

Illinois State Bar Association 2017 State & Local Tax Conference

DuaneMorris

Chicago and Cook County Tax Update January 27, 2017

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General Local Tax Litigation

- City of Chicago, et al. v. City of Kankakee, et al. 11 CH 29745 and 11 CH 34266 (Circuit Court dismissed case), on appeal #1-15-3531 (Chicago case as to proper local sourcing of sales.)
- Bartolotta v. Dunkin' Brands Group, et seq., 16 CV 4137, US District Court, ND Illinois (Consumer Fraud Act complaint for possible over-collected Illinois / local sales tax was dismissed by court, since Dunkin' had reasonable interpretation of law and it is simply "not fraud or an unfair business practice" for Dunkin' to follow a conservative approach to pay taxes.)

Chicago Tax Litigation Update

- **Transaction Tax** – Hertz v. City of Chicago, 2015 IL. App (1st) 123210– Chicago Personal Property Lease Transaction Tax Case – (tax upheld as applied to rentals within 3 miles of city based on presumption that a person with a driver’s license with a Chicago address will use vehicle 50% or more inside City).
Illinois Supreme Court Appeal Granted.
Oral Arguments heard on September 20, 2016.
- **Hotel Tax**
 - City of Chicago v. Hotels.com, Expedia, et al., 05 L 051003 (Expedia and other on-line travel companies required to collect Chicago Hotel Accommodations Tax), on appeal.
 - Keep Chicago Livable v. City of Chicago, 16 CV 10371 (Federal District Court) (Tax on shared housing and vacation rentals challenged as violating uniformity clause of Illinois Constitution and as an occupation tax).

Chicago Tax Litigation Update (cont'd.)

- **Other Tobacco Tax** – Iwan Reis, et al. v. City of Chicago, 2016 L. 50356 (Legality of new Chicago tobacco tax challenged).
- **Airport Departure Tax** – MPEA v. Uber, et al, 2016 L 050196 (MPEA sued to get Uber and Lyft to pay Airport Departure Tax).

Chicago Tax Litigation Update (cont'd.)

- **Amusement Tax** – Labell v. City of Chicago, 2015 CH 13399 (Amusement Tax Ruling #5 expansion of Amusement Tax to Netflix challenged as violating federal Internet Tax Freedom Act and Uniformity Clause of Illinois Constitution and Commerce Clause of Federal Constitution).
- **Amusement Tax** – Mercury Sightseeing Boats, Inc. v. County of Cook, 2016 CH 10775 (2016 L 050566) (City has moved to intervene.) (Appeal of ALJ decision holding that taxation of tour boats under County Amusement tax was illegal).
- **Parking Tax** – City of Chicago v. LAZ Parking, 2016 L 50304 (Case Dismissed) (Appeal of Chicago ALJ decision that held assessment of valet service's unpaid Parking Tax against parking lot operator violated language of Parking Tax Ordinance and was illegal).

Chicago Tax Litigation Update (cont'd.)

- **Real Estate Transfer Tax –**

- City of Chicago v. KTCP 225, 13 L 050290; City of Chicago v. Horizon Group LLC, 13 L 050291; Halsted West v. City of Chicago, 11 CH 19010; Elm State 14 L 050273; Halsted West, 14 L 050274 - 2016 IL App (1st) 152552, December 22, 2016.
 - Circuit Court, in reversing ALJ decisions, held that Mortgage assignments are Beneficial Interest transfers and that Exemption C in Transfer Tax does not apply since assignments of Mortgage were not done to secure debt.
 - Appellate Court reversed Circuit Court by finding that an assignment of a mortgage is not subject to the Chicago Real Estate Transfer Tax as an assignment of a beneficial interest in real property.
- Fannie Mae v. City of Chicago, 15 CV 9150 (N.D. Ill.) (Pending case on taxability of Fannie Mae Buyers) (District court ruled in favor of Fannie Mae) On Appeal.

Chicago Tax Code Update

- **Chicago Personal Property Lease Transaction Tax (Ch. 3-32, Chicago Mun. Code)**
 - New non-possessing lease of computer tax rate of 5.25% for certain leases when user supplies the data.
 - New Information Bulletin on non-possessing computer leases, established VDA program – Extended June 30, 2016
 - Annual membership fees paid to the operator of bike share program created and owned by Chicago DOT is exempt. (effective 2017)

Chicago Tax Code Update (cont'd.)

- **Ground Transportation Tax** (Chicago Mun. Code – Ch. 3-46, §3-46-40) – requires payment of tax on day of departure if MPEA Departure Tax due on day of departure (Appears to be designed to go after Uber and Lyft) – EFF. – 4/1/17.
- **New Tobacco Products Tax** – Chicago Mun. Code, Ch. 3-49
 - On cigars, smoking tobacco and other non-cigarette tobacco products
 - Effective date extended until February 2017
- **Amusement Tax** – Chicago Mun. Code, Ch. 4-156
 - New 9% tax on Tour Boats – credit for 9% Amusement Tax remitted – EFF. upon passage.
 - New tax on ticket resellers gross sale – 3.5% - EFF. 1/1/17

Chicago Tax Code Update (cont'd.)

- **Checkout Bag Tax** – Chicago Mun. Code, Ch. 3-50
 - 7 cents per bag sold or used in Chicago – EFF. 1/1/17
 - 2 cents can be kept by store.
 - Tax collected by Wholesaler from Retailer, then by Retailer from Customer if separately stated. Register by 2/1/17.
 - Existing bag inventory completed by 1/31/17
 - Paper and Plastic
- **URPO** – Chicago Mun. Code, Ch. 3-4.
 - Changes how credits are applied for overpayments
 - Changes the statute of limitations when substantial underpayment of tax occurs in normal 4 year audit period.

Chicago Tax Audit Update

- Chicago DOF Enforcement Measures
 - Chicago Transaction Tax (Chicago Mun. Code, Ch. 3-32)
 - Cloud computing issues
 - Dark fiber versus Lit Fiber
 - Remote Use Issue
 - Non-possessory leases
 - Possessory leases
 - Storage of data issue

Chicago Tax Audit Update (cont'd.)

- Parking Tax (Chicago Mun. Code, Ch. 4-236)
 - Valet parking
 - Parking aggregators
- Telecommunications Tax (Chicago Mun. Code, Ch. 3-73)
 - Cell Towers
- Amusement Tax Voluntary Disclosure for Satellite TV – Extended until March 31, 2017
 - Requires Tax Payment from 1/1/15 To Date (Waiver of Interest and Penalty)

Cook County Code Update & Enforcement Measures

- **Tobacco Tax Ordinance** (County Code, Article XI, Ch. 74-430) (Effective May 1, 2016 includes Nicotine Vapor Products)
- **New Sweetened Beverage Tax** (County Code, Article XI, Ch. 74-850) (Effective July 1, 2017, includes all sweetened and artificially sweetened beverages).
 - 1¢ per ounce tax
 - Floor Tax to be imposed
 - Tax collected by Distributor, then by Retailer from customer
- **Parking Tax** (County Code, Article XI, Ch. 74-510) (Valet Parking Services must pay tax and can get a credit for taxes paid to operator if there is a written agreement requiring such payment.)

Cook County Code Update & Enforcement Measures (cont'd.)

- **Firearms and Ammunition Tax** (County Code, Article XI, Ch. 74-665) (Effective 6/1/16 – Amends Tax to add a 1¢ to 5¢ per cartridge tax).
- **Hotel Accommodations Tax** (County Code, Article XI, Ch. 74-800) (Effective 5/1/16 – Adds a 1% Hotel Accommodation Tax, like the City of Chicago)
- **Enforcement Measures**
 - Effective 1/1/17 – Alcohol, Amusement, gasoline/diesel fuel, parking lot and hotel taxes to be paid electronically

Cook County Litigation Update

- LITIGATION
 - **Amusement Tax** – TRT Transportation, Inc. v. County of Cook, 2016 L 50744, (Appeal of taxation of tour buses under County Amusement tax which was upheld by County ALJ).
 - **Amusement Tax** – County of Cook v. Mercury Sightseeing Boats, 2016 CH 10775, (Appeal of Amusement Tax on sightseeing boats held illegal by County ALJ.)
 - **Amusement Tax** – Cook County v. Beauty Bar, County Department of Admin. Hearing (Amusement Tax on DJ's and other live music that is not deemed by County to be artistic.) (Pending)

Cook County Litigation Update

- **Ammo Tax** – Gun Save Life v. Ali, (Circuit Court) (Pending)
- **Gas Tax** – Equilon Enterprises, LLC v. Cook County, (Circuit Court) (Pending) (Appeal of ALJ decision that sales to unregistered distributors that picked up gas at Equilon's Cook County facility were taxable)

Questions ?