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## Hartney Fuel Oil Co. v. Hamer

**Supreme Court of Illinois - November 21, 2013 - N.E.2d - 2013 IL 115130**

This case concerned the proper situs for tax liability under retail occupation taxes arising under three Illinois statutes: the Home Rule County Retailers' Occupation Tax Law, the Home Rule Municipal Retailers' Occupation Tax Act, and the Regional Transportation Authority Act (collectively, the "local ROT Acts").

The Illinois Department of Revenue (DOR) determined through audit that Hartney Fuel Oil Company's sales at retail were attributable to the company's Forest View office, rather than the Village of Mark location reported by the company. The change in location made Hartney subject to retail occupation taxes imposed by the Village of Forest View, Cook County, and the Regional Transportation Authority. The Department issued a notice of tax liability, which Hartney paid under protest. Hartney then filed for relief in the circuit court.

The circuit court ruled in favor of Hartney, concluding that it had accepted both its long-term sales and daily order sales in the Village of Mark, and that the regulations relevant to each section established a bright-line test for situs of sale: where purchase orders are accepted, tax liability is incurred. The appellate court affirmed.

The circuit court and appellate court both found the regulations to establish a bright-line test: "If the purchase order is accepted at the seller's place of business within the county, municipality and/or metropolitan region, ROT liability is fixed in that respective county, municipality and/or metropolitan region." The DOR and Local Governments argued that the regulations instead presented a fact-intensive inquiry, looking to the totality of the circumstances. They argued that only a totality-of-t-e-circumstances view accords with the legislative intent of the local ROT Acts and the Supreme Court's prior interpretation of the "business of selling" under the local ROT Acts.

The Supreme Court of Illinois concluded that the "Jurisdictional Questions" regulations embodied in 86 Ill. Adm.Code 220.115, 270.115, and 320.115 which define situs for ROT where purchase order acceptance occurs, with sale at retail and the purchaser taking delivery within the state impermissibly narrowed the local ROT Acts, contrary to legislature's intention to allow local governments to collect taxes from retailers in their jurisdictions, and, thus, the regulations were invalid.

The regulations did not amply prescribe the fact-intensive inquiry contemplated by the Supreme Court, and by allowing for only one, potentially minor step in the business of selling to conclusively govern tax situs, the regulations impermissibly constricted the scope of intended taxation.

The court went on to note that, "We do not disturb the findings by the trial and appellate courts that, under the regulations, Hartney accepted its purchase orders and long-term contracts in Mark. Because of the Department's erroneous regulations, the Department has a duty under the Taxpayers' Bill of Rights Act to abate Hartney's penalties and retail occupation tax liability of Forest View, Cook County, and the Regional Transportation Authority for the audit period."

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