

ST 04-18
Tax Type: Sales Tax
Issue: Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-ST-0000
v.)	IBT #0000-0000
)	
ABC HOME SALES, INC.)	Claim for Credit or Refund
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC Home Sales, Inc.

Synopsis:

ABC Home Sales, Inc. (“taxpayer”) filed several Form ST-556 Sales Tax Transaction Returns with the Department of Revenue (“Department”) for the sales of mobile homes during various time periods, including the period of May 1999 through July 2000. On each return, the taxpayer indicated that 1% of the purchase price was being paid for the use tax owed to the City of Anywhere, and the amount for the Anywhere tax was included in the taxpayer’s payment to the Department. On April 12, 2004, the taxpayer filed several ST-556-X Amended Sales Tax Transaction Returns to claim refunds of the amounts paid to the Department for the tax owed to the City of

Anywhere. The Department credited the taxpayer's account for some of the claims but denied the ones for payments made prior to January 1, 2001 on the basis that the claims were barred by the statute of limitations. The taxpayer timely protested the Department's decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is in the business of selling mobile homes. (Tr. p. 6)
2. During the period of May 1999 through July 2000, the taxpayer filed a Form ST-556 Sales Tax Transaction Return with the Department for each sale of a home. (Taxpayer Ex. #1)
3. Section 6 of Form ST-556 is titled "Write the price, and figure the tax." Line 5 under section 6 states "Use tax – optional (see instructions)." Under line 5, there is a blank space next to the following three lines: a. County, b. City, and c. Township. On the blank line under section 6, line 5(b), the taxpayer wrote ".01 SPFLD." The taxpayer included 1% of the purchase price in the computation of the tax for the use tax owed to the City of Anywhere. This amount was included in the taxpayer's payment to the Department. (Taxpayer Ex. #1; Tr. pp. 6-7)
4. On April 12, 2004, the taxpayer filed several ST-556-X Amended Sales Tax Transaction Returns to request a refund of the amount paid to the Department for the Anywhere tax. (Dept. Ex. #1)
5. The Department credited the taxpayer's account for some of the claims. On June 25, 2004, the Department issued a Notice of Tentative Denial of Claim for Sales Tax that denied the taxpayer's claims for payments made prior to January 1, 2001 on the

basis that the statute of limitations prohibited the Department from honoring the claims. A copy of the Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Section 6 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) provides in relevant part as follows:

“Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment * * * [A]s to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, * * *.” 35 ILCS 120/6.

Section 6b of the ROTA provides that the Department's Notice of Tentative Denial of Claim constitutes *prima facie* proof of the correctness of the Department's determination, as shown therein. (35 ILCS 120/6b). Once the Department has established its *prima facie* case by submitting a certified copy of the Notice of Tentative Denial of Claim into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987).

The taxpayer's claims for credit or refund were filed on April 12, 2004. Under section 6 of the ROTA, when a claim is filed on April 12, 2004, it can only be granted if it concerns tax erroneously paid on or after January 1, 2001. The taxpayer's claims for a credit or refund of money paid prior to January 1, 2001 must be denied because the statute prohibits granting these claims.

The taxpayer argues that the statute of limitations should be waived because the forms are deceptive. The forms have a line for use tax that is owed to a city. The taxpayer states that it clearly marked the forms to indicate that 1% of the price was to be paid to Anywhere. The taxpayer contends that the Department should have told the taxpayer that it was incorrectly sending the money owed to the City of Anywhere to the Department. The taxpayer's representative stated that he was not aware that the tax owed to Anywhere should not be paid to the Department until a discussion was held with the mayor of Anywhere wherein he told the taxpayer's representative that the taxes should be paid to Anywhere. The taxpayer maintains that the forms are deceptive to someone who does not completely understand the tax laws because it appears as though the use tax owed to a city should be paid with the form. The taxpayer asserts that the employees of the Department should have notified the taxpayer of its mistake.

The section of the form that the taxpayer contends is deceptive is section 6, line 5, which states "Use tax – optional (see instructions)." The instructions for section 6, line 5 state as follows: "Is your buyer's address in one of the following Illinois counties? Cook, DuPage, Kane, Lake, Madison, McHenry, St. Clair, Will. If not, skip to Section 6, Line 6. If so, continue reading." The buyers on all of the forms that are the basis of the taxpayer's claims for refund live in Anywhere, which is in Anywhere County. Because Anywhere County is not one of the counties listed in the instructions, the instructions state to skip line 5 and go to line 6. If the taxpayer had done this, the tax owed to the City of Anywhere would not have been included on the form.

Taxpayers are presumed to know the law, and it is the taxpayer's responsibility to accurately complete the forms. In this case, line 5 of section 6 on Form ST-556

specifically refers to the instructions, which provide the taxpayer with the proper guidance for completing the form. The form is not misleading or deceptive.

In addition, the only exception to the statute of limitations under the ROTA is when the parties have agreed to extend the time for issuing a notice of tax liability. See 35 ILCS 120/6. In Dow Chemical Co. v. Department of Revenue, 224 Ill.App.3d 263 (1st Dist. 1991), the court considered the taxpayer's claim for refund under the Income Tax Act and determined that it was barred by the three-year statute of limitations. The court stated that the plain meaning of the statute is that the taxpayer has an affirmative duty to file for a tax refund within the appropriate time period. Dow Chemical at 267. In the present case, the taxpayer had to take an affirmative step to preserve its right to a refund, and it failed to do so by the deadline required under the ROTA. Even though the taxpayer would otherwise be entitled to the refund, the statute prohibits the Department from issuing a refund that was not properly requested within the appropriate time period. As harsh as this result may seem, the law does not allow for a different conclusion.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination be upheld.

Linda Olivero
Administrative Law Judge

Enter: November 30, 2004