

ST 04-7  
Tax Type: Sales Tax  
Issue: Books And Records Insufficient

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

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

ABC COMPUTERS, INC.,  
Taxpayer

No. 03-ST-0000  
IBT no. 0000-0000  
NTL no. 00 0000000000000000  
00 0000000000000000

Ted Sherrod  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General Shepard Smith on behalf of the Illinois Department of Revenue; James Griffin, Esq. of Schain, Burney, Ross & Citron, Ltd. on behalf of ABC Computers, Inc.

**Synopsis:**

This matter comes on for hearing pursuant to taxpayer's timely protest of Notice of Tax Liability ("NTL") number 00 0000000000000000 and NTL number 00 0000000000000000 issued to the taxpayer by the Department of Revenue for retailers' occupation and related taxes. At issue is whether the taxpayer has offered sufficient evidence to rebut the *prima facie* correctness of the Department's determination of tax due. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns and/or Determination of Tax Due, and NTLs, showing tax liability in the amount of \$51,571 for the period July, 1997 through February, 2001, and re-audit findings reducing this liability to \$11,596. Dept. Ex.1, 3.
2. Pursuant to its grant of authority under the provisions of statute, 35 ILCS 120/4, in December, 2002, the Department issued to the taxpayer NTL number 00 0000000000000000 and NTL 000000000000000000.
3. Following issuance of these Notices of Tax Liability, and as the result of documents provided by the taxpayer, a reaudit of the taxpayer was conducted to reconsider the liabilities encompassed by the NTLs. Tr. pp. 6, 9; Dept. Ex. 3.
4. By process of reaudit, the Department determined that the unpaid tax liabilities and assessments should be reduced to \$11,596. Tr. p. 9; Dept. Ex. 3.
5. Taxpayer has offered no evidence or testimony into the record. The taxpayer and the Department agree that the Department's Correction of Returns and/or Determination of Tax Due and NTLs (Dept. Ex. 1), Audit Comments (Dept. Ex. 2) and re-audit findings (Dept. Ex. 3) constitute the only evidence to be considered in this matter. Tr. pp. 8, 9.

**Conclusions of Law:**

The Department's assessment giving rise to this case is based upon its determination, following an audit and re-audit of the taxpayer, of underreported gross receipts. The admission of this determination into evidence established the Department's *prima facie* case against the taxpayer for the tax determined by the Department to be due.

35 ILCS 120/4; A.R. Barnes and Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1<sup>st</sup> Dist. 1988); Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1<sup>st</sup> Dist. 1981); Rentra Liquor Dealers, Inc. v. Department of Revenue, 9 Ill. App. 3d 1063 (1<sup>st</sup> Dist. 1973). Following the admission into evidence of the Department's *prima facie* case, the burden shifted to the taxpayer to produce competent evidence, identified with its books and records, showing that the Department's determination is not correct. DuPage Liquor Store v. McKibbin, 383 Ill. 276, 279 (1943); Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968). However, in the instant case, no testimony or documentary evidence was proffered on behalf of the taxpayer.

The taxpayer's attorney, James Griffin, appeared at the hearing without any representative from his client. Mr. Griffin indicated that the taxpayer had no evidence to introduce at the hearing and made no objection to the Department's *prima facie* case. As a consequence, the taxpayer failed to prove that the Department's determination was incorrect. Therefore, in accordance with the authorities cited above, the amount determined by the Department, being completely un rebutted by the taxpayer, must be deemed true and correct.

Based upon the foregoing, it is recommended that the Department's Correction of Return and/or Determination of Tax Due and NTLs (Dept. Ex. 1), as modified by the Department's re-audit results (Dept. Ex. 3), be finalized as issued.

Ted Sherrod  
Administrative Law Judge

Date: January 14, 2004