

Michigan Supreme Court denied use tax exemption without proof of sales tax payment

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In brief

On June 23, 2014, the Michigan Supreme Court held that in order to be entitled to the use tax exemption, one must show that sales tax was both due and *paid* on the sale of tangible personal property. The burden of proving entitlement to the exemption is on the taxpayer. The taxpayer had to show it paid sales tax on the purchase of property before it could claim an exemption and since it did not submit evidence that sales tax was paid, the taxpayer was not entitled to the exemption. [*Andrie Inc., v. Department of Treasury, Michigan Supreme Court, No. 145557, 06/23/2014*](#)

Based on the Court's decision, taxpayers are not entitled to a presumption that sales tax has been paid when their Michigan invoices do not list sales tax as a separate item. Therefore, companies purchasing tangible personal property from Michigan vendors should identify whether sales tax is delineated on receipts in order to determine whether a use tax liability may be imposed. If Michigan sales tax is not separately stated, companies should consider contacting retailers to request new invoices or other evidence to support that sales tax was paid.

In detail

Andrie, Inc., a Michigan corporation, transports asphalt and other products by tugboats and barges. Andrie purchases fuel and other supplies for its business from Michigan sellers. The Michigan Department of Treasury audited Andrie and issued a use tax assessment on in-state fuel and supply purchases. If Andrie produced a receipt showing it had paid sales tax to the retailer, the Department applied the use tax exemption. If Andrie did not show sales tax was paid, use tax

was assessed on such purchases. Andrie paid the use tax assessment under protest and filed suit in the Court of Claims, and received a partial refund of use tax paid. After the Court of Appeals affirmed the decision, the Department appealed to the Michigan Supreme Court.

Proof of sales tax paid required for Michigan use tax exemption

Tangible personal property sold in Michigan is generally subject to sales and use tax absent an exemption. Unlike the majority

of states, Michigan's sales tax is imposed directly on the retailer for the privilege of selling, rather than on the purchaser. The retailer has the right, but not obligation, to pass the economic burden of the tax onto the purchaser by collecting sales tax at the time of sale. Michigan retailers may not always separately state the sales tax charged.

A taxpayer otherwise subject to the use tax is entitled to an exemption if it complies with any of the conditions delineated in Michigan MCL 205.94.

Michigan MCL 205.94(1)(a) allows a use tax exemption if tax was due and *paid* on the retail sale to a consumer. The Supreme Court stated the exemption, “unambiguously requires payment of the sales tax before it exempts the taxpayer from the use tax.” Therefore, “the department properly assessed use tax on in-state purchases where Andrie failed to submit evidence that sales tax was actually paid at the time of sale.”

No presumption of sales tax paid when not separately stated

At the Court of Claims Andrie argued that the Michigan General Sales Tax Act (GTSA) requires sales tax to be included in the price of goods purchased, regardless of whether the sales tax is separately stated. The Court of Claims held that Andrie was entitled to a partial refund of use tax for those purchases that were subject to sales tax. The court reasoned that because Andrie was entitled to a presumption that sales tax was included in the price of goods purchased, it was not required to provide proof that the retail sellers had remitted sales tax to the department. The Court of Appeals affirmed on this issue, holding that because the retailer was ultimately responsible for paying sales tax, it was erroneous to place a duty on the purchaser to show that the sales tax had been paid to the state.

The Supreme Court disagreed, noting that a purchaser is not entitled to a presumption that sales tax is paid at the point of sale. The Court noted the burden of proving entitlement to an exemption rests on the party claiming the exemption. A presumption of sales tax payment would shift the burden of proof to the Department, contrary to established law regarding tax exemptions. The court ruled that at the very least, a purchaser-taxpayer must show that it paid tax to the

retailer or that the retailer remitted sales tax to the Department. Andrie submitted no evidence that it paid sales tax to the retailer or that the retailer remitted sales tax to the Department on the sales at issue. As a result, it did not meet its burden and is not entitled to an exemption.

Advertising statute did not prove sales tax was paid

Andrie argued that according to MCL 205.73(1), an advertising statute, a retail seller may not state or imply that an item’s purchase price does not include sales tax. Andrie’s position was that it should therefore be presumed sales tax was paid by the retailer when tax is not separately stated. However, the Supreme Court held the statute did not relieve Andrie of the duty to prove sales tax was paid. The Court noted the statute was merely a “restriction on retail sellers’ representations to the public; it did not purport to define the actual components of an item’s purchase price.”

Court addressed double taxation

The Supreme Court analyzed whether the imposition of sales and use tax on tangible personal property creates a threat of double taxation. The Court noted that payment of sales tax is mutually exclusive with the payment of the use tax. According to the Court, “[t]he taxpayer, as the beneficiary of the exemption, has the tools to ensure that it is not double-taxed. It may, as part of its freedom to contract with retail sellers, demand proof at the point of sale that the sales tax was paid. . . . In short, any double taxation that could occur in this situation is traceable to the taxpayer’s recordkeeping and not, as seen in other cases, the statutory scheme.”

The takeaway

The Michigan Supreme Court concluded that sales of tangible

personal property are subject to use tax unless a purchaser can provide proof that either the purchaser or the seller paid sales tax. The Court’s reasoning applies to all purchases from Michigan vendors.

Notably, Justice Zahra dissented, stating that, “...MCL 205.52(1) only places the burden of paying sales tax on retailers; it does not impose a sales tax on consumers. In light of the fact that ... only the retailer must pay sales tax, this Court should afford consumers a presumption that the retailer actually paid sales tax if it is evident that sales tax was due under the statute.” In this scenario, the Treasury could rebut this presumption “by producing some evidence, circumstantial or otherwise, that the tax was not paid or that the consumer transacted with an erroneous belief that, if true, would have entitled the transaction to be exempted from sales tax. Once the presumption is rebutted, the burden returns to the consumer to present evidence that the sales tax was actually paid or to establish that the consumer was properly entitled to some other exemption. I would hold that the consumer is entitled to a presumption that the sales tax was paid ... I would further conclude there was sufficient evidence to rebut this presumption.”

Under this decision, the Treasury can assess use tax on purchasers unless they can prove that the retailer paid the sales tax, creating the possibility for double taxation. Since the retailer is not required to separately state sales tax charges on invoices, the Supreme Court has created an additional burden on purchasers to prove the retailer’s sales tax was paid. Therefore, companies should examine their invoices and contracts with Michigan vendors to ensure sales tax charges are separately stated. Otherwise, companies risk exposure to both sales and use tax.

Let's talk

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