

Illinois Trial Court Deems Invalid Cook County's Non-Titled Personal Property Use Tax

November 1, 2013

Overview

An Illinois Circuit Court recently issued a written summary judgment decision in *Reed Smith LLP v. Director of the Cook County Department of Revenue*, holding that the Cook County non-titled personal property use tax: 1) violated local "home rule authority" ordinances because it was "a tax on the 'selling price or purchase price' of tangible personal property when first subjected to use in the County," 2) violated the Illinois Constitution in applying its "tax rate to the value of personal property" as a form of prohibited ad valorem taxation, and 3) was "per se discriminatory against interstate commerce" in violation of the U.S. Commerce Clause.¹ Cook County has filed a Notice of Appeal and thus this case is not final at this time.

In this alert we summarize the Illinois Circuit Court's decision.

Background

Effective April 1, 2013, Cook County, Illinois imposed a use tax (at the rate of 1.25%) upon the value of non-titled personal property purchased outside of the county when first used in the county.² On June 19, 2013, the tax rate was reduced to .75%.³

On June 21, 2013, the Chicagoland Chamber of Commerce (the "Chamber") filed a lawsuit against the Cook County Department of Revenue to block the County from imposing the use tax on non-titled personal property. The Chamber argued that the tax was illegal because the County did not have the authority under Illinois state statute to implement a non-titled use tax, the tax violated the Illinois Constitution's prohibition of ad valorem taxes, and the tax collected by the County using a differential in tax rates for purchases made outside of the county violated the U.S. Commerce Clause.⁴ The Chamber's suit requested that the court enjoin future collection of the tax and that the County issue refunds to all businesses that paid the tax since its effective date on April 1st.⁵ On August 1, 2013, the Illinois Circuit Court enjoined the County from imposing the tax or cashing any checks received related to the tax following the July 20th return due date.⁶ The County appealed.

On October 4, 2013, the County had a short-lived victory as the Appellate Court granted a motion of stay pending the outcome of the trial court proceedings; however, the County was also limited to segregating (and not processing) payments received under the non-titled personal property use tax ordinance.⁷

Reed Smith LLP v. Director of the Cook County Department of Revenue

On October 8, 2013, Cook County Judge Robert Lopez Cepero issued a bench ruling in favor of the lawsuits to block the use tax. The ruling granted the plaintiffs' motion for summary judgment on the three issues they had challenged:

- 1) that the use tax on the "value" of personal property is based on the "selling price or purchase price," which is prohibited by the Illinois Counties Code;

¹ *Reed Smith LLP v. Director of the Cook County Department of Revenue*, Ill. Cir. Ct., Cook County, Case Nos. 13 L 050454, 13 L 050470 (Oct. 11, 2013) slip op. at 6-7. A copy of the decision is accessible at: http://chicagolandchamber.org/wdk_cc/wcm/resources/documents/adobe_pdf/advocacy/2584_6212001_65117/use_tax_written_opini_on.10.11.13.pdf.

² Our Alert issued on November 26, 2012, discussing enactment of the use tax is accessible at: https://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_IL_alert_11-26-12.pdf.

³ Cook County Use Tax Ordinance Section 74-652(d), as amended.

⁴ The County amended its ordinance on June 19, 2013, potentially eliminating this argument in post-amendment periods. For more information on this amendment, see our Alert issued on June 24, 2013, accessible at http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_IL_062513.pdf.

⁵ See the Chamber's Legislative Update June 21, 2013,

http://chicagolandchamber.org/wdk_cc/programs_and_advocacy/2013_legislative_updates/legislative_update_june_21_2013.jsp.

⁶ *Reed, Smith LLP, etc. v. Ali Zahra, etc.*, No. 13 L 050454, (Aug. 1, 2013).

⁷ *Horwood Marcus & Berk, Chtd. v. Cook County Dept. of Rev.*, No. 13 L050470, (Oct. 4, 2013).

- 2) that the tax is “plainly and clearly” based on the value of personal property, which constitutes an “ad valorem” tax that is prohibited by the Illinois Constitution; and,
- 3) that the tax discriminates against interstate commerce and is in violation of the Commerce Clause of the U.S. Constitution.

In an apparent response to the court’s decision, on October 8, 2013, the County updated its website stating, “Cook County Department of Revenue will not be accepting registration, tax return filings and payments for the Non-Titled Personal Property Use Tax pending the outcome of current litigation.”⁸

The Court issued its written decision on October 11, 2013, granting the plaintiffs’ motions for summary judgment and holding that the use tax violates the home rule tax authority of Cook County Code Section 5-1009; is an *ad valorem* tax on personal property and, as such, violates Article IX, Section 5 of the Illinois Constitution; and violates the U.S. Commerce Clause.⁹

On October, 23, 2013, the County filed a Notice of Appeal.¹⁰

Considerations

The County is currently enjoined from collecting the non-titled personal property use tax. However, the County has filed a Notice of Appeal and thus the case is not final. With respect to refunds, taxpayers may want to consider whether to wait to file claims for previously paid non-titled personal property use tax until this matter is resolved.

Contacts

If you have questions regarding this Illinois Circuit Court decision or pertaining to other Illinois sales or use tax matters, please contact any of the following Deloitte Tax professionals.

Dominic Greco
Director
Deloitte Tax LLP, Chicago
dgreco@deloitte.com
(312) 486-9721

Mary Pat Kohberger
Director
Deloitte Tax LLP, Chicago
mkohberger@deloitte.com
(312) 486-3825

Anna Marie Alberti Hearn
Manager
Deloitte Tax LLP, Chicago
aalbertihearn@deloitte.com
(312) 486-2754

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2013 Deloitte Development LLC. All rights reserved.
Member of Deloitte Touche Tohmatsu Limited

⁸ See, http://www.cookcountyil.gov/portal/server.pt/community/revenue,_department_of/313/revenue,_department_of, referencing the “Non-Titled Personal Property Use Tax (Updated October 8, 2013).”

⁹ *Reed Smith LLP v. Director of the Cook County Department of Revenue*, slip op at 8.

¹⁰ See Cook County Clerk of the Circuit Court, Docket, accessible at: <https://w3.courtlink.lexisnexis.com/cookcounty/Finddock.asp?DocketKey=CABD0L0AFAEFE0LD>.