

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>SIMPLY LIVING, LTD.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 15-TT-67</b>
	)	<b>Conway</b>
<b>THE ILLINOIS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
	)	
<b>Respondent.</b>	)	

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**ANSWER**

**INTRODUCTION**

1. The Notice was issued by the Department on January 22, 2015, assessing in the amount of \$18,438.00 in aircraft use tax, \$3,937.90 in penalties and \$925.75 in interest for the reporting period April 20, 2012 with respect to aircraft identified as N212CB (“Aircraft”). A copy of the Notice is attached to this Petition.

**ANSWER:** The Department states the Notice speaks for itself and therefore denies the characterization thereof. The Department admits it issued the Notice of Tax Liability dated January 22, 2015, attached to Petitioner’s Petition.

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

**ANSWER:** The Department admits the allegations in Paragraph 2.

3. Petitioner is located at 4003 N Hollyridge Cir, Peoria, Illinois. Petitioner’s phone number is 309-368-0015. Petitioner’s Taxpayer Account number is 15121-00864.

**ANSWER:** The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Sections 310(a)(1)(A) and (C) (86 Ill. Admin. Code §5000.310) and is not a

material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations in Paragraph 3.

#### **BACKGROUND AND RELEVANT FACTS**

4. Petitioner acquired the Aircraft on April 25, 2012, when the Aircraft was located in Atlanta, Georgia. The closing was conducted by an escrow agent located in Oklahoma City, Oklahoma.

**ANSWER:** The Department lacks sufficient information to either admit or deny whether Petitioner acquired the Aircraft on April 25, 2012. The term *acquired* is vague and does not reasonably describe whether the taxpayer took legal or physical (or both) possession of the aircraft on April 25, 2012. The Department admits the Federal Aviation Administration (“FAA”) Bill of Sale shows the Aircraft was purchased on April 20, 2012. The Department lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 4 and therefore demands strict proof thereof.

5. On April 25, 2012, the Aircraft was flown from Atlanta, Georgia to Aurora, Illinois, where the Aircraft remained for avionics repairs from April 25, 2012 through June 20, 2012.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 5 and therefore demands strict proof thereof.

6. On June 20, 2012, the Aircraft was flown to Peoria, Illinois for an engine change and its annual inspection.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 6 and therefore demands strict proof thereof.

7. On July 5, 2012, the Aircraft left Peoria to fly to Duluth, Minnesota for a test flight, paint, and interior repairs, and was flown to Lewis Lockport, Illinois to pick up a second aircraft.

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

8. Later on July 5, 2012, the Aircraft was flown to Rockford, Illinois to drop off the second aircraft.

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

9. Later on July 5, 2012, the Aircraft completed its flight to Duluth, Minnesota for a test flight, paint, and interior repairs. The Aircraft remained in Duluth, Minnesota and was not flown again until July 8, 2012.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore demands strict proof thereof.

10. On July 8, 2012, the Aircraft was flown to Northbrook, Illinois for a meeting with the Federal Aviation Administration.

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

11. On July 9, 2012, the Aircraft was flown to Peoria, Illinois to drop off a passenger.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and therefore demands strict proof thereof.

12. On July 9, 2012, the Aircraft was flown back to Duluth, Minnesota for further repairs.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and therefore demands strict proof thereof.

13. From July 9, 2012 through September 28, 2012, the Aircraft was in Duluth, Minnesota for chute replacement, painting, and interior repairs.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 13 and therefore demands strict proof thereof.

14. On September 28, 2012, the Aircraft was flown to Peoria, Illinois to pick up ferry flight/survival gear before being flown to an ultimate destination of Germany, where the Aircraft arrived approximately October 8, 2012. On this flight to Germany, the Aircraft was landed in New York, Bar Harbor, and Quebec before normal ferry stops in Greenland, Iceland, and the United Kingdom, before ultimately landing in Germany.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 14 and therefore demands strict proof thereof.

15. After the Aircraft left Peoria, Illinois on September 28, 2012, it never again returned to Illinois while owned by Petitioner.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 15 and therefore demands strict proof thereof.

16. The Aircraft remained in Europe from September 28, 2012 through the date that Petitioner sold the Aircraft in March 2, 2015.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 16 and therefore demands strict proof thereof.

17. Petitioner owned the Aircraft for 1,041 days. The Aircraft was in Illinois overnight on 71 days or 6.8% of the days the Aircraft was owned by Petitioner.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 17 and therefore demands strict proof thereof.

18. The Aircraft was in Illinois for these 71 days only because it was being repaired at a location in Illinois. While the Aircraft was located in Illinois, the Aircraft was not yet in operating

condition and could not be flown except on the six dates that it was flown. The few flights that occurred in Illinois were necessary to make sure that the Aircraft was safe and in airworthy condition.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 18 and therefore demands strict proof thereof.

#### **APPLICABLE LAW**

19. The Illinois Aircraft Use Tax law imposes a tax “on the privilege of using, in this State, any aircraft as defined in Section 3 of the Illinois Aeronautics Act acquired by gift, transfer, or purchase after June 30, 2003.” 35 ILCS 157/10-15.

**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. To the extent an answer may be required the Department denies any factual allegations in Paragraph 19.

20. “The rate of tax shall be 6.25% of the selling price for each purchase of aircraft that qualifies under this law. For purposes of calculating the tax due under this law when an aircraft is acquired by gift or transfer, the tax shall be imposed on the fair market value of the aircraft on the date the aircraft is acquired or the date the aircraft is brought into the State, whichever is later. Tax shall be imposed on the selling price of an aircraft acquired through purchase. However, the selling price shall not be less than the fair market value of the aircraft on the date the aircraft is purchased or the date the aircraft is brought into the State, whichever is later.” 35 ILCS 157/10-15.

**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. To the extent an answer may be required the Department denies any factual allegations in Paragraph 20.

21. The United States Constitution grants Congress the power to “regulate Commerce...among the several States.” U.S. Const., art. I, § 8, cl. 3.

**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 an answer may be required the Department denies any factual allegations in Paragraph 21.

22. “The Supreme Court has consistently interpreted this express grant of congressional authority as implicitly containing a negative command, known as the dormant commerce clause, which limits the power of the states to tax interstate commerce even when Congress has failed to legislate on the subject.” *Irwin Inds. Tool Co. v. Illinois Dep’t of Revenue*, 238 Ill. 2d 332, 241 (2010).

**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. To the extent an answer may be required the Department denies any factual allegations in Paragraph 22.

23. “To withstand a claim that is has unconstitutionally burdened interstate commerce, a state tax must satisfy the four-part test enunciated in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed.2d 326 (1977).” *Irwin Inds. Tool Co. v. Illinois Dep’t of Revenue*, 238 Ill. 2d 332, 241 (2010).

**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 an answer may be required the Department denies any factual allegations in Paragraph 23.

24. “Under Complete Auto, the tax must: (1) be applied to an activity with 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.” *Irwin Inds. Tool Co. v. Illinois Dep’t of Revenue*, 238 Ill. 2d 332, 241 (2010).

**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. To the extent an answer may be required the Department denies any factual allegations in Paragraph 24.

**ERROR I**  
**(Lack of Substantial Nexus with Illinois)**

25. Petitioner realleges and incorporates herein paragraphs 1 through 24 of this Petitioner.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 24 as though fully set forth herein.

26. The Department erred by assessing aircraft use tax with respect to the Aircraft when the Aircraft did not have a substantial nexus with Illinois.

**ANSWER:** The Department denies the allegations in Paragraph 26. Further, 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.

27. The Aircraft was located in Illinois on only 6.8% of the nights that the Aircraft was owned by Petitioner.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 27 and therefore demands strict proof thereof.

28. While the Aircraft was owned by Petitioner, the only reason the Aircraft was present in Illinois was because it was being repaired in Illinois.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 28 and therefore demands strict proof thereof.

29. The Aircraft was not in operating condition nearly the entire time that the Aircraft was present in Illinois. Therefore, while the Aircraft was present in Illinois, it was not capable of being used for the use for which it was designed, namely flying.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 29 and therefore demands strict proof thereof.

30. Instead of being used for flying while located in Illinois, the Aircraft was really only temporarily stored in Illinois while it was being repaired.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 30 and therefore demands strict proof thereof.

31. The small amount of time that the Aircraft was present in Illinois combined with the fact that the Aircraft was not being flown but was only stored in Illinois while being repaired cause the Aircraft to lack substantial nexus with Illinois.

**ANSWER:** The Department denies the allegations in Paragraph 31. Further, Paragraph 31 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 II**  
**(Overstated Assessed Value)**

32. Petitioner realleges and incorporates herein paragraphs 1 through 24 of this Petitioner.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 31 as though fully set forth herein.

33. Petitioner does not owe any aircraft use tax because the Aircraft lacked substantial nexus with Illinois, as alleged in paragraphs 25-28 above. However, if aircraft use tax is determined to be due, the Department erred by assessing aircraft use tax with respect to the Aircraft having a value of \$295,000.

**ANSWER:** The Department denies the allegations in Paragraph 33. Further, Paragraph 33 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.

34. Vref, the aircraft value reference publication, lists the value of the Aircraft as \$135,300. However, the Aircraft needed the following work, which would reduce the value below the listed value by the amounts indicated: paint (\$5,400), interior repair (\$5,400), parachute repack (\$13,500), airframe repair (\$7,161), engine repair (\$31,060), and other repairs and reconditioning (\$8,168).

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 34 and therefore demands strict proof thereof.

35. When considering the condition of the Aircraft and the repairs necessary to make the Aircraft airworthy, the fair market value of the Aircraft when acquired by Petitioner was \$64,611.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 35 and therefore demands strict proof thereof.

**ERROR III**  
**(Assessment of Penalties)**

36. Petitioner realleges and incorporates herein paragraphs 1 through 24 of this Petitioner.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 35 as though fully set forth herein.

37. Petitioner does not owe any aircraft use tax because the Aircraft lacked substantial nexus with Illinois, as alleged in paragraphs 25-31 above. However, if aircraft use tax is determined to be due, Petitioner should not owe any penalties with respect to the aircraft use tax due to reasonable cause pursuant to 35 ILCS 735/3-8.

**ANSWER:** The Department denies the allegations in Paragraph 37. Further, Paragraph 37 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.

38. “The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code 700.400(b).

**ANSWER:** Paragraph 38 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 an answer may be required the Department denies any factual allegations in Paragraph 38.

39. Petitioner, in good faith, determined that Petitioner did not owe aircraft use tax with respect to the Aircraft because, in several previous audits of Petitioner, the Department has determined that no aircraft use tax was due with respect to aircraft owned by Petitioner with facts very similar to the facts in this case involving this Aircraft.

**ANSWER:** Paragraph 39 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 an answer may be required the Department denies any factual allegations in Paragraph 39.

**WHEREFORE**, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: May 11, 2015

Respectfully submitted,  
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte  
Ashley Hayes Forte  
Special Assistant Attorney General

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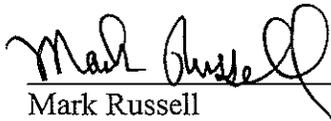
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**AFFIDAVIT OF MARK RUSSELL  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Auditor III.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 27, 28, 29, 30, 34, and 35.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



\_\_\_\_\_  
Mark Russell  
Revenue Auditor III  
Illinois Department of Revenue

DATED: 5-11-2015