

ST 95-12

Tax Type: SALES TAX

Issue: Audit Methodologies and/or Other Computational Issues

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

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THE DEPARTMENT OF REVENUE      )
OF THE STATE OF ILLINOIS      )   Docket #   XXXXX
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                               )   IBT #   XXXXX
v.                               )
                               )
XXXXXX                          )   Karl W. Betz
                               )   Administrative Law Judge
Taxpayer                        )
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: As a result of examining Federal Aviation Administration listings of airplane sales, the Department discovered XXXXX (hereinafter "taxpayer") had purchased and registered an aircraft in Illinois without paying Illinois Use Tax. The Department then assigned the matter for audit and made inquires with XXXXX, owner. The auditor did cause to be issued a corrected return that served as the basis for an assessment whose protest by taxpayer resulted in the instant contested case.

After a hearing was scheduled in this matter, taxpayer submitted a letter dated March 1, 1995 waiving his right to present further evidence at the hearing and stating his desire to stand upon the information he had already submitted.

The issue in this case is whether taxpayer has submitted sufficient documentary evidence to establish that its purchase of the aircraft was a one for resale and not subject to the application of use tax.

After reviewing the record in this matter, I recommend the issue be resolved in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer purchased a Cessna aircraft, model XXXXX, registration

Number XXXXX, on July 3, 1987 from XXXXX a retailer of aircraft. Dept. Grp. Ex. No. 1.

2. The Department issued Notice of Tax Liability (NTL) No. XXXXX to taxpayer on October 21, 1990 for \$1,425.00 inclusive of tax and interest. Dept. Grp. Ex. No. 1.

3. During June 1987 taxpayer had an active certificate of registration number, XXXXX, from the Department. After December 31, 1989 the taxpayer caused its registration number XXXXX to become inactive. Dept. Grp. Ex. No. 1.

4. Taxpayer did not obtain the individual transaction reporting returns from the Department that are required to be filed by a retailer of airplanes. Dept. Grp. Ex. No. 1.

CONCLUSIONS OF LAW: The Department's prima facie case was established herein by the receipt into the record of the auditor's corrected return as part of the Department's Group Exhibit. This shifts the burden to taxpayer to produce competent documentary evidence in the form of its books and records to show that the corrected return is not accurate. *Copilevitz v. Department of Revenue* 41 Ill. 2d 154 (1968); *Fillichio v. Department of Revenue* 15 Ill. 2d 327 (1959).

As taxpayer waived his right to a formal hearing, the only documentary evidence submitted by taxpayer in this case was the material that it had previously shown to the auditor. After reviewing these items I conclude that the auditor's preparation of the corrected return meets a minimum standard of reasonableness.

While taxpayer did obtain a Retailers' Occupation Tax registration number in accordance with Section 2c of the Retailers' Occupation Tax Act,¹ I cannot accept that as dispositive of the resale issue herein because the auditor documented taxpayer had not obtained the individual transaction reporting returns that Section 3 of the Act² requires a retailer of

aircraft to use and file with the Department. Also, taxpayer submitted no certificate of resale on the disputed transaction into this record. Although taxpayer did provide a photocopy of his purchase order for the aircraft and said purchase order contains the statement "this aircraft purchased for resale", an examination of this statement shows it was written with a lighter pen/pencil than the other statements affixed by XXXXX - those being his signature and position title. Thus I must note the possibility this statement was only added after Taxpayer received inquiries from the Department. Further, there is no evidence in this record that Taxpayer ever filed a 556 individual transaction return with the Department.

Because taxpayer did not comply with statutory provisions that are required of a retailer of aircraft, I conclude it was correct and proper for the auditor to assess tax on the transaction.

In summary, I find the taxpayer has not overcome the Department's prima facie case and I recommend the NTL stand as issued, with the taxpayer given credit for his pre-assessment \$1,000.00 payment and any applicable post assessment payments/credit rollovers.

RECOMMENDATION: Based upon the above findings, I recommend the Department finalize Notice of Tax Liability No. XXXXX in its entirety and issue a final assessment.

Karl W. Betz
Administrative Law Judge

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1. 35 ILCS 120/2c
 2. 35 ILCS 120/3