Loopholes big enough to drive a bus through: Regional Transit Authority's tax fight likely not the last of its kind

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By Phil Rosenthal
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Tax avoidance or tax evasion? It's the difference between a loophole and a noose.

One's practically part of this country's DNA. The other's the crime for which they put away Al Capone.

The Regional Transit Authority and the city of Chicago filed suit in Cook County Circuit Court on Tuesday against the municipalities of Kankakee and Channahon. At issue is the diversion of at least $20 million a year in tax revenue that the RTA and Chicago believe they should have received.

It's not enough that Illinois is fighting to keep businesses from seeking tax advantages by moving out of state. Our own communities are at war with each other, using the same tactics.

So it will be up to the court to determine whether Kankakee and Channahon have fattened up legally on incentives designed to spread economic development by allowing transactions to be taxed where a deal is processed rather than where goods are delivered.

Or, as the RTA alleges, are the towns and the companies saving money in these arrangements merely using "sham sales offices outside RTA's jurisdiction … to avoid paying any locally imposed taxes to RTA or other taxing bodies"?

It may turn out that this isn't tax evasion but rather effective tax avoidance, a use of the law without breaking it. But tough times make it a virtual certainty this will not be the last challenge along these lines.

"In point of fact, most places have lawyers and they're saying, let's try it. If we lose it, fine, we'll pay it," said Al Gini, professor of business ethics at Loyola University Chicago Graduate School of Business.

"Under the rubric of capitalism … it's practicing smart business to minimize costs while paying duly obligated taxes wherever they (are) located," Gini said. "The reality is in changing times when infrastructures are falling apart and municipalities and states are facing bankruptcy, they cannot generate enough money."

Everyone is looking for the loopholes, either to exploit them or shut them down.

Businesses increasingly are under pressure to do what they can to reduce expenses. Governments are challenged to fund their operations. And you and I, as everyday citizens and consumers, have
our own budgets to balance and our own expectations as to what constitutes a return on our investments.

"You're going to see more of it … because governments across the state of Illinois are experiencing the same economic downturn citizens are," said Laurence Msall, president of the Civic Federation, a nonpartisan Chicago-area tax policy and government research organization. "Their revenues are under pressure. … Everything economically sensitive has tightened up. Everyone's seen a reduction since the high points in 2007."

The Civic Federation has not taken a position on the RTA case and is only starting to review the lawsuit. But its annual breakdown of taxes in and around Chicago makes it abundantly clear there is an incentive to comparison shop for tax rates, even among those who understand how important the financial health of Chicago and surrounding communities are to the region and state.

Think about your own spending. As consumers, we pay local taxes nearly every day and we don't think of it as tax avoidance when we find a way around them. We think of it as trying to get a better deal.

When possible, for example, I avoid gassing up the family minivan in Chicago to save a few bucks. I try to top off the tank whenever I'm outside Cook County. Likewise, if I'm sent to buy bottled water, I also try to do it where I won't get hit by Chicago's nickel-a-bottle surcharge. Buying water is silly enough. Spending an extra $1.20 a case is extra silly.

On the other hand, I can't remember ever making a dining choice based on trying to save the added 1 percent restaurant tax levied by the Metropolitan Pier and Exposition Authority. If you haven't noticed, it's tacked on at establishments within the area from Lake Michigan west to Ashland Avenue, north to Surf Street and south to the Stevenson Expressway, in addition to O'Hare and Midway airports.

It's not that I'm such a fan of McPier. It's just something I don't think about much. Never mind the one-quarter of 1 percent Chicago adds no matter where in the city one pays to eat.

I'd be foolish to ignore that I've frittered away an awful lot of money on Chicago's 3 percent soft-drink tax and 9 percent fountain soft-drink syrup tax. And I know I'd be better off avoiding soft drinks altogether for all kinds of reasons.

The good news is I don't smoke. With every 20-cigarette pack I don't buy, I save myself 68 cents to Chicago, $2 to Cook County, 98 cents to Illinois and $1.01 to the feds on top of whatever the smokes actually cost, according to the Civic Federation.

Part of the reason for the suit against Kankakee and Channahon, the RTA says, is it has been unable to review the towns' public records to see exactly how much money is being siphoned off. The city of Chicago, which has its own revenue issues, is among those that would love to know if it's being cheated out of some cash that should have been earmarked for it as well.

But with every attempt to pin down a business on taxes, there is going to be someone — or in a situation such as General Electric, a massive department of someones — with pencils, ledgers, copies of the latest tax laws and a keen eye for enough loopholes to make a doily.
The hole story will be one to watch.