



## **JURISDICTION**

4. The Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the alleged tax liability in question from the Illinois Use Tax Act and the aggregate amount at issue exceeds, \$15,000, exclusive of penalties and interest, and because Petitioner has remitted the \$500 filing fee.

5. The Tax Tribunal also has jurisdiction because a late discretionary hearing was granted on January 20, 2016 and this filing allowed a tax protest to be filed within 60 days of this letter. This filing is within that 60 day timeframe. A copy of the Late Discretionary Hearing Order is attached to this Petition.

## **BACKGROUND AND RELEVANT FACTS**

6. Petitioner is organized as limited liability company as of May 30, 2007.

7. Petitioner's principal place of business is in Montana.

8. Petitioner's manager and registered agent is Action Service LLC located in Missoula, Montana.

9. Petitioner's purposes are; " A holding company for liability and estate protection."

10. Petitioner holds the vehicle at issue and other vehicles for the purposes of limiting legal liability.

11. On July 18, 2007, Petitioner purchased the vehicle at issue from Stouts RV Center located in Indiana.

12. Petitioner was issued a certificate of title for the vehicle at issue on September 24, 2007.

13. Petitioner purchased the vehicle in Indiana, and not in Illinois.

14. The vehicle at issue is a large motor home, and has a weight in excess of 50,000 lbs.

15. Petitioner did not file an Illinois use tax return regarding its purchase of the vehicle in Indiana.

16. Immediately after the purchase in Indiana, Petitioner drove the vehicle from Indiana to Florida.

17. The vehicle was driven to and kept in the Riverbend Motorcoach Resort in Hendry County Florida through the assessment date of March 31, 2008.

18. The vehicle was held in Lot 309 from purchase through the assessment date of March 31, 2008.

19. The vehicle was purchased for and used as a residence in North Dakota and each winter in Florida from its purchase date.

20. At no time from purchase date through March 31, 2008 was this vehicle ever located in Illinois.

21. The Petitioner was subsequently assessed a Notice of Tax Liability (Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report) on September 22, 2014.

22. This Notice assessed as of March 31, 2008, \$22,277 in tax, \$4,445.85 in audit late payment penalty, \$4,705.85 in amnesty penalty, \$250 in audit late filing penalty, \$4,649.07 in interest and \$4,649.07 in amnesty interest.

#### **APPLICABLE LAW AND CASES**

23. The Petitioner relies upon the United States Constitution and the Illinois Use Tax Act (hereinafter "IITA") 35 ILCS Section 105 and Section 1402 to dispute the above referenced Illinois Use Tax.

24. The law relied upon includes:

The United States Constitution Article 4 Section 1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

The United States Constitution Article 1 Section 8 Clause 3:

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

The Illinois Use Tax Act provides, in relevant part, as follows:

**(35 ILCS 105/3) (from Ch. 120, par. 439.3)**

Sec. 3. Tax imposed. A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition. Beginning January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Purchases of (1) electricity delivered to customers by wire; (2) natural or artificial gas that is delivered to customers through pipes, pipelines, or mains; and (3) water that is delivered to customers through pipes, pipelines, or mains are not subject to tax under this Act. The provisions of this amendatory Act of the 98th General Assembly are declaratory of existing law as to the meaning and scope of this Act. (Source: P.A. 98-583, eff. 1-1-14.)

**(35 ILCS 105/3-55) (from Ch. 120, par. 439.3-55)**

Sec. 3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

(e) The temporary storage, in this State, of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing, or shaping, and, as altered, is used solely outside this State.

(h) Except as provided in subsection (h-1), the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. The issuance of the drive-away permit or having the out-of-

state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State.

**Irwin Industrial Tool Company v. Illinois Department of Revenue, 938 N.E.2d 459**

**(September 23, 2010)** – The Illinois Supreme Court affirmed the Appellate Court’s finding of sufficient physical connection between both the Taxpayer and the airplane and Illinois, so as to satisfy the “substantial nexus” requirement by repeated and prevalent contacts and allowed the Department to impose a use tax on the airplane adding:

“The airplane’s frequent physical presence in Illinois, through the many take-offs and landings from Illinois runways, as well as the nights that it spent in Illinois, was not coincidental but was inherent in its basic purpose and function in this state.”

**Thomas v. Bridges, 144 So. 3d 1001 (May 7, 2014)** – There was error to apply Louisiana law to pierce the LLC veil. The Court also held that taking actions to avoid sales tax is not illegal, citing the United States Supreme Court:

“The legal right of a taxpayer to decrease the amount of what would otherwise be his taxes, or altogether avoid them by means which the law permits, cannot be doubted.”  
Gregory v. Helvering, 293 U.S. 465 (1935).

**ERROR I – USE TAX WAS ERRONEOUSLY ASSESSED AS THE VEHICLE AT  
ISSUE WAS NOT IN ILLINOIS FROM THE VEHICLE PURCHASE DATE THRU  
MARCH 31, 2008**

25. Petitioner realleges and reincorporates paragraphs 1-24 of the Petition herein.

26. Petitioner is not liable for use tax as the vehicle in question was not in Illinois prior to or on March 31, 2008.

27. The Illinois Use Tax Act (UTA) imposes a tax on the privilege of using tangible personal property at retail from a retailer, for use or consumption in Illinois. 35 ILCS 105/3.

28. The vehicle was not physically present in Illinois from its purchase through March 31, 2008.

29. Since the vehicle was not physically present in Illinois at any time prior to or on March 31, 2008 it could not have been used in Illinois prior to or on March 31, 2008.

**ERROR II – USE TAX COULD NOT BE ASSESSED AS THE VEHICLE IN QUESTION  
WAS OWNED BY A NONRESIDENT LLC**

30. Petitioner realleges and reincorporates paragraphs 1-24 of the Petition herein.

31. The vehicle in question was purchased and titled by MacKenzie LLC, a Montana LLC.

32. The vehicle at issue was used as a residence in both Florida and North Dakota.

33. The vehicle was used as a residence in Florida during the winters.

34. The vehicle was used a residence in North Dakota during summers.

35. MacKenzie LLC is a limited liability company that limits legal liability. This choice of entity is valid as is the business choice to incorporate in certain states to avail the corporation of favorable laws, i.e. Delaware corporations.

36. MacKenzie LLC holds both the vehicle at issue in this case as well as other vehicles.

37. The transfer of the other vehicles were the subject of an Administrative Hearing case No.15-ST-117 .

38. That Administrative Hearing case was dismissed on February 25, 2016, as the transfer of the vehicles was valid and the LLC itself was not challenged.

39. Pursuant to 35 ILCS 105/3-55, this vehicle is exempt from tax as its owner, Mackenzie LLC, is a Montana LLC and therefore a non-resident of Illinois.

40. Under Section 3-55(e) and (h) of the Illinois Use Tax Act, a taxpayer's use of a motor vehicle is exempt if the taxpayer is not a resident of Illinois.

41. In Irwin v. IDOR, the Illinois Supreme Court explained that an items' frequent physical presence in Illinois was not coincidental but was inherent in its basic purpose and function in this state.

42. In Thomas v. Bridges, the Louisiana Supreme Court found that the Montana LLC which held the vehicle at issue was legal and that "use of particular business entities to avoid taxes and other liabilities, far from being fraudulent, is a common legal practice." 144 So.3d 1001, 1007.

43. Thus a non resident LLC that owns a vehicle for a basic purpose and function that is performed in a State or States other than Illinois is not subject to Illinois Use Tax if that

vehicle was not in Illinois. In addition, even if the non resident LLC's vehicle was temporarily in Illinois it would not be subject to Illinois use tax if the presence was coincidental and not inherent in its basic purpose and function.

### **ERROR III – ABATEMENT OF PENALTIES**

44. Petitioner realleges and reincorporates paragraphs 1- 24 of the Petition herein.

45. Petitioner contends that the Department erred in assessing Petitioner \$4,445.85 in audit late payment penalty, \$4,705.85 in amnesty penalty, \$250 in audit late filing penalty, \$4,649.07 in interest and \$4,649.07 in amnesty interest.

46. The Petitioner does not owe any Illinois Use Tax to the State of Illinois as alleged by the Department on the Notices of Tax Deficiency, and therefore no penalties or interest may be assessed by the Department. Notwithstanding, even if any tax is due, any penalties assessed on such tax should be abated for reasonable cause. 35 ILCS 735-3/8.

47. The Petitioner has relied in good faith on its understanding of Illinois law with respect to these transactions.

48. The Department's regulation on reasonable cause looks to whether the taxpayer "made a good faith effort" and exercised "ordinary business care in prudence". Illinois Admin. Code tit. 86 Section 700.400.

### **CONCLUSION AND RELIEF REQUESTED**

THEREFORE, the Department is precluded from assessing the Illinois Use Tax, penalties, and interest as set forth in the aforementioned Notices of Tax Deficiency as the vehicle at issue was not used in Illinois before or on March 31, 2008 and it was owned and titled by a non-resident and not located in Illinois on or before March 31, 2008. WHEREAS, for the reasons set forth above, Petitioner respectfully requests the Illinois Use Tax, penalties, and

interest assessed in the aforementioned September 22, 2014 Notice of Tax Liability in the total amount of amount of Notice assessed \$22,277 in tax, \$4,445.85 in audit late payment penalty, \$4,705.85 in amnesty penalty, \$250 in audit late filing penalty, \$4,649.07 in interest and \$4,649.07 in amnesty interest be cancelled.

Respectfully Submitted,

MacKenzie, LLC

By:   
One of the Petitioner's Attorneys

David J. Kupiec  
Natalie M. Martin  
Kupiec & Martin, LLC  
600 W. Van Buren #202  
Chicago, IL 60607  
(312) 632-1022  
[dkupiec@kupiecandmartin.com](mailto:dkupiec@kupiecandmartin.com)  
Attorney No. 58817

March 14, 2016



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

January 20, 2016

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Suite 202  
Chicago, IL 60607

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
Mackenzie LLC  
Account ID: 21224-74496  
Notice of Tax Liability (NTL)  
Letter ID: CNXXXX956824X8X4, dated September 22, 2014

Dear Mr. Kupiec:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request on behalf of Mackenzie LLC for a late discretionary hearing for regarding the above NTL. This is the second request we have received for this taxpayer regarding this NTL. Due to the unusual circumstances regarding this case, including the untimely death of the litigator who was handling the related cases with the Department, I believe that it is appropriate to grant your request for a late discretionary hearing for Mackenzie LLC regarding the above NTL. Please note that if for any reason Mackenzie LLC fails to properly file a petition with the Illinois Independent Tax Tribunal within the proper time frame granted by this letter, no further requests will be granted to this taxpayer.

The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,



Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC

# Notice of Tax Liability

for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report



#BWNKMGV  
#CNXX XX95 6824 X8X4#  
MACKENZIE LLC  
ATTN: FRED & BONNIE HUCKSTORF  
12719 HENSEL RD  
HUNTLEY IL 60142-9797

September 22, 2014



Letter ID: CNXXXX956824X8X4

Account ID: 21224-74496

Date brought into IL: Mar 31, 2008

MV: 025002309

ID: 4VZVU1E907C060455

HERCULES



We have audited your account for the transaction listed above. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Audit Tax	22,277.00	0.00	22,277.00
Audit Late Payment Penalty	4,455.85	0.00	4,455.85
Amnesty Penalty	4,705.85	0.00	4,705.85
Audit Late Filing Penalty	250.00	0.00	250.00
Interest	4,649.07	0.00	4,649.07
Amnesty Interest	4,649.07	0.00	4,649.07
<b>Assessment Total</b>	<b>\$40,986.84</b>	<b>\$0.00</b>	<b>\$40,986.84</b>

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000 or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is November 27, 2014. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail Form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
217 785-6579

IN THE INDEPENDENT TAX TRIBUNAL

<u>MACKENZIE LLC</u>	)	Doc.
Petitioner	)	
Vs.	)	
THE ILLINOIS DEPARTMENT OF	)	
REVENUE	)	
Defendant	)	

---

NOTICE OF FILING

TO:

Illinois Department of Revenue  
100 W. Randolph St.  
SUITE 7-900  
Chicago, IL 60601

Please take note that on March 14, 2016, the undersigned representative for MacKenzie LLC., filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: March 14, 2016

Respectfully Submitted,  
MacKenzie LLC

By:

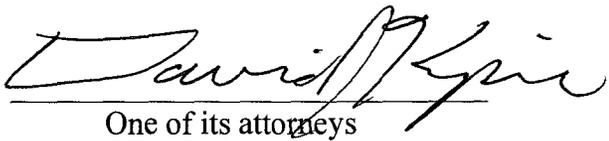
  
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered in person before the hour of 5:00p.m. on the 14th day of March, 2016.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

By:   
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607