

Sales/Use/Indirect:

Illinois Appellate Court Says Expanded Temporary Storage Exemption Does Not Apply Due to Partial In-State Use

Case No. 1-23-0072, Ill. App. Ct. (2/29/24). An Illinois Appellate Court (Court) agreed with the Illinois Tax Tribunal that an Illinois sales tax exemption for property that is purchased and temporarily stored in-state before being transported and used out-of-state did *not* apply to a taxpayer's customers' (*i.e.*, to a fuel supplier's airline customers') purchases of aviation fuel because the fuel was not consumed solely outside Illinois. Specifically at issue was an Illinois retailers' occupation tax provision that exempts "personal property purchased from an Illinois retailer by a taxpayer engaged in centralized purchasing activities in Illinois who will, upon receipt of the property in Illinois, temporarily store the property in Illinois for the purpose of subsequently transporting it outside this State for use or consumption thereafter solely outside this State" – which is commonly known as Illinois' "expanded temporary storage exemption." The Court explained that pursuant to Illinois statutes, legislative history, and caselaw, to qualify for the expanded temporary storage exemption, the purpose of the temporary storage must be for future transportation outside of Illinois for use or consumption solely and entirely outside of Illinois, which was not the case here. Under the facts at hand, the Court explained that the purchased fuel failed to qualify for exemption because, after being loaded into the customers' airplanes operating out of an Illinois airport, it was consumed partly in Illinois rather than used for consumption solely outside of Illinois. Please contact us with any questions.

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