

ST 97-46

Tax Type: SALES TAX

Issue: Occasional Sales - Non-Retail Transactions (Exempt)

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

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS,	)	
Petitioner	)	No.
	)	
v.	)	IBT No.
	)	
TAXPAYER,	)	Linda K. Cliffel,
	)	Admin. Law Judge
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

**APPEARANCES:** Robert F. Sharp of Querrey & Harrow, Ltd. for taxpayer; Alan Osheff, Special Assistant Attorney General, for the Illinois Department of Revenue.

**SYNOPSIS:** TAXPAYER (hereinafter "TAXPAYER" or "taxpayer") was issued Notices of Tax Liability ("NTL's") XXXXX, XXXXX, and XXXXX on June 19, 1996 for Retailers' Occupation Tax beginning the third quarter 1992 and ending second quarter 1995. Taxpayer protested the Notice of Tax Liability ("NTL") on February 23, 1996.

The issue presented for review is whether the sales of beer made during a street festival were subject to the Retailers' Occupation Tax ("ROT") and if so, whether the TAXPAYER or the Greater State Street Council ("GSSC") was the seller.

On consideration of this matter it is my recommendation that this matter be resolved in favor of the taxpayer.

**FINDINGS OF FACT:**

1. The Greater State Street Council is a not-for-profit organization which was founded in 1929 to promote economic development in the State Street area and plan special promotions and events to attract tourists and businesses to the area. (Tr. p. 13, Taxpayer Exhibit No. 6)

2. Celebrate on State Street is an annual street festival sponsored by GSSC to attract tourists and visitors to State Street and thereby promote the merchants located on the street.

3. GSSC was granted a permit to sell beer and wine for Celebrate State Street by the Illinois Liquor Control Commission for June 17, 18 and 19, 1992. (Taxpayer Ex. No 1A) A Certificate of Insurance was issued to GSSC for liquor liability for the period June 17, 1992 through June 19, 1992. (Taxpayer Ex. No. 1B)

4. In 1993, TAXPAYER became the purveyor of beer and wine for the Celebrate on State festival. A Certificate of Insurance was issued to GSSC for liquor liability for the period June 16, 1993 through June 19, 1993, and TAXPAYER was named as an additional insured. (Taxpayer Ex. No. 2B)

5. In 1994, GSSC obtained a license to sell beer and wine for a special event from the City of Chicago. (Taxpayer Ex. Nos. 3A, 3B and 3C) A Certificate of Insurance was issued to GSSC for liquor liability for the period June 8, 1993 through June 10, 1994, and TAXPAYER was named as an additional insured. (Taxpayer Ex. No. 3D)

6. GSSC was granted a permit to sell beer and wine for Celebrate State Street by the Illinois Liquor Control Commission for June 14

through 17, 1995. (Taxpayer Ex. No 4A) A Certificate of Insurance was issued to GSSC for liquor liability for the period June 8 through June 10, 1995<sup>1</sup>. (Taxpayer Exhibit No. 4C)

7. GSSC had a verbal agreement with TAXPAYER that TAXPAYER would administer the sale of beer and wine for the festival with GSSC receiving 75% of the profits and TAXPAYER receiving 25%. (Tr. pp. 26, 41-44)

**CONCLUSIONS OF LAW:**

Pursuant to 35 ILCS 120/4, the Correction of Returns submitted as Dept. Ex. Nos. 5 through 8 are *prima facie* correct and constitute *prima facie* evidence of the correctness of the amount of tax due as shown thereon. See also, A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3rd 826 (1st Dist. 1988).

Once the Department establishes the *prima facie* correctness of the amount of tax due via admission into evidence of the Correction of Returns, the burden shifts to the taxpayer to show that such determination is incorrect. In order to overcome the presumption of validity attached to the Department's corrected returns, the taxpayer must produce competent evidence, identified with its books and records showing that the Department's returns are incorrect. Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968).

On examination of the record in this case, the taxpayer has presented competent evidence that Greater State Street Council was in

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<sup>1</sup> Apparently a scrivener's error, since the cover letter transmitting the certificate indicates that the information listed is the same as last year and asks for any needed corrections. The dates of the festival in 1994 were June 8 through 10.

fact the seller of the beer and wine at issue, not TAXPAYER, and therefore it is GSSC which bears the liability for the tax. In this case TAXPAYER was merely the agent for GSSC in selling the beer and wine. GSSC obtained the necessary licenses and insurance for selling beer and wine at a special event. Further, we have both the testimony of the Executive Director of GSSC and Herman TAXPAYER, the Chief Financial Officer of TAXPAYER, which was in agreement that TAXPAYER was hired to operate the beer tents on behalf of GSSC for the festival.

While a liquor license was not submitted for 1993, licenses had been obtained for the other periods and the certificates of insurance with GSSC as the named insured were submitted for all periods, it can be inferred that GSSC had obtained the necessary license for 1993. The testimony of the parties was credible and taken together with the documentary evidence is persuasive that GSSC was the true seller of the beer and wine. I find, therefore, that taxpayer has produced sufficient competent evidence to overcome the Department's *prima facie* case.

Inasmuch as the Department failed to rebut the taxpayer's evidence, the Department has failed in its burden of proof, and accordingly, the aforementioned NTL's should be cancelled in their entirety.

WHEREFORE, based on my examination of the record and for the reasons stated above, it is my recommendation that the Notices of Tax Liability be cancelled.