

ILLINOIS INDEPENDENT
TAX TRIBUNAL

GERMAN STAR MOTORS, INC.,)	
)	
Petitioner,)	
)	
v.)	No. 16 TT 32
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	Chief Judge James M. Conway
)	
Respondent.)	

DEPARTMENT’S ANSWER TO PETITION

NOW COME the Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Petitioner’s Petition (“Petition”), hereby states as follows:

PARTIES

1. This matter arises because the Petitioner, a Canadian car dealer in Markham, Ontario, procured vehicle titles from Illinois Secretary of State for vehicles purchased in Canada and later imported directly into Pennsylvania for sale at auction to other car dealers. Notably, the vehicles were not registered. Pursuant to statute, as well as its practices and procedures, the Secretary of State required the Petitioner to complete a form provided by the Department to either calculate Use Tax or show that no Use Tax is due.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. There are two options for Vehicle Use Tax forms: RUT-25 or RUT-50. The instructions for form RUT-25 state,

You must complete Form RUT-25, Vehicle Use Tax Transaction Return, if you are titling or registering in Illinois a motor vehicle, watercraft, aircraft, trailer, mobile home,

snowmobile, or all-terrain vehicle (ATV) *that you purchased from an unregistered out-of state dealer or retailer.* [Emphasis added.]

ANSWER: The Department admits the existence, force and effect, at all relevant times of the form set forth or referred to in paragraph 2 and state such form speaks for itself.

3. The RUT-25 instructions further state,

Also, do not use Form RUT-25 if you purchased a motor vehicle, or an aircraft or watercraft, *from an individual or private party.* Instead, use Form RUT-50, Private Party Vehicle Use Tax Transaction, for a private-party vehicle sale and Form RUT-75, Aircraft/Watercraft Use Tax Transaction Return, for a private-party aircraft or watercraft sale." [Emphasis added.]

ANSWER: The Department admits the existence, force and effect, at all relevant times of the form set forth or referred to in paragraph 3 and state such form speaks for itself.

4. The instructions on RUT-25 then provide the following options for declaring the transaction as exempt:

Step 4: Mark the box that best describes your transaction if exempt from tax -If your transaction is taxable, skip to Step 5.

Line a: Check Box a for an exempt sale to a charitable, religious, educational, or governmental organization with an active Illinois Department of Revenue exemption number. Enter the exempt organization's active Illinois Sales Tax exemption "E" number on the line provided. The purchaser must be the organization itself, rather than a member or officer of the organization. The item must be titled and/ or registered in the organization's name and paid for with the organization's funds. The organization's Sales Tax exemption number must have been in effect on the day the item was purchased.

Line b: Check Box b if the item qualifies as exempt farm machinery or equipment used primarily in production agriculture (excluding motor vehicles required to be registered under the Illinois Vehicle Code), or if the item is a ready-mix concrete truck used in manufacturing tangible personal property for sale.

Line c: Check Box c to claim the rolling stock exemption. If you purchased the item for use as rolling stock to haul persons or commodities for hire in interstate commerce, enter the certificate of authority number in the space provided. Keep a properly completed Form RUT-7, Rolling Stock Certification., in your records for documentation.

Line d: Check Box d to claim the sale for rental purposes exemption. If the purchaser is a business registered to collect Automobile Renting Occupation Tax and if the item will be used for rental purposes in rental :agreements of one year or less, enter the purchaser's Illinois Automobile Renting Occupation Tax account ID number on the line provided.

Line e: Check Box e if the purchaser is a registered Illinois retailer and if the item is for the purchaser's interim use only. Enter the purchaser's Illinois account ID number on the line provided.

Note: This exemption is only allowed if the item is of the same general type of tangible personal property sold by that retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period. See 86 Ill. Adm. Code Section 150.306.

Line f: Check Box f to claim the out-of-state resident exemption. Illinois law allows an exemption from use tax if you were :an out-of-state resident (individuals only) and the item was used outside Illinois at least three months. You must surrender the out-of-state title, registration, or other proof of the item, s use when you apply for an Illinois title. You cannot claim this exemption if you are a business relocating into Illinois, an individual who used the item outside Illinois for less than three months, or a military member whose home of record is Illinois.

5. While no Illinois Use Tax is due as outlined in Errors I - V below, there is no provision in form RUT-25 for a case as presented by Petitioner's facts. Boxes "e," and "f", come the closest. But in box "e", Petitioner is not, *and is not required to be*, a registered Illinois retailer since 1) Petitioner doesn't sell anything at retail in Illinois and 2) Petitioner doesn't sell anything *at all* in Illinois. In box "f", Petitioner did not "use, the vehicles outside of Illinois, or anywhere, because Petitioner holds the vehicles as inventory for resale.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the form set forth or referred to in paragraph 5 and state such form speaks for itself.

6. Petitioner, faced with a form that did not cover its exemption, not seeing anything else that applied and not understanding Illinois sales tax law, erroneously claimed a credit for taxes paid in Canada upon the purchase of the vehicle.

ANSWER: The Department admits the allegations contained in paragraph 6.

GENERAL FACTS

7. The 79 Notices were issued by the Department on between December 11, 2015 and January 15, 2016, assessing \$175,117 in Use Tax, \$17,511 as late payment penalty, and \$843.52

in interest for cars allegedly brought into Illinois on various dates between September 10, 2015 and November 2, 2015.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as exhibits and referred to in paragraph 7 and state that such documents speak for themselves.

8. Petitioner is a corporation with its principal place of business in Ontario, Canada.

ANSWER: The Department admits the allegations contained in paragraph 8.

9. Petitioner is located at 4472 Steeles Ave E Markham, Ontario, Canada.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. The Taxpayer Account Number is 06407-63808.

ANSWER: The Department admits the allegations contained in paragraph 10.

11. Petitioner is a car dealer in Markham, Ontario, Canada.

ANSWER: The Department admits the allegations contained in paragraph 11.

APPLICABLE LAW

12. **625 ILCS 5/3-1001 - Tax Imposed, Rate, Abatement.**

A tax is hereby imposed on the privilege of using, *in this State*, any motor vehicle
[Emphasis added.]

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 12 and state such provision speaks for itself.

13. **35ILCS105/2 Definitions**

a) "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property

b) "Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration: Provided that the property purchased is deemed to be purchased for the purpose of resale, despite first being used, to the extent

to which it is resold as an ingredient of an intentionally produced product or by-product of manufacturing. For this purpose, slag produced as an incident to manufacturing pig iron or steel and sold is considered to be an intentionally produced by-product of manufacturing.

c) "Sale at retail" includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 13 and state such provision speaks for itself.

14. **35ILCS120/2c - Resales of Tangible Personal Property.**

If the purchaser is not registered with the Department as a taxpayer, but claims to be a reseller of the tangible personal property in such a way that such resales are not taxable under this Act or under some other tax law which the Department may administer, such purchaser (*except in the case of an out-of State purchaser who will always resell and deliver the property to his customers outside Illinois*) shall apply to the Department for a resale number. [Emphasis added.]

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 14 and state such provision speaks for itself.

15. **Construction -*American Distilling Co. v. Department of Revenue*, 53 Ill. App. 3d 42, 10 Ill. Dec. 946, 368 N.E.2d 541, 1977 Ill. App. LEXIS 3419 (Ill. App. Ct.1st Dist. 1977).** Revenue laws are not to be extended beyond the clear import of the language used and when there is any doubt they are to be construed strictly against the government and in favor of the taxpayer.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 15 and states such case law speaks for itself.

16. **Minimum Contacts -*Allied-Signt.11, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 778 (1992)**

Although our modern due process jurisprudence rejects a rigid, formalistic definition of minimum connection, we have not abandoned the requirement that, *in the case of a tax on an activity, there must be a connection to the activity itself, rather than a connection only to the actor the State seeks to tax*, see *Quill Corp. v. North Dakota*, at 306-308. [Emphasis added.]

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 16 and states such case law speaks for itself.

17. **Commerce Clause - *Irwin Industrial Tool Co. v. Illinois Department of Revenue*, Appellate Court of Illinois, First District, <jf402-013, (Sept. 11, 2009)**

Under contemporary dormant commerce clause law, to withstand an allegation that it has unconstitutionally burdened interstate commerce, a state tax must satisfy the four-part test articulated in *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274, 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977). Under this standard, a state tax on interstate commerce must: (1) be applied to an activity that has a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state. *Complete Auto Transit Inc.*, 430 U.S. at 279, 51 L. Ed. 2d at 331, 97 S. Ct. at 1079.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 17 and states such case law speaks for itself.

ERROR I – THE DEPARTMENT’S ASSESSMENT OF VEHICLE USE TAX AGAINST THE PETITIONER IS BEYOND THE AUTHORITY GRANTED IN THE VEHICLE USE TAX ACT

18. At various times prior to September 10, 2015, Petitioner purchased various vehicles at wholesale in Canada.

ANSWER: The Department admits the allegations contained in paragraph 18.

19. On or near the dates when the Department alleges that Petitioner brought vehicles into Illinois, Petitioner applied to the Illinois Secretary of State for an Illinois title for each of the vehicles.

ANSWER: The Department admits the allegations contained in paragraph 19.

20. The Secretary of State, pursuant to its processes and procedures issued an Illinois title for each of the vehicles.

ANSWER: The Department admits the allegations contained in paragraph 20.

21. The Secretary of State mailed the newly issued Illinois titles to Manheim Pennsylvania, 1190 Lancaster Rd., Manheim PA, 1745-9746.

ANSWER: The Department admits the allegations contained in paragraph 21.

22. At various times the Petitioner then imported the cars from Ontario, Canada into Pennsylvania and there, in Pennsylvania, proceeded to sell the vehicles to other dealers at wholesale auctions.

ANSWER: The Department admits the allegations contained in paragraph 22.

23. While Petitioner was the owner of these vehicles, at no point in time were these vehicles ever present in Illinois.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 and therefore neither admits or denies the allegations.

24. While Petitioner was the owner of these vehicles, at no point in time were the vehicles registered in Illinois or any other state in the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24 and therefore neither admits or denies the allegations.

25. While Petitioner was the owner of these vehicles, the vehicles at issue were not sold at retail to Illinois residents.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 and therefore neither admits or denies the allegations.

26. While Petitioner was the owner of these vehicles, the vehicles at issue were not advertised for sale at retail in Illinois.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 and therefore neither admits or denies the allegations.

ERROR II – THE DPARTMENT’S TAX ON PETITIONER VIOLATES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

27. Petitioner repeats and realleges paragraphs 18 through 26 as its paragraph 27 of this petition.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-26 as its answer to Paragraph 27 as if fully set forth herein.

28. The Petitioner maintains a mailing address in Illinois, but no employees or officers use the Illinois address and no business activities are conducted out of that office.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 and therefore neither admits or denies the allegations.

29. The only use of the Illinois address is the requirement of the Secretary of State that the owner seeking an Illinois vehicle title have an Illinois address.

ANSWER: Paragraph 29 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

ERROR III – THE DEPARTMENT’S TAX ON PETITIONER VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

30. Petitioner repeats and realleges paragraphs 18 through 29 as and for its paragraph 30 of this petition.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-29 as its answer to Paragraph 30 as if fully set forth herein.

ERROR IV – ALTERNATIVELY, THE DEPARTMENT’S TAX ON PETITIONER IS NOT FAIRLY APPORTIONED

31. Petitioner repeats and realleges paragraphs 18 through 29 as and for its paragraph 31 of this petition.

ANSWER: The Department repeats and incorporates its answers to paragraphs 18-29 as its answer to Paragraph 31 as if fully set forth herein.

32. The Department seeks to tax the entire value of the vehicles resold in another state with the only connection with the State of Illinois is being a title issued by the Illinois Secretary of State.

ANSWER: Although paragraph 32 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 32.

33. The Petitioner has paid the associated charges to the Illinois Secretary of State for the service of issuing a vehicle title.

ANSWER: The Department admits the allegations contained in paragraph 33.

ERROR V – ALTERNATIVELY, THE DEPARTMENT’S TAX ON PETITIONER IS NOT FAIRLY RELATED TO THE SERVICES PROVIDED BY THE STATE OF ILLINOIS

34. Petitioner repeats and realleges paragraphs 18 through 33 as and for its paragraph 34 of this petition.

ANSWER: The Department repeats and incorporates its answers to paragraphs 18-33 as its answer to Paragraph 34 as if fully set forth herein.

35. The only services provided by Illinois are related to the issuance of a vehicle titles by the Illinois Secretary of State for which the Petitioner has paid the required fee.

ANSWER: Although paragraph 35 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 35.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on all Counts in this matter;
- B) That the Department's Notice(s) of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper.

Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL. 60601
(312) 814-6697; FAX (312) 814-4344

Respectfully submitted,



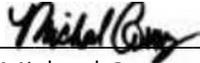
Michael Coveny
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Verified Answer to Petitioner's Verified Petition upon:

Judi Smith
The Law Office of Judi Smith
50 S. Main Street
Suite 200
Naperville, IL 60540

By email to jsmith@judismithlaw.com on June 14, 2016.



Michael Coveny,
Assistant Attorney General