

ST 14-01

Tax Type: Sales Tax

Tax Issue: Books and Records Insufficient

**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**
James R. Thompson Center
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-6114

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC BUSINESS,

TAXPAYER

No. XXXX

**Letter ID: XXXX
NTL issued May 24, 2012**

**Letter ID: XXXX
NTL issued May 24, 2012
Account ID: XXXX**

**Kenneth Galvin
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION and
ORDER ON COUNSEL'S MOTION TO WITHDRAW**

Appearances: Ms. Lauren Evans DeJong, Pembroke, Jefson & Associates, on behalf of ABC Business; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing pursuant to a protest filed by ABC Business, (hereinafter "ABC Business") of two Notices of Tax Liability ("NTL"), captioned above, both issued on May 24, 2012, covering the audit periods January 1, 2008 through June 30, 2009 and July 1, 2009 through December 31, 2009, respectively, assessing Illinois Retailers' Occupation Tax, penalties and interest for unreported car sales.

On November 15, 2013, ABC Business's Counsel filed a "Motion to Withdraw" and set the motion for hearing on November 19, 2013, which was the time set for the evidentiary hearing in this matter. Neither John Doe, President of ABC Business, nor any other ABC Business employee, appeared for the motion or evidentiary hearing. Tr. p. 3. Counsel for ABC Business did not offer any evidence in rebuttal of the Department's *prima facie* case. Tr. p. 8. Following a review of the Department's evidence, it is recommended that the Notices of Tax Liability be finalized. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the two Notices of Tax Liability, captioned above, both dated May 24, 2012 assessing Illinois Retailers' Occupation Tax, penalties and interest for unreported car sales, as adjusted by the SC 10-K, "Audit Correction and/or Determination of Tax Due." Tr. pp. 4-6; Dept. Ex. Nos. 1, 2 and 3.
2. Neither John Doe, President of ABC Business, nor any other ABC Business employee, appeared for the motion or evidentiary hearing. Counsel for ABC Business did not offer any evidence in rebuttal of the Department's *prima facie* case. Tr. pp. 3, 8.

Conclusions of Law:

The Department of Revenue issued the two Notices of Tax Liability, captioned above, to ABC Business covering the audit periods January 1, 2008 through June 30, 2009 and July 1, 2009 through December 31, 2009 and assessing Illinois Retailers' Occupation Tax, penalties and

interest for unreported car sales. Tr. pp. 4-6; Dept. Ex. Nos. 1, 2 and 3. Section 4 of the Retailers' Occupation Tax Act, (35 ILCS 120/1 *et seq.*), provides that NTL's issued by the Department are *prima facie* correct and are *prima facie* evidence of the correctness of the amount of tax due. *Id.* at 120/4. Once the Department has established its *prima facie* case by submitting the NTL's into evidence, the burden shifts to the taxpayer to overcome the presumption of validity. Clark Oil & Refining v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the NTL's, the taxpayer must produce competent evidence, identified with its books and records showing that the NTL's are incorrect. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Documentary proof is required to prevail against an assessment of tax by the Department. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). Neither John Doe, President of ABC Business, nor any other ABC Business employee, appeared for the motion or evidentiary hearing. Counsel for ABC Business did not offer any evidence in rebuttal of the Department's *prima facie* case. Tr. pp. 3, 8. Accordingly, upon examination of the record in this case, I must find that the taxpayer has failed to demonstrate by testimony, through exhibits or through argument, evidence sufficient to overcome the Department's determination that Retailers' Occupation Tax is due.

Counsel for Taxpayer filed a "Motion to Withdraw" and set the motion for hearing at the time scheduled for the evidentiary hearing. Counsel showed proof of service of the motion on ABC Business c/o John Doe, Anywhere, Illinois. As stated previously, Mr. John Doe did not appear for the motion hearing or the evidentiary hearing. Counsel's Motion to Withdraw was denied in accordance with 86 Ill. Adm. Code § 200.190(c) which states that once a matter has

been set for hearing, leave to withdraw may be denied if granting such request would act to delay the hearing. Tr. p. 4. The evidentiary hearing had been previously continued from August 27, 2013.

WHEREFORE, for the reasons stated above, it is my recommendation that 1) Counsel's Motion to Withdraw be denied; 2) the Department's Notices of Tax Liability, captioned above, issued to ABC Business on May 24, 2012, as amended by the SC-10-K, are hereby finalized; and 3) all further proceedings in this cause are cancelled and the matter is closed.

January 23, 2014

Kenneth J. Galvin,
Administrative Law Judge