

**IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION**

LEARJET, INC.)

Plaintiff,)

v.)

THE ILLINOIS DEPARTMENT OF REVENUE;)
BRIAN HAMER, as Director of Revenue; and DAN)
RUTHERFORD, as State Treasurer,)

Defendants.)

No. 2011 L 051159

MEMORANDUM DECISION AND ORDER

This matter is before the Court on cross-motions for summary judgment by 1) Plaintiff, Learjet, Inc. (“Learjet”) and 2) Defendant, ILLINOIS DEPARTMENT OF REVENUE (“Department”), pursuant to 735 ILCS 5/2-1005(a).

STATEMENT OF FACTS

On October 14, 2011, Learjet filed this action under the State Officers and Employees Money Disposition Act (the “Protest Monies Act”), 30 ILCS 230/2a and 2a.1 to challenge a Notice of Tax Liability (the “Notice”) issued by the Department pursuant to Section 4 of the Retailers’ Occupation Tax Act (the “ROT Act”), 35 ILCS 120/1, et seq., after conducting an audit of Learjet’s books and records and to recover amounts paid under protest in response to that Notice. The Notice covered the period of July 1, 2005 through December 31, 2007 (the “Periods at Issue”). At issue in this case is whether Learjet is liable for the sales tax for sales of parts purchased pursuant to the “Smart Parts Program” (“SPP”) which is administered by its parent corporation, Bombardier Inc. (“Bombardier”).

Learjet is an aircraft manufacturer and parts distributor for both its own parts as well as parts for aircraft manufactured by its parent corporation, Bombardier. Both Learjet and Bombardier offer aircraft owners (“Operators”) the option of participating in an SPP, a budgeting tool allowing Operators to spread the cost of replacement parts over an extended period of time. When an aircraft requires maintenance or a part needs to be replaced, the Operator takes the aircraft to an Authorized Service Facility (“ASF”). In this case the ASF is Midcoast. Each ASF has entered into a contractual agreement with either Learjet or Bombardier establishing the terms and conditions of the transactions between the aircraft manufacturer (Learjet or Bombardier) and the respective ASF.

Under the SPP, an Operator makes monthly payments into an account maintained by the SP administrator, in this case Bombardier, for the individual operator for purposes of budgeting future parts replacements. The monthly payment amount is calculated using a set amount for a particular aircraft multiplied by the usage amount of the Operator for that month. For example, one month the usage amount would be significant based upon the Operator going cross country, while another month would be minimal if the operator only took trips to Wisconsin. The SPP only covers certain parts; labor, other parts not covered by the SPP, and any other service are billed to the Operator by Midcoast.

Pursuant to the ASF Agreement, Midcoast would receive the component parts from Learjet, including parts covered under the SPP, as well as parts not covered which would be billed to the Operator. Midcoast would order the part needed for the aircraft by submitting a purchase order to Learjet. Learjet would submit a request for payment from Bombardier as administrator of the SPP, for parts covered under the SPP, who would then release the funds to

Learjet. The ASF issues a work order invoice to the Operator for parts ordered from Learjet and for service and labor.

Midcoast is registered with the Department to collect the tax and has provided a valid Multi-Jurisdiction Sales Tax Exemption Certificate (“MTC”) certificate to Learjet. Further, the ASF assumes ownership, title and risk of loss of the parts. The ASF provides a warranty for all parts, including Small Parts transactions, and service for fourteen (14) days commencing when the aircraft is returned to the Operator. Learjet offers participating ASF’s a warranty in regard to all parts. Only the participating ASF may make a warranty claim against Learjet.

On August 26, 2011, the Department issued the Notice to Learjet for the Period at Issue assessing a total due of \$1,659,707.58. On September 21, 2011, Learjet, pursuant to the Protest Monies Act paid the assessed amount under protest. As noted earlier, Learjet filed its complaint under the Protest Monies Act on October 14, 2011. The Court entered a preliminary injunction order on October 19, 2011, prohibiting the Treasurer from transferring Learjet’s protest payment to the general revenue fund.

ISSUE PRESENTED

BOTH SIDES HAVE REQUESTED SUMMARY JUDGMENT ON THE SOLE ISSUE OF WHETHER LEARJET, INC OWES SALES TAX ON PARTS SOLD PURSUANT TO THE “SMART PARTS PROGRAM”.

ARGUMENTS OF THE PARTIES

1. Point of Sale:

Learjet argues that the parts are not subject to tax because Learjet is merely a supplier and the parts are then resold. This is a situation akin to Pyrex supplying to Walmart and then Walmart selling the Pyrex and charging sales tax. In these types of transactions, under Illinois Law sales of tangible personal property for purposes of resale are not subject to ROT when made

to purchasers who have a valid resale certificate. 35 ILCS 120/1 and 120/2c. Learjet contends its sales to Midcoast satisfy this statutory test as a sale for a resale. First, Midcoast purchased component parts from Learjet pursuant to the SPP and had an active resale number from the Department. Learjet's sole Illinois ASF, Midcoast, was a registered Illinois taxpayer and was subject to audit by the Department. Midcoast had an active resale number with the Department, as evidenced by its MTC certificate, which Learjet collected from Midcoast. Thus, Learjet satisfied the first statutory requirement.

Second, Midcoast provided Learjet with a valid Illinois MTC certificate for sales made pursuant to the SPP. Learjet satisfied its burden by obtaining an MTC certificate from Midcoast which had all the necessary information as required by Regulation Section 130.1405, including a valid Illinois registration number (No. 12685186). Learjet sold component parts to Midcoast and Midcoast provided Learjet with a valid MTC certificate certifying the parts are purchased for purposes of resale. Midcoast has in fact provided Learjet with an MTC. Learjet argues that they sold component parts to Midcoast and, in turn, Midcoast provided Learjet with a valid MTC certificate certifying that the parts are purchased for purposes of resale. By accepting the valid MTC certificate from Midcoast, Learjet met its burden under the statute to establish that its sales are not subject to tax. Under the Department's own regulations, Learjet is not obligated to determine whether each item purchased was actually resold. Thus, by accepting a valid MTC certificate from Midcoast in connection with sales made pursuant to the SPP's, Learjet asserts it satisfied the second statutory requirement. Therefore, Learjet argues it acted in accordance with Illinois law by not charging sales tax on all sales for which a valid MTC certificate was accepted from Midcoast.

The Department contends Learjet is the proper taxpayer since the ASF holds no privity in the contract. Although, the ASF provides repairs and maintenance services, the ASF does so at the behest of Bombardier. Based on provisions of the SPP, transfer of ownership is made from Learjet to Bombardier. Bombardier restricts use of the parts, finances the transaction, and identifies the parties for whom the Operator may obtain services. Additionally, the ASF is not a signatory to the agreement. Rather, the Department contends, Bombardier holds the ultimate authority to provide services under the SPP. By contrast, the ASF is neither a purchaser nor seller but a conduit for replacing parts.

The Department argues Learjet does not make sales to ASF's. The Department's auditors articulated, "[t]he only retail sale occurring in this process [the reimbursement for the replacement parts] is the sale between Learjet and Bombardier. As such, the Department states, Bombardier is the end user of the aircraft parts and, therefore, required MTC in accordance with 35 ILCS 120/2c. Absent the MTC, the taxpayer is required to remit sales tax.

The Department notes the principal parts distribution center for Learjet and Bombardier is located in Des Plaines, Illinois. The parts are owned by Learjet, and Learjet is registered to collect Illinois tax. Bombardier is not registered to collect Illinois sales tax. Bombardier small parts represent parts sold by Learjet to Bombardier pursuant to the SPP. Additionally, Learjet small parts represent Learjet parts withdrawn from inventory and supplied under the Learjet SPP.

The SPP applies in certain circumstances when an Operator takes his or her aircraft to an ASF for service and a covered party is needed. The ASF will request approval from Bombardier to replace the part. Bombardier will approve replacement of the part and direct Learjet to ship the part from Learjet's inventory to the ASF. All distribution of parts to the ASF is made pursuant to the authority of Bombardier under the ASF. On receiving the part, the ASF installs

the part. Learjet invoices Bombardier for the part and Bombardier will charge the Operator's account established under the SPP. Bombardier, the Department advances, purchases the parts from Learjet to fulfill its obligation under the program. In the present case, Learjet failed to collect tax on sales to Bombardier shipped to Illinois. Additionally, a valid MTC for Bombardier was not provided by Learjet.

The Department asserts Learjet's argument that risk of loss is retained by the ASF is irrelevant. Learjet asserts Bombardier does not at any time hold title to, use, or ship the parts provided under the SPP. The argument, the Department explains, is unpersuasive because it lacks sense to have any other party retain the risk of loss in the transaction. Bombardier does not have to retain title since they do not provide any service beyond adhering to the warranty provisions in the agreement. The Department contends Bombardier does not need to retain title or risk of loss in this transaction because it neither operates a facility storing parts nor does it actually replace parts. Bombardier provides Operators with the option of entering into a contract with Learjet for maintenance services.

Regarding an MTC, the Department suggests, the exemption certificate provided by Learjet is insufficient because the certificate is not issued to Bombardier for its purchase of airplane parts from Learjet pursuant to the SPP. The failure to provide a proper MTC is the basis for the auditor's conclusion the sales tax must be applied. Additionally, the Department provides Learjet's argument Illinois does not have a good faith requirement, and that Illinois retailers meet their burden by accepting a valid resale certificate and are not required to make a good faith determination the purchaser actually intends to resell the item, misses the point.

2. Warranty:

The Department contends the SPP is similar to an insurance policy or maintenance agreement and taxable pursuant to Ill. Admin. Code 86 § 140.141(c)(1). Consistent with the requirement of the code section, the Operator enters into a contract with Bombardier for repairs to an aircraft starting on an effective date and expiring on a specific date or 5000 flight hours. The cost of the smart parts is specified in Article 5 of the SPP Agreement. All requisite factors are placed in this transaction. Thus, Learjet is providing services pursuant to a warranty agreement. Learjet, the Department advances, is thus required to remit sales tax for repairs in satisfaction of the SPP.

The Department maintains that absent from the SPP Agreement are characteristics that would lend the Court to conclude the SPP is a budgeting tool. The SPP does not provide any forecasts for part replacement, tables, charts, or reports that show fixed and variable expenses related to aircraft maintenance. Rather, the SPP provides for a predetermined fee over a stated time period. The fee covers, ordinary maintenance, which lends to the conclusion the SPP is a maintenance agreement. Learjet's attempt to characterize the SPP as a budgeting tool is flawed and unsupported by the SPP Agreement. Specifically, the Operator is purchasing the right to receive parts if needed. The Operator pays the monthly fee whether the program is utilized or not. Per the contract, in no event will any surplus be returned. Thus, the Department reiterates, purchasers of the SPP are buying an ongoing contract for maintenance.

DECISION BY THE COURT

The Court initially determines an issue of material fact does not exist in the proceeding. The parties stipulate regarding the parts transaction, specifically the invoice and payment flow. Whether the sales made pursuant to the SPP qualify as non-taxable sales for resale under the

Illinois ROT Act shall be dependent on the applicable legal provisions and, therefore, arises to a question of law. Summary judgment is encouraged to expedite the disposition of lawsuits.

Nowak v. Coghill, 296 Ill. App. 3d 886, 892, 695 N.E.2d 532, 537 (2d Dist. 1998). The Illinois Code of Civil Procedure articulates the following with respect to summary judgment:

The judgment sought shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law...

735 ILCS 5/2-1005(c) (2010). Summary judgment should be granted only if the pleadings, affidavits, depositions, admissions, and exhibits on file show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Nowak, 296 Ill. App. 3d at 892, 695 N.E.2d at 536. The evidence before the court must be strictly construed against the movant and liberally in favor of the opponent. Siklas v. Ecker Ctr. for Mental Health, Inc., 248 Ill. App. 3d 124, 129, 617 N.E.2d 507, 510 (2d Dist. 1993). Thus, despite the favorable view of the remedy, summary judgment should be granted only when the right of the moving party is clear and free from doubt. Id., 617 N.E.2d 507, 510.

Learjet brought the original complaint under the Protest Monies Act. The Protest Monies Act provides a mechanism for a party to challenge the propriety of its required payment of money to the State of Illinois. Hartney Fuel Oil Co. v. Hamer, 2012 IL App (3d) 110144, ¶ 31, (citing 30 ILCS 230/1 et seq. (West 2010)). Hartney Fuel Oil Co. noted the Illinois Supreme Court had not clarified the standard to be used by a trial court when addressing claims brought pursuant to the Protest Monies Act. Hartney Fuel Oil Co., 2012 IL App (3d) 110144, ¶ 32. However, the appellate court in Hartney Fuel Oil Co. agreed with the lower courts conclusion, the moving party in the proceeding, “bear[s] the burden of proof by a preponderance of the

evidence as to each cause of action alleged.” *Id.* at ¶ 32. The court, quoting the lower court, continued:

The [non-movant begins] with a *prima facie* advantage, being entitled to a rebuttable presumption of accuracy [the assessment] provided the same is shown to have met minimum standards of reasonableness premised upon its best judgment. ... If that presumption is indeed overcome, [the moving party] must still proceed to meet their burden of proof, which the State may seek to rebut by not only meeting 'minimum standards' or using 'best judgment,' but with the loftier goal of being right. ... [The] [c]ourt is to weigh the evidence to determine whether [the moving party has] met [its] burden as above-stated.

Id. at ¶ 32.

The initial inquiry requires an interpretation of the ROT Act. Regarding statutory interpretation, the primary rule of is that a court should ascertain and give effect to the intention of the legislature. Abrahamson v. Illinois Dep't of Professional Regulation, 153 Ill.2d 76, 91, 606 N.E.2d 1111, 1118 (1992). The legislative intent should be sought primarily from the language used in the statute. *Id.*, 606 N.E.2d at 1118. “Where the language of the act is certain and unambiguous the only legitimate function of the court is to enforce the law as enacted by the legislature.” *Id.*, 606 N.E.2d at 1118. In addition, where a statute does not define a term that term must be given its ordinary and popularly understood meaning. Lake County Bd. of Review v. Property Tax Appeal Bd., 119 Ill. 2d 419, 423, 519 N.E.2d 459, 461 (1988). Moreover, the term must be given its full meaning, not the narrowest meaning of which it is susceptible. *Id.*, 519 N.E.2d at 461. Further, taxing statutes are to be strictly construed, and their language is not to be extended or enlarged by implication beyond its clear import, but in cases of doubt such laws are construed most strongly against the government and in favor of the taxpayer. First Nat'l Bank v. Department of Revenue, 85 Ill.2d 84, 88, 421 N.E.2d 175, 177 (1981).

As to the point of sale analysis, 35 ILCS 120/2 provides the tax imposed pursuant to the ROT Act is, “on persons engaged in the business of selling ... retail tangible personal property....” 35 ILCS 120/2 (2012). Additionally, the ROT is imposed upon persons engaged in the business of selling such property at retail. Cerro Wire & Cable Co., Div. of Marmon Group, Inc. v. Dep., 111 Ill. App. 3d 882, 883, 444 N.E.2d 771, 772 (1st Dist. 1982). The ROT further provides that the term “sale at retail” includes “any transfer of the ownership of or title to tangible personal property ... unless made in compliance with Section 2c of this Act.” Id. at 883-84, 444 N.E.2d at 772. Section 2c states:

[N]o sale shall be made tax-free on the ground of being a sale for resale unless the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

Id. at 884, 444 N.E.2d at 772 (citing Ill. Rev. Stat. 1975, ch. 120, par. 441c). A purchaser as defined by the ROT is, “... anyone who, through a sale at retail, acquires the ownership of or title to tangible personal property for a valuable consideration.” 35 ILCS 120/1 (2013).

Additionally, under the ROT, the disparity between a taxable retail sale and a non-taxable sale for resale is that in the non-taxable event, “... the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.” 35 ILCS 120/2c (2013). Thus, pursuant to the writing of the statute, the ROT Act defines a non-taxable sale for resale as occurring when the purchaser, as defined by the ROT Act, acquires ownership or title to tangible personal property for a valuable consideration.

The Department contends, Learjet does not make sales to Midcoast. The Section 3.3(1) of the ASF Agreement between Midcoast and Bombardier articulates, “Bombardier shall ... sell

[p]roducts to the [ASF]....” However, Page 2 of the ASF Agreement involving Midcoast and Bombardier defines Bombardier to include “... its subsidiaries....” The record clearly articulates Learjet is a subsidiary of Bombardier. The Court determines the ASF Agreement applicably involves Learjet. Additionally, the record clearly provides Learjet owned all the SPP parts in question, and supplemental exhibits contain purchase orders, order confirmation and delivery note for the sale of SPP parts. The purchase orders are addressed to Learjet as the supplier of the SPP parts. The “Ship To” and “Bill To” addresses are that of Midcoast. The order confirmations clearly specify Midcoast as the “Sold To” party. The delivery note lists the “Ship To” and “Bill To” addresses as that of Midcoast. Additionally, with respect to the Department’s further contention the sale arose between Learjet and Bombardier, the only transfer between Learjet and Bombardier amounts to funds transferred to Learjet for SPP parts delivered to Midcoast. Learjet does not transfer SPP parts to Bombardier, nor does Bombardier transfer SPP parts to Learjet. Thus, pursuant to the ROT Act a sale did not arise between Learjet and Bombardier, because consideration was not given by Learjet for the transfer of funds from Bombardier to Learjet either in the form of SPP parts or other denomination. However, the record clearly shows Learjet “Sold To” Midcoast the SPP parts in question. Therefore, a sale pursuant to the ROT arose in the transaction between Learjet and Midcoast. In the second prong of the 35 ILCS 120/2c exemption analysis, the Department does not contest the validity of the MTC issued between Midcoast and Learjet. In addition, the record clearly provided Midcoast furnished the applicable MTC number to Learjet, and certification of the intent to resale is evident on the Midcoast purchase orders.

Concluding the point of sale analysis, the Learjet/Midcoast transactions satisfy the ROT definition of a sale. Additionally, Midcoast issued an MTC number to Learjet which was not

contested. The Court in turn determines Learjet transactions with Midcoast amount to non-taxable sales of tangible personal property pursuant to 35 ILCS 120/2c of the ROT Act.

As to the Department's assertion the relationship SPP Agreement is a maintenance program. The Department highlights the language defining maintenance agreements pursuant to 86 Ill. Adm. Code § 140.141(c)(1), "[m]aintenance agreements are contracts to provide repairs for a particular item within a stated period and for a pre-determined fee." An SPP is, however, a program to supply certain replacement parts at specified pricing. An SPP, such as the one in question, does not provide for service to install a part purchased through the program. The Court notes the section referenced by the Department discusses repairs pursuant to maintenance agreements. On analysis of related statutory links proceeding the administrative code section identified by the Department (86 Ill. Adm. Code § 140.301(b)(3), 35 ILCS 105/3-75 and 35 ILCS 120/2-55), it is apparent the term "repairs" in 86 Ill. Adm. Code § 140.141(c)(1) denotes service repairs provided by service individuals and not the mere supplying of parts. Instead, Black's Law dictionary defines a "budget" as a "... sum of money allocated to a particular purpose for a specified period of time." Black's Law Dictionary 194 (Henry Campbell Black, M.A. Ed., 6th ed., 1990). The money allocated under the SPP is for the purchase of certain parts, and the Department noted in its papers the duration of the SPP was until 5000 flight hours on the applicable airplane. Notably the SPP does not indicate the amounts needed to be spent at certain times, but the SPP satisfies a budgetary definition because of the preceding. Thus, pursuant to the statutory and code provisions provided by the Department, the SPP agreement subject of this proceeding does not amount to a taxable maintenance agreement.

In conclusion, Learjet has shown by a preponderance of the evidence the Learjet transactions with Midcoast amount to non-taxable sales of tangible personal property pursuant to

35 ILCS 120/2c of the ROT Act. Moreover, the SPP Agreement subject of this proceeding does not amount to a taxable maintenance agreement. Therefore, the Court grants Learjet's motion for summary judgment, and denies the Illinois Department of Revenue's cross-motion for summary judgment.

The Court orders:

1. Learjet, Inc.'s motion for summary judgment is **GRANTED.**
2. The Illinois Department of Revenue's cross-motion for summary judgment is **DENIED.** **Judge Eileen O'Neill Burke**

MAY 02 2013

ENTER: Circuit Court 1996
JUDGE Eileen O'Neill Burke