**ILLINOIS INDEPENDENT TAX TRIBUNAL**
**CHICAGO, ILLINOIS**

| | | |
|---|---|---|
| **JIMMY JOHN'S FRANCHISE, LLC,** | ) | |
| **Petitioner,** | ) | |
| **v.** | ) | **Case No. 14-TT-50** |
| | ) | **Chief Judge James M. Conway** |
| **ILLINOIS DEPARTMENT** | ) | |
| **OF REVENUE,** | ) | |
| **Respondent.** | ) | |

**ILLINOIS DEPARTMENT OF REVENUE'S RESPONSE TO**
**PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT**

Now comes the State of Illinois, Department of Revenue ("Department"), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and responds to Petitioner's First Set of Interrogatories to Respondent as follows:

## GENERAL OBJECTIONS

These General Objections are made in addition to the Specific Objections and no full or partial answer of a Request is intended to waive either these General Objections or any Specific Objection to Request. The Department incorporates the following General Objections into their Responses and Specific Objections below:

(a) The Department objects to the extent Petitioner's First Set of Interrogatories seeks disclosure of information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or doctrine.

(b) The Department objects to the extent Petitioner's First Set of Interrogatories purport to impose obligations beyond those imposed by the Illinois Supreme Court Rules, Rules of the Illinois Independent Tax Tribunal, 86 Ill.Adm.Code § 5000.10, *et. seq.*, or any rules or orders of this Court.

(c) The Department objects to the extent Petitioner's First Set of Interrogatories seek or call for a legal conclusion rather than the admission of a fact.

## ANSWERS TO INTERROGATORIES

1. Identify the Person(s) answering and/or responding to these Interrogatories, and Petitioner's First Set of Requests for Production of Documents, and Petitioner's First Set of Requests to Admit, and each Person who provided information and/or Documents used in the preparation of the same.

**ANSWER:** (a) Danny Piper, Revenue Auditor III; (b) Roger Koss, Sales and Miscellaneous Taxes Division Manager; (c) Angela Freitag, Revenue Audit Supervisor; and (d) Faith Dolgin, Special Assistant Attorney General.

2. Identify each Person with knowledge or information regarding the facts alleged in JJF's petition and any facts asserted in the Department's Answer to the Petition and as to each such Person, identify the subject matter about which each witness has knowledge or information, their employer, and their last known address and telephone number.

**ANSWER:** (a) Danny Piper, Revenue Auditor III, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 557-5689 -- audit

(b) Dan Olivero, Revenue Audit Supervisor, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 524-2229 – audit

(c) JoAnn Collins, Revenue Audit Supervisor, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 557-8769 – audit

(d) Angela Freitag, Revenue Audit Supervisor, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702 (217) 782-9813 -- audit

(e) Roger Koss, Sales and Miscellaneous Taxes Division Manager, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 785-2785 -- audit

(f) Louise Calvert, Administrator, Informal Conference Board, Illinois Department of Revenue, 100 W. Randolph St., Chicago, IL 60601; (312) 814-1722 – Informal Conference Board

(g) Phil Bolander, Conferee, Informal Conference Board, Illinois Department of Revenue, 100 W. Randolph St., Chicago, IL 60601; (312) 814-4941 – Informal Conference Board

(h) Debra Boggess, Informal Conference Board Member, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 782-2844 – Informal Conference Board

(i) Brian Wolfberg, Informal Conference Board Member, Illinois Department of Revenue, 100 W. Randolph St., Chicago, IL 60601; (312) 814-1607 – Informal Conference Board

(j) Please refer to the audit file for any other Person, including the Petitioner and any of its representatives, who may be referenced.

3. In compliance with Illinois Supreme Court Rule 213(f)(1), identify each fact witness You may use to present evidence at any hearing or trial, and with respect to each such witness identify their name, employer, last known address and telephone number along with the subject matter(s) of their anticipated testimony.

**ANSWER:** (a) Danny Piper, Revenue Auditor III, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 557-5689 – anticipated testimony will concern his audit of the Petitioner.

4. Identify each witness You may use to present evidence under Rule 213(f)(2) of the Illinois Supreme Court Rules and with respect to each such witness, identify all disclosures required by the Illinois Supreme Court Rules.

**ANSWER:** None anticipated.

5. Identify each witness You may use to present evidence under Rule 213(f)(3) of the Illinois Supreme Court Rules and with respect to each such witness, identify all disclosures required by the Illinois Supreme Court Rules.

**ANSWER:** None anticipated.

6. Identify each Person who participated in any discussions or decisions regarding Your refusal to apply the Rolling Stock Exemption to Petitioner's Aircraft, the assessment of any tax deficiency, the assessment of any penalties and the assessment of any interest.

**ANSWER:** (a) Danny Piper, Revenue Auditor III, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217)557-5689

(b) Dan Olivero, Revenue Audit Supervisor, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 524-2229

(c) Louise Calvert, Administrator, Informal Conference Board, Illinois Department of Revenue,100 W. Randolph St., Chicago, IL 60601; (312) 814-1722

(d) Phil Bolander, Conferee, Informal Conference Board, Illinois Department of Revenue, 100 W. Randolph St., Chicago, IL 60601; (312) 814-4941

(e) Debra Boggess, Informal Conference Board Member, Illinois Department of Revenue, 101 W. Jefferson, Springfield, IL 62702; (217) 782-2844

(f) Brian Wolfberg, Informal Conference Board Member, Illinois Department of Revenue,100 W. Randolph St., Chicago, IL 60601; (312) 814-1607

7. Identify the complete factual basis for Your refusal to apply the Rolling Stock Exemption to Petitioner's Aircraft, the assessment of any tax deficiency, the assessment of any penalties and the assessment if any interest and identify all Documents relating thereto.

**ANSWER:** The factual basis for the Department's assessment of liability under the subject Notice of Tax liability issued on July 17, 2013 ("NTL") is contained in the audit file which has previously been forwarded to counsel for the Petitioner.

8. Identify all non-privileged Communications by or between You and any other Person regarding the Use Tax for Petitioner's Aircraft, including but not limited to any exemptions applicable to such tax, and identify all Documents relating thereto.

**OBJECTION:** The Department objects to Interrogatory #8 on the basis that it is unduly burdensome. With regard to communications by or between its employees, the Department does not maintain a log or other method to record or identify the occurrence of all such oral communication by or amongst its staff, including any which may have included a discussion of the use tax assessed against the Petitioner under the NTL. With regard to communications occurring in any proceeding involving the Petitioner in the Informal Conference Board, the Department, further, objects to Interrogatory #8, pursuant to *86 Ill Adm. Code §§215.120(c)(e),* which precludes any such disclosure.

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #8, please refer to (1) the audit file which has previously been forwarded to counsel for the Petitioner; and (2) the emails produced in connection with the Department's Response #1 to the Petitioner's First Set of Document Requests.

9. Identify the standard You applied to determine whether or not Petitioner's Aircraft was subject to the Rolling Stock Exemption, how You applied that standard, all facts used in Your application of that standard and identify all Documents relating thereto.

**OBJECTION:** The Department objects to Interrogatory #9 on the basis that the term "standard" is vague and ambiguous.

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #9, the Department states that its determination whether or not Petitioner was entitled to claim exemption from tax was based upon application of *§3-55(b)* of the Illinois Use Tax Act, *35 ILCS 105/1, et seq.,* case law construing *§3-55(b)* and all related Regulations. The factual basis and documents used in the Department's determination are contained in the previously tendered audit file. Additionally, please see the copies of email communications between Petitioner's representative and the auditor, produced in connection with the Department's Response #1 to the Petitioner's First Set of Document Requests, which contain information concerning the auditor's methodology.

10. Identify all public Documents of which You are aware which provide guidance to taxpayers regarding what constitutes regular and frequent use of an aircraft in interstate commerce.

**OBJECTION:** The Department objects to Interrogatory #10 on the basis that it is unduly burdensome. The Department further objects on the basis that the term "guidance" is vague and ambiguous and it is unclear to what the Petitioner is referring. The Department further objects since whether there exists public "guidance" on what may constitute "regular and frequent" use of an aircraft in interstate commerce is irrelevant as to whether or not Petitioner's use of aircraft in interstate commerce for hire was sufficiently "regular and frequent" under applicable statute and, therefore, the Interrogatory is beyond the relevant scope of discovery pursuant to Ill. Sup. Ct. R. 201(b)(1). See, *National School Bus Service, Inc. vs. The Department*

*of Revenue*, 302 Ill. App. 3d 820, 825 (1st Dist. 1998)("'[Not] all statements of agency policy must be announced by means of published rules. When an administrative agency interprets statutory language as it applies to a particular set of facts, adjudicated cases are a proper method of announcing agency policies.'" [citations omitted]). Further, to the extent that documents may be available in the public domain, the Department objects since such documents are readily accessible by the Petitioner.

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #10, the Department is aware, for example, of the following: *National School Bus Service, Inc. v. Department of Revenue*, 302 Ill.App.3d 820 (1st Dist. 1998); *Department of Revenue v. ABC Aviation, Inc.*, Ill. Admin. Hearing Decision UT 09-05 (October 13, 2009); *Department of Revenue v. John Doe*, Ill. Admin. Hearing Decision UT 07-04 (July 13, 2007). See, also, Exhibit 1 and Exhibit 2 which are articles searched and found by the undersigned on the web.

11. Identify all non-privileged Communications by or between You and any other Person regarding the Rolling Stock Exemption's potential application to Taxpayers' aircraft and identify all Documents relating thereto. You can exclude any Documents related to the Illinois Legislature's recent amendment of the statute setting forth the Rolling Stock Exemption for aircraft that is applicable only to aircraft purchased on or after January 1, 2014.

**OBJECTION:** The Department objects to Interrogatory #11 on the basis that the information sought, concerning other Illinois taxpayers, is confidential and, except as provided under applicable statute, prohibited from being divulged, subject to criminal and civil penalties. See, *35 ILCS 120/11; 35 ILCS 105/12; TTX v. Whitley, et al.*, 295 Ill.App.3d 548 (1st Dist. 1998). It objects, further, in that the information sought – detail as to the application of exemption as to

other taxpayers – is not relevant as to the validity of the liability proposed against Petitioner under the NTL and, therefore, the information sought under Interrogatory #11 is beyond the scope of discovery pursuant to Illinois Supreme Court Rule 201(b)(1).

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #11, to the extent not confidential, such information is contained on the Department's website in form of, for example: General Information Letters, Private Letter Rulings, Regulations, Administrative Decisions, and Informational Bulletins.

12. Identify all non-privileged Communications by or between You and any other Person regarding what constitutes regular and frequent use of an aircraft in interstate commerce and identify all Documents relating thereto. You can exclude any Documents related to the Illinois Legislature's recent amendment of the statute setting forth the Rolling Stock Exemption for aircraft that is applicable only to aircraft purchased on or after January 1, 2014.

**OBJECTION:** The Department objects to Interrogatory #12 on the basis that it is unduly burdensome. With regard to communications by or between its employees, the Department does not maintain a log or other method to record or identify the occurrence of oral communications by or amongst its staff, including any which may have included a discussion of "regular and frequent" use of aircraft in interstate commerce. The Department further objects since such communications are irrelevant as to whether or not Petitioner's use of aircraft in interstate commerce for hire was sufficiently "regular and frequent" under applicable statute and, therefore, the Interrogatory is beyond the relevant scope of discovery pursuant to Ill. Sup. Ct. R. 201(b)(1). See, *National School Bus Service, Inc. vs. The Department of Revenue*, 302 Ill. App. 3d 820, 825 (1st Dist. 1998)("'[Not] all statements of agency policy must be announced by means

of published rules. When an administrative agency interprets statutory language as it applies to a particular set of facts, adjudicated cases are a proper method of announcing agency policies.'" [citations omitted]). Further, to the extent that documents may be available in the public domain, the Department objects since such documents are readily accessible by the Petitioner. The Department, further objects to Interrogatory #12, on the basis that the information sought may concern information related to other Illinois taxpayers which is confidential and, except as provided by applicable statute, is prohibited from being divulged, subject to criminal and civil penalties. See, *35 ILCS 120/11; 35 ILCS 105/12; TTX v. Whitley, et al.,* 295 Ill.App.3d 548 (1st Dist. 1998). With regard to communications occurring in any proceeding involving the Petitioner in the Informal Conference Board, the Department, further, objects to Interrogatory #12, pursuant to *86 Ill Adm. Code §§215.120(c)(e),* which precludes any such disclosure.

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #12, to the extent not confidential, such information is contained on the Department's website in the form of, for example: General Information Letters, Private Letter Rulings, Regulations, Administrative Decisions, and Informational Bulletins. With respect to any such communications relating to the Petitioner's use of its Aircraft, please refer to (1) the audit file which has previously been forwarded to counsel for the Petitioner and (2) the copies of emails between Petitioner's representative and the auditor, produced in connection with the Department's Response #1 to the Petitioner's First Set of Document Requests, which reflect the methodology used by the auditor to determine whether or not Petitioner's Aircraft was used sufficiently regular and frequent to qualify for exemption under *§3-55(b)* of the Use Tax Act.

13. Identify each instance in which You have approved the application of the Rolling Stock Exemption to a Taxpayer's aircraft and for each such circumstance, identify each fact which supported the application of the Rolling Stock Exemption, the case number (if applicable), the Taxpayer, whether the Rolling Stock Exemption was approved before, during or after the Taxpayer demanded a hearing on the issue and the amount of use tax that was avoided as a result of the application of the Rolling Stock Exemption and identify all non-privileged Documents

**OBJECTION:** The Department objects to Interrogatory #13 on the basis that the information sought, concerning other Illinois taxpayers, is confidential and, except as provided by applicable statute, is prohibited from being divulged, subject to criminal and civil penalties. See, *35 ILCS 120/11; 35 ILCS 105/12; TTX v. Whitley, et al.,* 295 Ill.App.3d 548 (1st Dist. 1998). It objects, further, in that the information sought -- a detail as to all cases where exemption may have been granted to other taxpayers under *§3-55(b)* of the Use Tax Act – is not relevant as to the validity of the liability proposed against Petitioner under the NTL and, therefore, the information sought is beyond the scope of discovery pursuant to Illinois Supreme Court Rule 201(b).

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #13, to the extent not confidential, some of the information is contained on the Department's website in the form of, for example: Private Letter Rulings and Administrative Decisions.

14. Identify each instance in which You have refused to apply the Rolling Stock Exemption to a Taxpayer's aircraft and for each such circumstance, identify each fact which supported your refusal to apply the Rolling Stock Exemption, whether the Taxpayer demanded a hearing on the issue, the case number (if applicable), the Taxpayer, and the amount of Use Tax

that was collected as a result your refusal to apply the Rolling Stock Exemption, and identify all non-privileged Documents relating thereto.

**OBJECTION:** The Department objects to Interrogatory #14 on the basis that the information sought, concerning other Illinois taxpayers, is confidential and, except as provided by applicable statute, is prohibited from being divulged subject to criminal and civil penalties. See, *35 ILCS 120/11; 35 ILCS 105/12; TTX v. Whitley, et al.,* 295 Ill.App.3d 548 (1st Dist. 1998). It objects, further, in that the information sought -- a detail as to all cases where exemption may have been denied to other taxpayers under *§3-55(b)* of the Use Tax Act – is not relevant as to the validity of the liability proposed against Petitioner under the NTL and, therefore, the information sought is beyond the scope of discovery pursuant to Illinois Supreme Court Rule 201(b).

**ANSWER:** Without waiving and subject to its Objection to Interrogatory #14, to the extent not confidential, some of the information is contained on the Department's website in the form of, for example: Private Letter Rulings and Administrative Decisions.

15. If Your response to any request to admit served by Petitioner on You is anything other than unqualified admission, identify the basis for Your denial or qualified admission, including the facts You believe support Your denial or unqualified admission and any Documents relating thereto.

**ANSWER:** Please refer to the Department's Responses to Petitioner's First Request for Admission which set forth the basis for each qualified admission or denial.

Respectfully submitted,

/s/ Faith Dolgin

Faith Dolgin
Special Assistant Attorney General
Illinois Department of Revenue
100 W. Randolph St., 7th Floor
Chicago, Illinois 60601
312-814-3185

## CERTIFICATE OF SERVICE

I, Faith Dolgin, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Response to Taxpayer's First Set of Interrogatories to Respondent upon:

Brian A. Smith
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, IL 60606
bsmith@freebornpeters.com

Todd J. Ohlms
Freeborn & Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, IL 60606
tohlms@freebornpeters.com

By email to the email addresses listed above on September 29, 2014.

/s/ Faith Dolgin
Faith Dolgin

STATE OF ILLINOIS )
) SS
COUNTY OF SANGAMON )

**VERIFICATION**

I, Roger Koss, being first duly sworn upon his oath, deposes and says that I am an employee of the Illinois Department of Revenue and as such I am the duly authorized agent for the Illinois Department of Revenue, that I have read the foregoing Department of Revenue's Response to Petitioner's First Set of Interrogatories, that I am well acquainted with its contents, and under penalties as provided by law pursuant to *735 ILCS 5/1-109* of the Illinois Code of Civil Procedure, the undersigned certifies that the matters and things contained in it are true to the best of my knowledge, information and belief.

Dated: 9/29/2014

Roger W Koss

Roger Koss
Sales and Miscellaneous Taxes Division Manager
ILLINOIS DEPARTMENT OF REVENUE

# ANSWER #10

# GA aircraft grandfathered under Illinois tax measure

0

June 6, 2013 | ByBenét J. Wilson

The Illinois legislature May 30 approved Senate Bill 2326, a measure that protects aircraft operating under a rolling stock exemption.

Aircraft that are used approximately 33.3 percent in for-hire interstate commerce are exempt from Illinois sales tax under the state's "rolling stock" exemption. However, because other vehicles, including over-the-road trucks, are operating under a 50-percent-or-more threshold for tax-exempt status, the legislature, at the urging of the Illinois Department of Revenue, sought to require aircraft to achieve the same 51-percent threshold to maintain their rolling stock exemption. AOPA worked with legislators to find ways to protect aircraft operators that may have found themselves in the gray area between the 33.3 -percent and proposed 51-percent thresholds.

Late in the session, the Illinois Aviation Trades Association, supported by AOPA, advocated for an amendment to S.B. 2326 that would allow currently registered "rolling stock" aircraft to maintain their exemption, while requiring the new 51-percent threshold for future registered aircraft. S.B. 2336 now grandfathers existing aircraft in at the 33-percent threshold.

General aviation airports in Illinois support 54,887 jobs and contribute more than $4.4 billion to the state economy. The state is home to 65 charter flight companies, 98 repair stations, and 13 flight schools. There are 116 public-use airports that support 18,601 pilots and 10,578 registered GA aircraft.

"Although we certainly understand the legislature's interest in standardizing these rates, supporting the IATA amendment to grandfather currently qualified businesses was vital, in our view, to ensure the continued health and vitality of these aviation operations as key contributors to the state economy," said Mark Kimberling, AOPA director of state government affairs.

**Benét J. Wilson | AOPA eNewsletter and Social Media Editor**

AOPA eNewsletter and Social Media Editor Benét J. Wilson joined AOPA in 2011. She is working on her private pilot certificate.

0

Topics Taxes,Advocacy

Exhibit 1

# Sales Tax Changes for Charter Aircraft in Illinois

Starting January 1, 2014 the state of Illinois has changed the rules for owners wishing to place their aircraft into a charter operation in order to avoid paying the states sales tax on the purchase of an aircraft. The Rolling Stock Exemption prior to this year has used a "regular and frequent" guidelines to determine charter use and has been , at times, a point of contention for owners because the guidelines were not clearly defined. Past rulings had allowed charter usage to dip as low as 25% and still qualify for the Rolling Stock Exemption. A text of this new law can be seen on the state's web site at the following link:

http://www.ilga.gov/legislation/publicacts/98/PDF/098-0584.pdf

Please keep in mind that this rule only applies to aircraft acquired on or after 1/1/14. All aircraft purchased prior to this year fall under the old rules. As with all tax law changes we advise that you consult with your tax advisor for the handling of your personal taxes. However, JA is committed to providing the best possible charter management scenarios to our customers and have suggestions that may work to avoid paying the state sales tax. Feel free to call or email me to discuss how this may effect your future purchase: sfank@jaair.com

facebook twitter linkedin email

3+1

## Related Posts via Categories

- J.A. Named IL/WI Cessna Certified Pre-Owned Dealer for 2014
- Weekly Ground School
- J.A.E.T. To Lead A Group Flight To Key West
- Winter Special: Discounted Redbird FMX Sim Rates
- JA Flight Training Becomes Local Chapter for IMC Club
- NextGen GA Fund Will Finance Avionics Upgrades - AVweb flash Article
- Just Listed - Rare low time A-36 Bonanza with A/C

## Contact Us

Scott Fank - Sales Manager

E-Mail - 630 549 2123

## Contact Aircraft Sales

Name *

First Last

Phone

Email *

Subject *

Message *

SUBMIT

## See our aircraft products

Sales, Charter, rental and more

Aircraft for Charter view

## Affiliated Aircraft Sales Sites

- Aircraft 24.com
- Aircraft Shopper On Line
- International Aircraft Sales
- The Controller
- Trade A Plane

Caravan Leasing

Exhibit 2