

Sales/Use/Indirect:

Illinois Tax Tribunal Addresses Commerce Clause Caselaw and Holds Aircraft Owner Had Substantial Nexus

Case No. 22 TT 04, Ill. Tax Trib. (7/5/23). In a lengthy ruling summarizing US Commerce Clause caselaw and addressing whether Illinois use tax could be assessed on an out-of-state company for its aircraft's in-state use, the Illinois Tax Tribunal (Tribunal) held for the Illinois Department of Revenue that based on the provided facts, the company had substantial nexus with Illinois – emphasizing that “under any benchmark,” the facts here show that the company used its aircraft more than occasionally, sporadically or incidentally in Illinois. Among the facts, the company purchased the aircraft using an Illinois address and through its Illinois-based representative, registered it with the Federal Aviation Administration (FAA) in Illinois. The company also leased the aircraft to, among others, an Illinois-based company with Illinois offices; in so doing, the company's Illinois-based representative managed the leases for the company from Illinois, held the company and the aircraft out as based in Illinois, and oversaw approximately 200 hours of repairs and modifications conducted over a six-week period by a company located in Illinois. Moreover, the aircraft regularly took off, landed and/or was overnighed in Illinois. The Tribunal did, however, rule in the company's favor in holding that it was not required to register the aircraft in Illinois and thus was exempt from an additional 1% local use tax, because the company was a resident of Delaware rather than Illinois for Illinois Aeronautics Act purposes. Please contact us with any questions.

URL: <https://taxtribunal.illinois.gov/content/dam/soi/en/web/taxtribunal/documents/rules-decisions/22tt04.pdf>

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