because Petitioner received a Notice of Tax Liability and the protest exceeds the statutory amount of \$15,000 exclusive of penalties and interest. 35 ILCS 1010/1-45.

ANSWER: Paragraph 5 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal

Regulations.

BACKGROUND AND RELEVANT FACTS

6. In September of 2014, Petitioner sold the Yacht to Brad Holzhauser (the “Purchaser”) for a sales price of \$427,521.00. A copy of the invoice for the sale of the Yacht is attached to this Petition as **Exhibit B**.

ANSWER: The Department admits an invoice is attached to the Petition as **Exhibit B**. The Department lacks sufficient information to admit or deny the allegations in Paragraph 6 and therefore demands strict proof thereof.

7. At the time of the sale, the Yacht was located at the manufacturer in Williston, Florida.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 7 and therefore demands strict proof thereof.

8. At the time of the sale, the Purchaser requested that the Yacht be shipped directly from the Florida manufacturer to 696 Passover Road, Osage Beach, Missouri 65065 for use exclusively in the State of Missouri.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 8 and therefore demands strict proof thereof.

9. Lake Region Partners LLC transported the Yacht from Williston, Florida, to Osage Beach, Missouri. A copy of the straight bill of lading is attached to the Petition as **Exhibit C**.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore demands strict proof thereof. The Department admits a straight bill of lading is attached to the Petition as **Exhibit C**.

10. To Petitioner’s knowledge, the Yacht has never been and never will be within the State of Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and therefore demands strict proof thereof.

11. On September 26, 2014, Petitioner submitted a Sales Tax Transaction Return (Form ST-556) incorrectly indicating that the transaction was exempt due to the “watercraft use tax law 15-10.”

ANSWER: The Department admits a Sales Tax Transaction Return (Form ST-556) was filed on or about September 26, 2014. The allegation regarding the legal validity of the exemption claimed on the September 26, 2014 Form ST-556, is a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 11 requires any further answer, the Department denies the allegations.

12. On October 29, 2014, the Department issued the Notice.

ANSWER: The Department states the Notice speaks for itself but admits it issued a Notice dated October 29, 2014.

13. Petitioner twice amended the original Form St-556. A copy of the original Form ST-556 and two amendments are attached to this Petition as **Exhibit D**.

ANSWER: The Department admits the allegations in Paragraph 13.

14. However, Petitioner and the Department were unable to reach an agreement as to the reporting of the sales transaction.

ANSWER: The Department admits the allegations in Paragraph 14.

15. As a result, Petitioner requested a late discretionary hearing on the matter by a letter dated April 3, 2015.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in

Paragraph 15 and therefore demands strict proof thereof.

16. On April 16, 2015, the Chief Administrative Law Judge at the Office of Administrative Hearings of the Illinois Department of Revenue granted Petitioner's request for a late discretionary hearing regarding the Notice. A copy of the letter granting the late discretionary hearing is attached to this Petition as **Exhibit E**.

ANSWER: The Department admits the allegations in Paragraph 16.

APPLICABLE LAW

17. The Retailers' Occupation Tax Act, 35 ILCS 120/1 *et seq.*, imposes a tax upon persons engaged in the business of selling tangible personal property at retail in Illinois.

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

18. The Retailers' Occupation Tax is not imposed "upon the privilege of engaging in a business in interstate commerce or otherwise, when the business may not, under the Constitution and statutes of the United States, be made subject of taxation by this State." 35 ILCS 120/2-60.

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

19. The interstate commerce exemption states that the Retailers' Occupation Tax "does not extend to the gross receipts from sales in which the seller is obligated, under the terms of his or her agreement with the purchaser, to make physical delivery of the goods from a point in [Illinois] to a point outside [Illinois], not to be returned to a point with [Illinois], provided that delivery is actually made." 86 Ill. Admin. Code 130.605(c).

ANSWER: Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

20. Where tangible personal property is located in Illinois at the time of sale, the place at which the contract of sale is negotiated and executed, the place at which title to the property passes to the purchaser, and the place at which the purchaser resides are immaterial. 86 Ill. Adm. Code 130.605(a)(3).

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

ERROR

21. The Department incorrectly assessed the Retailers' Occupation Tax on the sale of the Yacht where the sale was in interstate commerce.

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 21 requires an answer, the Department denies the allegations.

22. The interstate commerce exemption to the Retailers' Occupation Tax applies because the Yacht was never within the State of Illinois.

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department lacks sufficient information to admit or deny the allegation that the Yacht was never within the State of Illinois and therefore demands strict

proof thereof. To the extent Paragraph 22 requires any further answer, the Department denies the allegations.

23. Illinois law explicitly does not impose the Retailers' Occupation Tax on sales of tangible personal property which is located within the State of Illinois at the time of sale and is delivered outside of Illinois in connection with the sale. See 86 Ill. Adm. Code 130.605(c).

ANSWER: Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 23 requires an answer, the Department denies the allegations.

24. It follows that Illinois law would not tax the sale of tangible personal property where, as here, the property being sold never physically entered Illinois and was delivered outside of Illinois.

ANSWER: Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department lacks sufficient information to admit or deny the allegation that the Yacht was never within the State of Illinois and therefore demands strict proof thereof. To the extent Paragraph 24 requires any further answer, the Department denies the allegations.

25. The Department has stated that the "interstate commerce exemption applies to sales made from Illinois businesses that are delivered outside Illinois and are not returned to Illinois for use." Illinois Department of Revenue, *Publication 104 Common Sales Tax and E911 Surcharge Exemptions*, November 2011, at page 3, also available online at <http://tax.illinois.gov/publications/pubs/pub-104.pdf>.

ANSWER: Paragraph 25 contains a legal conclusion, not a material allegation of fact, and

therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 25 requires an answer, the Department denies the allegations.

26. Accordingly, the Retailers' Occupation Tax does not apply to the sale of the Yacht and the tax, penalties and interest set forth in the Notice should be canceled in their entirety.

ANSWER: Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 26 requires an answer, the Department denies the allegations.

CONCLUSION AND RELIEF REQUESTED

27. The interstate commerce exemption to the Retailers' Occupation tax applies to the sale of the Yacht; therefore, the Retailers' Occupation Tax should not be assessed on the sale of the Yacht.

ANSWER: Paragraph 27 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 27 requires an answer, the Department denies the allegations.

28. As a result, the assessment of tax, penalties and interest in the Notice should be canceled in full.

ANSWER: Paragraph 28 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 28 requires an answer, the Department denies the allegations.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Tax Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Dated: June 23, 2015

Respectfully submitted,
Illinois Department of Revenue,

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