



TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

A note from the co-editors

By Mary Ann Connelly and Stanley R. Kaminski

This issue of Tax Trends contains a very interesting article written by David Kupiec and Natalie M. Martin on the issues surrounding the push by some to have a new local sales tax sourcing law in Illinois. The article explains the general sourcing issue and the legislative fight between the Department of Revenue and the business community on whether the decades-old point of sale sourcing test should be

codified into the statute or whether a new multi-factor sourcing test should be used to source local sales tax revenues. The outcome of the fight will determine how a business will report sales in Illinois, and thus impact where businesses will locate their operation in Illinois or whether they will move outside the state to escape the local tax altogether. ■

Illinois state and local sales tax sourcing—Will the current long standing local sales tax sourcing test be changed in Illinois?

By David J. Kupiec JD, CPA and Natalie M. Martin JD of Kupiec & Martin, LLC

On January 26, 2011, a Judgment Order was issued for the Taxpayer returning the sales tax Taxpayer paid under protest in *Hartney Fuel Oil Co., Board of Commissioners of Putnam County, Illinois, and Board of Trustees of the Village of Mark, Illinois v. Brian A. Hammer Director of the Illinois Department of Revenue and Alexi Giannoulis, Treasurer*, Case Nos. 08-MR-13 and 08-MR-15, Circuit Court of the Tenth Judicial Circuit, Putnam County, Illinois. The issuance of this Order and resulting public statements from individuals supporting either side of the issue concerning the sourcing of Illinois state and local sales tax sparked numerous front page newspaper articles, evening news stories and the Regional Transportation Authority litigation. What adds to the intrigue of this issue is that the underlying facts of the Hartney case state that Hartney had been assessed millions in sales tax, penalties and interest based on a prior state audit and made changes to its day-to-day business operations to

conform to those audit findings. However, during the audit at issue, Taxpayer was once again assessed sales tax, penalty and interest based on the application of a different sourcing standard. The Department of Revenue has appealed the Hartney Order.

As explained in the Hartney Order, "the State's share of the sales tax, i.e., Illinois Retailer's Occupation Tax, is the same 6.25% throughout the State regardless of situs, additional sales taxes totaling 2.5% are collected by the Illinois Department of Revenue on behalf of local home rule taxing districts including the Village of Forest View, County of Cook, and Regional Transportation Authority, each of which have authority to levy additional sales taxes against sales situated within their jurisdiction." If the sales at issue are sourced to the location of Hartney's Village of Mark sales office, Hartney would only pay the

Continued on page 2

INSIDE

A note from the co-editors. 1

Illinois state and local sales tax sourcing—Will the current long standing local sales tax sourcing test be changed in Illinois? 1

Upcoming CLE programs 3



IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT ABOUCHER@ISBA.ORG

Illinois state and local sales tax sourcing—Will the current long standing local sales tax sourcing test be changed in Illinois?

Continued from page 1

6.25% state tax and the Village of Mark and Putnam County receive a small percentage of the 6.25% state tax. However, if the sales at issue were sourced to Hartney's Forest View main office, Hartney would pay the 6.25 % state tax plus the 2.5% local tax to the Village of Forest View, Country of Cook and the Regional Transportation Authority. Thus the issue in the case is whether Hartney owes any sales tax above the 6.25% state rate.

The Circuit Court explained that three sets of Illinois Regulations are applicable: "one set permitting a home rule county to levy its own Retailers' Occupation Tax (86 Ill. Adm. Code 220), another permitting a home rule municipality to levy its own Retailer's Occupation Tax (86 Ill. Adm. Code 270) and a third set specifically permitting the Regional Transit Authority to levy its own separate Retailer's Occupation Tax (86 Ill. Adm. Code 320)." Each of these regulations expressly provide that "it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important

single factor in the occupation of selling." In other words, the Taxpayer must accept the customer order in a home rule jurisdiction in order for the additional home rule tax to be imposed. Accordingly, the Court found that there was insufficient evidence to support that the sales at issue should be sourced to Taxpayer's Forest View home office and thus the Taxpayer was only subject to the 6.25% State sales tax.

Based on the regulatory provisions cited above as well as numerous letter rulings issued by the Department concerning this issue over the years (including but not limited to ST 07-0043-GIL, ST 08-0044-GIL, ST 08-0099-GIL, ST 02-0019-PLR, and PLR 88-0917), legislation was introduced this past 2011 Spring Session. Senate Bill 2194, as originally drafted, would have enacted the policy and regulatory provisions concerning sales tax sourcing that have been in place for the past decades. The Department and others have proposed an amendment to Senate Bill 2194 with a new "totality-of-the-circumstances test" that appears to replace the current pri-

mary focus on the place of order acceptance. A proposed House Amendment 1 to Senate Bill 397 also put forth a similar "multiple factors test". Neither Bill was enacted during the 2011 Spring Session.

As of the drafting of this article, this sales tax sourcing issue remains the focus of pending Illinois legislation and litigation. The sales tax sourcing issue to be decided is whether the long standing emphasis on the location of order acceptance will remain the primary focus or whether the proposed "totality-of-the-circumstances test" or the somewhat similar "multiple factors test" or some other alternative test will be enacted or promulgated. The policy issue to address is whether the long standing order of acceptance standard works, needs to be revised or needs to be replaced. Moreover, part of the concern is whether it's wise for Illinois to abandon its current bright line test and adopt a subjective test for sourcing sales not used in any other state. As with most state tax issues, the enactment of legislation will hopefully provide the certainty and clarity needed in this area. ■

*Don't Miss This Easy-To-Use
Reference Guide of Deadlines and Court
Interpretations of Illinois Statutes*

**A "MUST HAVE"
for civil
practitioners.**

Guide to Illinois STATUTES OF LIMITATION 2011 EDITION

The new 2011 Guide to the Illinois Statutes of Limitation is here! The Guide contains Illinois civil statutes of limitation enacted and amended through September 2011, with annotations. This is a quick reference to Illinois statutes of limitation, bringing together provisions otherwise scattered throughout the Code of Civil Procedure and other chapters of the Illinois Compiled Statutes. Initially prepared by **Hon. Adrienne W. Albrecht** and updated by **Hon. Gordon L. Lustfeldt**.

Need it NOW?

Also available as one of ISBA's *FastBooks*. View or download a pdf immediately using a major credit card at the URL below.

FastBooks prices:

\$32.50 Members / \$42.50 Non-Members

Order at www.isba.org/bookstore or by calling Janice at 800-252-8908
or by emailing Janice at jishmael@isba.org

Guide to ILLINOIS STATUTES of LIMITATION - 2011 Edition

\$35 Members / \$45 Non-Members
(includes tax and shipping)



Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

December

Thursday, 12/1/11- Chicago, ISBA Chicago Regional Office—Recent Developments in State and Local Tax- 2011. Presented by the ISBA State and Local Tax Committee. 9-12.

Thursday, 12/1/11- Teleseminar—Business Planning with S Corps, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Teleseminar—Business Planning with S Corps, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Chicago, ISBA Chicago Regional Office—Motion Practice- From Pleadings through Post-Trial. Presented by the ISBA Civil Practice & Procedure Section. 8:50-2:15.

Thursday, 12/6/11- Teleseminar—Estate Planning for Retirement Benefits. Presented by the Illinois State Bar Association. 12-1.

Thursday, 12/8/11- Chicago, Sheraton Hotel—ISBA Basic Skills Course 6.0 Live. Presented by the Illinois State Bar Association. 9-4:30.

Friday, 12/9/11- Chicago, Sheraton Hotel—Master Series: Divine Ethics: Avoiding the Chasm of Incivility. Presented by the Illinois State Bar Association. 1:00-4:14.

Tuesday, 12/13/11- Teleseminar—Individual Liability for Corporate Obligations: Piercing the Corporate Veil. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 12/14/11- Webcast—Jury Selection. Presented by the ISBA Criminal Justice Section. 12-1.

Thursday, 12/15/11- Teleseminar—UCC Issues in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 12/20/11- Teleseminar—Asset Protection Strategies for Real Estate. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 12/21/11- Teleseminar—Tax Efficient Methods of Getting Money out

of a Business. Presented by the Illinois State Bar Association. 12-1.

January

Thursday, 1/5/12- Teleseminar—Estate Planning in 2012: Now That the Federal Tax is a Dead Letter, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/6/12- Teleseminar—Estate Planning in 2012: Now That the Federal Tax is a Dead Letter, Part 2. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 1/10/12- Teleseminar—Dangers of Using "Units" in LLC Planning. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/13/12- Teleseminar—Bridging the Valuation Gap: "Earnouts" and Other Techniques. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 1/17/12- Teleseminar—Real Estate Finance in A World With Tight Credit and Less Leverage. Presented by the Illinois State Bar Association. 12-1. ■

BACK TO SCHOOL SAVINGS!

ISBA's Unlimited Law Ed Passport

Sign up for the *Unlimited Law Ed Passport Live* or the *Unlimited Law Ed Passport Online* and earn unlimited MCLE credit through June 30, 2012!

To enroll and for more information, please visit

WWW.ISBA.ORG/CLE/PASSPORT



ISBA LAW ED
CLE FOR ILLINOIS LAWYERS

TAX TRENDS

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

To subscribe, visit www.isba.org or call 217-525-1760

OFFICE

Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

CO-EDITORS

Mary Ann Connelly
180 N. LaSalle St., Ste. 2901
Chicago, IL 60601

Stanley R. Kaminski
190 S. LaSalle St., Ste. 3700
Chicago, IL 60603

ASSOCIATE EDITORS

Catherine Battin	Marilyn Schlesinger
Matthew Boch	Kevin Wolfberg
Kathleen Lach	Jennifer Zimmerman
Mary Nicolau	Al White

MANAGING EDITOR/

PRODUCTION

Katie Underwood
kunderwood@isba.org

STATE & LOCAL TAXATION

SECTION COUNCIL

Donald T. Rubin, Chair
Julie-April Montgomery, Vice Chair
Tara H. Ori, Secretary
William J. Seitz, Ex-Officio

Thomas F. Arends	David Kupiec
Thomas M. Battista	Brian P. Liston
Whitney T. Carlisle	Timothy E. Moran
Mark R. Davis	John K. Norris
Nora A. Doherty	David R. Reid
David P. Dorner	Marilyn F. Schlesinger
Joanne Elliott	Rodney C. Slutzky
Anthony M. Farace	Gary H. Smith
Brian E. Flifet	Steven M. Waggoner
Thomas A. Jaconetty	Richard D. Worsak
Stanley R. Kaminski	

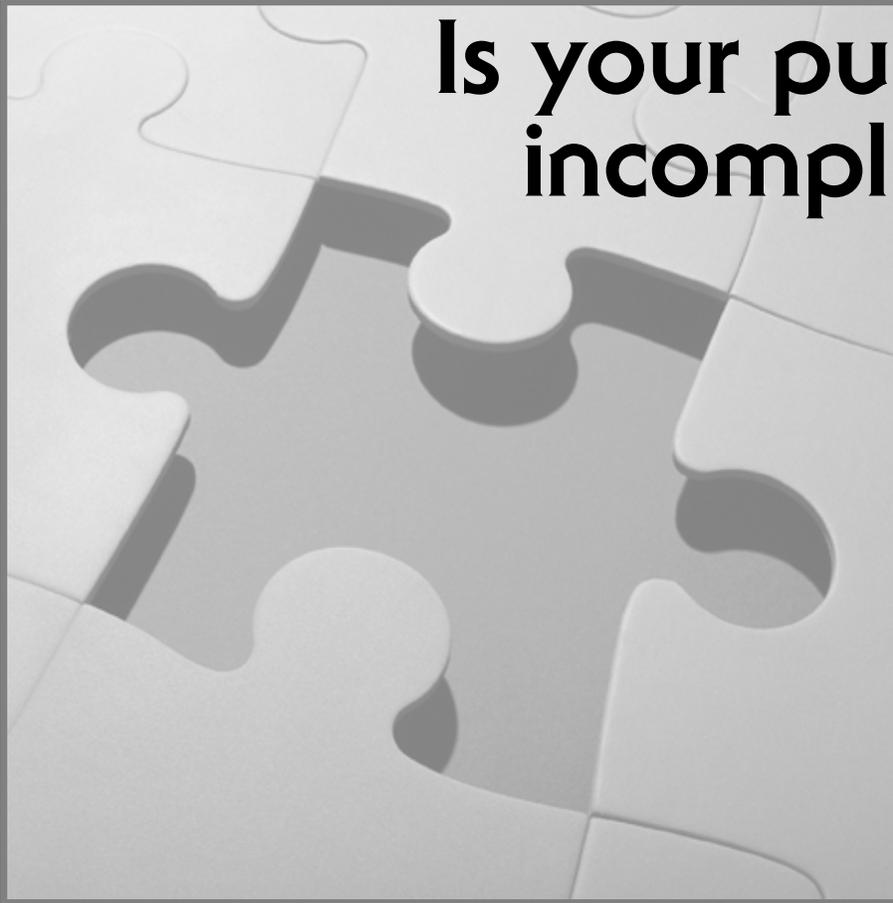
Mary M. Grant, Staff Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.



Is your puzzle incomplete?

Advertise your product, service, or job opening in an ISBA newsletter and reach thousands of legal professionals. You could find just the piece you're missing.

Contact Nancy Vonnahmen at nvonnahmen@isba.org or 800-252-8908 to learn more.



Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820

TAX TRENDS
ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701-1779
NOVEMBER 2011
VOL. 55 NO. 5