



# TAX TRENDS

The newsletter of the Illinois State Bar Association's Section on State & Local Taxation

## A note from the co-editors

By Mary Ann Connelly and Stanley R. Kaminski

This issue of the *Tax Trends* newsletter features an article by Scott Ginsburg, one of the associate editors of the newsletter. The article summarizes the recent Chicago Bears case against the Cook County Department of Revenue on amusement tax. It explains the ruling of the majority decision against the Bears, as well as the dissent that offered only limited aid to the Bears cause. Notably, however, last month was not all

wins for Cook County, since two days prior to this Bears win, the Cook County Non-Titled Personal Property Use Tax was struck down as illegal by another appellate court. In that case, the appellate court held that the Use Tax violated Section 5-1009 of the Illinois County Code by being a use tax on the selling or purchase price of tangible personal property. *Reed Smith LLP v. Zahra Ali*, 2014 IL App (1st) 132646-U. ■

## Chicago Bears Football Club v. The Cook County Department of Revenue, 2014 IL App (1st) 122892

By Scott L. Ginsburg

The Illinois Appellate Court recently reversed an administrative review decision by the Circuit Court of Cook County, and reinstated an Administrative Law Judge ("ALJ") finding that the Chicago Bears Football Club (the "Bears") owed an amusement tax delinquency in the amount of \$4,135,184.68 as related to the amenities included in club level seats and luxury suites. As of September 10, 2014, the Bears have filed a Petition for Leave to Appeal with the Supreme Court of Illinois.

### Background

Section 74-392(a) of the Cook County Ordinance No. 99-O-15, §3 imposes an "amusement tax" of "three percent of the admission fees or other charges paid for the privilege to enter, to witness or to view such an amusement." At issue in the case was whether portions of certain tickets at Soldier Field, the Bears' home stadium, constituted "admission fees or other charges paid for

the privilege to enter, to witness or to view such an amusement."

Soldier Field's 62,000 seats are divided into three separate seating sections: regular seats, club seats, and luxury suites. The majority of Soldier Field's seats are "regular seats" that entitle the ticket holder to witness the game, access public restrooms, and purchase food and beverages from vendors in the seating areas and on the concourses. Approximately 8,600 seats are classified as "club seats." Club seats are located in preferred areas of the stadium and the ticket includes parking passes for every game. Club seat tickets also include, among other things, exclusive access to the "club lounge," better and more varied food options, heated and air-conditioned private seating areas, private restrooms and access to flat screen televisions and jumbo screens. The remaining seats are "luxury seats." The luxury

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## Chicago Bears Football Club v. The Cook County Department of Revenue, 2014 IL App (1st) 122892

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seats are composed of 133 suites, called the "Executive Suites" and the "Skyline Suite." Luxury suites are licensed by a contract between the Bears and licensees, who pay annual fees. Luxury suites include a number of amenities and privileges, including food and beverages, that are not available to regular seat or club seat ticket holders.

For purposes of the amusement tax, the Bears allocated portions of the club seat and luxury suite ticket price between the price to enter the stadium and watch the game on the one hand, and the price for other privileges on the other. The Bears claimed that they were only liable for the amusement tax on the "watch the game" portion of the fee. The Bears, therefore, calculated and paid the amusement tax on the value of a seat for home football games, exclusive of the other amenities available to the club seat and luxury suite ticket holders.

### Procedural History

The Cook County Department of Revenue (the "County") audited the Bears and issued an assessment charging the Bears with a tax deficiency, contending that the value of the privileges attendant to club seats and luxury suites is subject to the amusement tax. The Bears protested the assessment and requested a hearing on the matter before an ALJ, who found that the delinquency tax was properly assessed. The ALJ upheld the Cook County Department of Revenue position that club seats should be taxed based on 100% of the club seat ticket price and luxury suites, which included non-amusement charges and tangible personal property, should be taxed on 60% of the annual license fee. The ALJ ruled that the amenities associated with club seats and luxury suites were part of the "game day experience" and thus can be included for purposes of calculating the amusement tax. The circuit court reviewed the administrative decision and reversed the ALJ's decision. On appeal, the First District Appellate Court reversed the Circuit Court, and reinstated the ALJ's findings. The Bears have petitioned to the Supreme Court for leave to appeal.

### Appellate Court Analysis

The majority decision of the Appellate

Court found that "fans who want to witness a Bears home game from a club seat or a luxury suite cannot get to a seat where they can watch the game without paying the price attendant to those seats." 2014 IL App (1st) 122892, ¶129. Citing itself in *Stasko v. City of Chicago*, 2013 IL App (1st) 120265, the Court stated that "purchasing the [club seat ticket or luxury suite license] is a prerequisite to viewing the game from a seat covered by the [club seat ticket or luxury suite license]." *Id.* ¶131. The Court, therefore, concluded that the "admission fees or other charges" included these amenities.

In reaching its conclusion, the Court applied a burden-shifting framework that ultimately placed the burden on the Taxpayer, the Bears, to prove exemption from taxation. The Court held that "where the taxing authority has made out a *prima facie* case that goods or services are subject to taxation, the burden shifts to the taxpayer to demonstrate by competent evidence that the subject of the tax assessment is exempt." The Court added, "[a] person claiming an exemption from taxation has the burden of proving clearly that he comes within the statutory exemption. Such exemptions are to be strictly construed, and ... resolved in favor if taxation." *Soho Club, Inc. v. Department of Revenue*, 269 Ill.App.3d 220, 231 (1995).

The Court found that while there were tangible elements in the price of the club and luxury suites that might be exempt under the ordinance, these were not separately stated from the other privileges and amenities that are inseparable from the amusement itself and unavailable for purchase independently of the ticket. The Appellate Court held that the adoption of the Bears position in this case would allow any purveyor of amusement to arbitrarily allocate a fraction of the face value of any ticket to an amusement purpose for calculating the taxes due. The Court concluded that amenities associated with higher priced tickets cannot be separated from the price to enter and view the event, and thus are subject to the County amusement tax. The Appellate Court also noted that although the County's assessment of tax on only 60% of the annual license fee for luxury seats (rather than

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100%) could be viewed as arbitrary, this did not help the Bears since such a finding would make 100% of the fee taxable.

Interestingly, the dissent offered only partial relief to the Bears. The dissent stated that since the club fee for amenities was sepa-

rately stated, this portion of the ticket was expressly excludible from the taxable admission fee under the tax ordinance. On the other hand, the dissent would have held that 100% of the annual fee for the luxury seats was taxable, thus making the Bears liable for

even more tax on this fee. ■

Prathima Yeddanapudi contributed to the research and writing for this article

## Upcoming CLE programs

To register, go to [www.isba.org/cle](http://www.isba.org/cle) or call the ISBA registrar at 800-252-8908 or 217-525-1760.

### October

**Wednesday, 10/1/14- Teleseminar**—The Perils of Using “Units” in LLC Planning. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/2/14- Teleseminar**—Asset Protection for Real Estate. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 10/7/14- Teleseminar**—Inter-species Conversions and Mergers-Part 1. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 10/7/14- Webinar**—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00.

**Wednesday, 10/8/14- Teleseminar**—Inter-species Conversions and Mergers-Part 2. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/9/14- Webinar**—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00.

**Friday, 10/10/14- Palatine, Harper College: Wojcik Conference Center**—Fall 2014 DUI & Traffic Law Conference. Presented by the ISBA Traffic Law Section. All Day.

**Friday, 10/10/14- Chicago, Baker & McKenzie Law Office**—Human Trafficking and the Commercial Sexual Exploitation of Children. Presented by the ISBA Administrative Law Section, the ISBA Standing Committee on Racial and Ethnic Minorities & the Law; the ISBA Standing Committee on Women and the Law and Baker & McKenzie Law Office.

**Friday, 10/10/14- Chicago, ISBA Regional Office**—The Unforeseen Challenges of Implementing the Affordable Care Act. Presented by the ISBA Health Care Section. 1-4:30.

**Friday, 10/10/14- Live Webcast**—The Unforeseen Challenges of Implementing the Affordable Care Act. Presented by the ISBA Health Care Section. 1-4:30.

**Monday, 10/13/14- Chicago, ISBA Regional Office**—Advanced Workers’ Compensation- Fall 2014. Presented by the ISBA Workers’ Compensation Section. 9-4.

**Monday, 10/13/14- Fairview Heights, Four Points Sheraton**—Advanced Workers’ Compensation- Fall 2014. Presented by the ISBA Workers’ Compensation Section. 9-4.

**Tuesday, 10/14/14- Teleseminar**—2014 Americans with Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 10/15/14- Teleseminar**—Incentive Trusts in Estate Planning: Promise and Peril. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/16/14- Webinar**—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00.

**Thursday, 10/16/14- Chicago, ISBA Regional Office**—ISBA Solo & Small Firm Practice Institute. Presented by the Illinois State Bar Association. 8:30-5:30.

**Thursday, 10/16/14- Live Webcast**—ISBA Solo & Small Firm Practice Institute. Presented by the Illinois State Bar Association. 8:30-5:30.

**Tuesday, 10/21/14- Teleseminar**—Governance of Private and Family-Controlled Companies. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/23/14- Chicago, ISBA Regional Office**—Family Law Nuts & Bolts. Presented by the ISBA Family Law Section. 8:30-5:00.

**Friday, 10/24/14- Teleseminar**—Attorney Ethics, Advertising and the Internet. Presented by the Illinois State Bar Association. 12-1.

**Friday, 10/24/14- DeKalb, NIU School of Law**—Construction Contracts: The Boiler Plate That Gives You Fits. Presented by the ISBA Construction Law Section; co-sponsored by the ISBA Commercial Banking, Collections and Bankruptcy Section and the ISBA Real Estate Law Section. 8-4:30.

**Friday, 10/24/14- Chicago, ISBA Regional Office**—Hearing On Motion for Preliminary Injunction. Presented by the ISBA Labor & Employment Section; co-sponsored by the ISBA Civil Practice Section. 8:55-4.

**Friday, 10/24/14- Live Webcast**—Hearing On Motion for Preliminary Injunction. Presented by the ISBA Labor & Employment Section; co-sponsored by the ISBA Civil Practice Section. 8:55-4.

**Tuesday, 10/28/14- Teleseminar**—Fiduciary and Income Tax Issues in Estate Planning-Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 10/29/14- Teleseminar**—Fiduciary and Income Tax Issues in Estate Planning-Part 2. Presented by the Illinois State Bar Association. 12-1. ■

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