

a violation of uniformity by clear and convincing evidence. The court cited *Kankakee County Board of Review v. Property Tax Appeal Board*, 131 Ill. 2d 1, 20 (1989) which provides that taxing officials may not value the same kinds of properties within the same taxing boundary at different proportion of their true value because there must be equality in the burden of taxation. The court held

that the record supported PTAB's finding of a lack of uniformity. The testimony before the agency was that there was no difference in square footage between the subdivided and the un-subdivided buildings and that the buildings were essential the same. The court found that the Board of Review failed to establish that the PTAB's ruling was against the manifest weight of the evidence. ■

Irwin Industrial Tool Co. v. Department of Revenue, **Docket No. 109300 (Ill Sup Ct. 9/23/2010)**

By Bill Seitz

On September 23, 2010, the Illinois Supreme Court issued its decision in the *Irwin Industrial Tool* case.

This case concerns the imposition of a use tax, pursuant to section 3 of the Use Tax Act (35 ILCS 105/3).

At issue was whether the Illinois Department of Revenue could impose a use tax on the full value of an aircraft even though it was hangared outside of the state.

The Supreme Court upheld the appellate court's finding that the Department can impose the full use tax at the statutory rate without apportionment.

The appellate court had reversed the circuit court's finding that the Department could tax only 4 percent of the airplane's value based on the percentage of time the airplane spent on the ground in Illinois. They found that the circuit court erred in limiting the use tax to 4 percent of the airplane's value.

To withstand a claim that the Department is unconstitutionally burdening interstate commerce, a state tax must satisfy the four-part test enunciated in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076 (1977).

Under *Complete Auto*, the tax must: (1) be applied to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state.

Irwin argued that the use tax failed to satisfy the first two prongs of the *Complete Auto* test. The Court rejected both arguments.

Is the Tax being applied to an activity with a substantial nexus with Illinois?

Irwin argued that the commerce clause bars the Department from imposing a use tax because the airplane lacked a "substan-

tial nexus" with Illinois. The airplane was hangared and maintained outside of Illinois and only made quick and periodic trips to the State. The flight log established that it spent only 3.65 percent of its time on the ground in Illinois and only 3.42 percent of its nights in Illinois.

The court rejected this argument, determining that there was enough physical presence in Illinois to establish a substantial nexus, focusing on flight logs and the number of take-offs or landings at Illinois airports.

The court cited that there were flights in and/or out of Illinois on nearly half of the days on which any flights were made. The flight log established that 36.9 percent of the total flight segments for the airplane were logged on flights to and/or from Illinois. In addition, the airplane was present overnight at one of Illinois' airports 3.42 percent of the time.

Based on those contacts, the court then concluded that the airplane had more than a "slight" physical presence in Illinois. It met *Complete Auto's* substantial nexus requirement so as to allow the Department to impose a use tax on the airplane.

Is the Tax Fairly Apportioned?

The Court rejected the argument that the tax was not fairly apportioned. They determined that imposing the Illinois' use tax based on the full purchase price of the airplane is externally consistent and thus fairly apportioned because no tax has been paid on the airplane to any other state, and even if it had been, the Use Tax Act provides an exemption for sales or use taxes paid to other states.

The Court then concluded that the appellate court properly reversed that portion of the circuit court's judgment limiting the use tax to 4 percent of the airplane's purchase price. ■

TAX TRENDS

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

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