

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

3-20-2014

Summary of Harrah's v. Nevada Department of Taxation, 130 Nev. Op. 15

Edward Wynder
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Taxation-State and Local Commons](#), and the [Tax Law Commons](#)

Recommended Citation

Wynder, Edward, "Summary of Harrah's v. Nevada Department of Taxation, 130 Nev. Op. 15" (2014).
Nevada Supreme Court Summaries. 777.
<https://scholars.law.unlv.edu/nvscs/777>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

TAX LAW: USE TAX

Summary

The Court considered the meaning of “first use” to determine whether Harrah’s was entitled to a refund of the Nevada use tax under NRS 372.258 for four aircraft it purchased outside Nevada and used to fly employees and clients to Harrah’s properties when most flights either began or ended outside Nevada.

Disposition

When considering the applicability of the Nevada use tax under NRS 372.258, the “first use” of an airplane purchased outside Nevada is the first flight. To trigger a statutory presumption that an aircraft was purchased for use in interstate commerce (and thus not subject to the Nevada use tax), the both the origin and the destination of the first flight must be outside Nevada.

Factual and Procedural History

Harrah’s bought four aircraft to transport its employees and guests to and from its properties worldwide. Two of the aircraft it purchased and received in Arkansas and then flew both directly to Las Vegas. The other two aircraft it purchased and received in Oregon and then flew one to Arkansas and the other to California.

Harrah’s requested refunds for the Nevada use taxes it paid when it purchased the aircraft, asserting it did not purchase the aircraft for *use* in Nevada within the meaning of that term in Nevada Revised Statutes (NRS) Chapter 372. The Nevada Department of Taxation (Department) denied the refund requests. The Department’s administrative law judge and later by the Nevada Tax Commission, both upheld the denial.

The district court denied Harrah’s petition for judicial review. Harrah’s appealed to the Nevada Supreme Court.

Discussion

The Nevada Sales and Use Tax Act imposes a use tax on property purchased out of state if it is purchased for “storage, use or consumption” in Nevada.² However, property purchased outside Nevada is presumed exempt from the tax when the property was purchased for use in

¹ By Edward Wynder.

² Nev. Rev. Stat. § 372.185 (2013)

interstate commerce. To qualify for this presumption against tax liability, a buyer must show that the property (1) was first used in interstate commerce outside the state, and (2) continuously used in interstate commerce for the first twelve months after purchase, provided the use is not exclusively in Nevada.³ Nevertheless, the State can still impose the tax if it can rebut this presumption by showing the property was in fact stored, used, or consumed in Nevada and not used in interstate commerce.

First Use

Relying on several standard canons of construction the Court rejected earlier interpretations⁴ of “first used,” holding that, in the context of aircraft, the first use is the first flight. Thus, to qualify for the presumption the first flight must be entirely outside Nevada. Because Harrah’s flew two of the aircraft directly to Las Vegas after purchase, the Court affirmed the denial of the refund requests for the use taxes Harrah’s paid on those two aircraft. Conversely, because Harrah’s first flight of the other two aircraft originated and terminated outside Nevada (one was flown to Little Rock and the other to California) the Court held the Department of Taxation’s Administrative Law Judge erred in deciding these two aircraft were not “first used” outside Nevada.

Continuous Use

The Court’s analysis of whether Harrah’s used the aircraft continuously in interstate commerce was “made easy” because the parties stipulated that the aircraft had been “continuously so used.”⁵

Rebutting the NRS 372.258 Presumption of Nontaxability

The Court found the Department did not present evidence sufficient to rebut the presumption that Harrah’s purchased the two Oregon aircraft for use in interstate commerce. Examining the record, the Court observed that use of the aircraft was nearly always interstate. The Court noted that the statute did not consider the amount of time each aircraft spent in Nevada, rather whether it was purchased for use in Nevada or in interstate commerce.

³ Nev. Rev. Stat. § 371.258 (2013)

⁴ The Department of Taxation’s Administrative Law Judge interpreted “first used” to include all flights on the first day. Here, however, the Court rejected this interpretation and conclude that the first flight of each aircraft was the first use. It is notable, that each “first flight” included at least on passenger. The Court did not indicate whether a flight without a passenger would still constitute a “use.”

⁵ See Nev. Rev. Stat. § 378.258(1)(b)

Conclusion

Harrah's is entitled to a refund of the Nevada use tax it paid on two aircraft because Harrah's (1) first flight of the aircraft occurred entirely outside Nevada and (2) continuously used the aircraft in interstate commerce for the twelve months following purchase.