

# Temporary Storage Exemption/Use Tax: Illinois Appellate Court Addresses Applicability to Solvent Recycling Process



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The Appellate Court of Illinois (First District) (“Court”) addresses in an April 28th Opinion a challenge to the Illinois Department of Revenue (“Department”) assessment of a Use Tax on unused or virgin clean solvent. *Safety-Kleen Systems, Inc. v. Department of Revenue*, 2020 IL App. (1st) 191078.

The question was whether the Use Tax Act’s temporary storage exemption was applicable to solvent: . . . temporarily stored in Illinois, shipped out-of-state, and then returned to Illinois for further storage.

Safety-Kleen Systems, Inc. (“Safety-Kleen”) provides certain solvent recycling services. They include recycling of used solvent to particular specifications for later sale and a tolling program in which a customer’s solvent is recycled to dictated specifications and returned to them.

The Opinion more specifically notes that Safety-Kleen provides “solvent parts washers” and “recycled solvent” to commercial customers throughout North America. This involves draining used solvent from customers’ parts washers and replenishing the washers with recycled solvent.

The recycled solvent includes some virgin solvent. It is purchased from out-of-state retailers. This product was blended with the recycled solvent to ensure an adequate supply.

The Department audited Safety-Kleen and determined it owed Illinois Use Tax on the virgin solvent. Safety-Kleen requested an adjustment from the Department’s informal conference board. The board concluded that the recycling of solvents is considered to be taxable in Illinois.

Safety-Kleen argued that the virgin solvent was received and stored in Illinois and subsequently distributed and used outside of Illinois. This was premised on its position that the virgin solvent was not subject to its “intended use” until it reached its customers’ facilities both within and outside Illinois. Further, when the solvent was used and returned to Illinois it was argued to constitute a substantially different product. This was based on the fact that it was contaminated with debris and foreign chemicals that had to be removed through the recycling process before further use.

The company’s Summary Judgment Motion before the Illinois Independent Tax Tribunal stated that:

. . . 88.46% of the out-of-state virgin solvent purchases qualified for the temporary storage exemption to the Use Tax because the virgin solvent was:

1. acquired outside of Illinois,

2. stored in Illinois temporarily, and
3. used solely outside of Illinois.

The Department responded:

1. Virgin solvent lost the temporary storage exemption once it was returned to Illinois for further storage after its initial post-purchase storage
2. Virgin and used solvent were different properties
3. Some of the original virgin solvent returns multiple times to Illinois in contaminated or used form
4. Cleaned or contaminated solvent is still solvent

A number of stipulations were developed by both parties addressing the Summary Judgment Motions.

The Tax Tribunal granted the Department's Summary Judgment Motion holding:

1. The temporary storage exemption can apply only once
2. If the property is returned to Illinois for further storage, the exemption is lost

A caveat was noted by the Tribunal that:

It does seem reasonable that at some point property may be so transformed out of state that when returned to Illinois it could claim its own temporary storage exemption.

However, the Tribunal determined the Safety-Kleen scenario was not such a situation.

The Court initially notes that:

- Tax exemptions are strictly construed
- Any doubts regarding the exemption's applicability are to be resolved in favor of taxation

The Court undertakes an analysis of the Illinois temporary storage tax exemption and notes that it only applies when the property is:

1. Acquired outside the state
2. Stored temporarily
3. Used either in the form in which it came into Illinois or is altered, solely outside the state

The Court notes that the parties agree the virgin solvent was acquired outside of Illinois and does not qualify for the temporary storage exemption when it has been temporarily stored in Illinois, shipped out-of-state and then returned to Illinois for further storage. They further are deemed to have been in agreement on whether the virgin solvent's first storage in Illinois, before it is used out-of-state in customers' parts washers constitutes a use.

As a result, the issue is whether the virgin solvent is used in Illinois for purposes of the statute when it is altered by its out-of-state use and, in a different form, returned to Illinois and stored again.

The Court cites the decision in *Shared Imaging, LLC v. Hamer* and deems it applicable to Safety-Kleen's process. It notes:

Because the solvent was stored in Illinois after its "initial post-purchase storage in Illinois" Safety-Kleen cannot claim that the temporary storage exemption applies.

The Court also rejects Safety-Kleen's argument that *Shared Imaging* is distinguishable. It states that even if it can be assumed that virgin solvent and used solvent are substantially different products – that the used

solvent is ultimately recycled and used alongside virgin solvent for the “same activity again.” Further referenced are stipulated facts that the Court finds important, such as the virgin and recycled solvents having several of the same characteristics.

The Court upholds the Tribunal finding that the virgin solvent is not exclusively used outside of Illinois, therefore, failing to qualify for the temporary storage exemption.

A copy of the Opinion can be downloaded [here](#).