

UT 09-9

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

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

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

) No.: 00- ST-0000
) NTL No.: 00 000000000000
) IBT No.: 0000-0000
)

v.

) Use Tax
)

JOHN DOE,

Taxpayer

) Julie-April Montgomery
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe *pro se*; Marc M. Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter arose from a protest filed by John Doe (“Taxpayer”) of the “Audit Correction and/or Determination of Tax Due” (“Determination”) dated June 3, 2008 and issued to him by the Illinois Department of Revenue (“Department”). The Determination was issued pursuant to the provisions of the Illinois Use Tax Act (“UTA”), 35 ILCS 105/1 *et seq.*, with respect to merchandise purchased by Taxpayer outside of Illinois for which no tax was paid. An evidentiary hearing was held on November 5, 2009 at which the Department presented documentary evidence and the Taxpayer presented documentary and testimonial evidence. 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. In support thereof, are made the following finding of fact and conclusions of law:

Finding of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the "SC-10-K: Audit Correction and/or Determination of Tax Due" for the period June 2005, which reflects use tax due of \$1,459, a late filing penalty of \$29, and a late payment penalty of \$292 for a total amount due of \$1,780. Department Ex. No. 1; Tr. p. 10.

Conclusions of Law:

The UTA is complementary to the Retailers' Occupation Tax Act ("ROTA"). Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63 (1985). "Functionally, the Use Tax Act serves to tax property purchased out of State by Illinois residents that is not taxable under the Retailers' Occupation Tax Act and at the same time attempts to eliminate the competitive disadvantage of in-State businesses." *Id.* at 69.

The UTA makes numerous sections of the ROTA (35 ILCS 120/1 *et seq.*) applicable to the Use Tax. Section 12 of the UTA incorporates sections 4 and 8 of the ROTA. These ROTA sections provide that the admission into evidence of Department records under a certificate of the Director establishes the Department's *prima facie* case and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/4, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Once the Department's *prima*

facie case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

To overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with his books and records that show the Department's records are incorrect. Copilevitz, supra. Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of tax deemed due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4th Dist. 1990).

The Department's Determination was entered into evidence under the certificate of the Director of Revenue, establishing the Department's *prima facie* case. The burden of proof then shifted to Taxpayer to overcome the Department's *prima facie* case.

Taxpayer's response is to deny that he purchased carpet from China. Tr. pp. 6-7, 23, 60, 63. In support of his position, Taxpayer posits the following arguments: 1) the transaction at issue was the result of the theft of his identity; 2) he could not have made the purchase because he was not in China during the period in question; and 3) his bank records reflect that no payment was made for the carpet. Tr. pp. 15, 20-21, 30, 60.

Taxpayer admits that his name, home address and social security number appear on both the transcript of purchases and United States Customs Service: Entry Summary ("Customs document") for the transaction at issue. Department Ex. Nos. 2 (transcript of purchases), 3 (United States Customs Service: Entry Summary); Tr. pp. 34-35. Taxpayer further admits that the Customs document identifies him as the importer of the carpet.

Tr. p. 35. Taxpayer argues however that someone forged the documents relating to the current Chinese transaction using information from a prior purchase of carpet from India. Taxpayer Ex. No.1 (documents relating to Taxpayer's India carpet purchase); Tr. pp. 15-18. In support of his argument, Taxpayer states that the freight notice reflecting shipment (Taxpayer Ex. No. 2) incorrectly lists his address and gives a telephone fax number in Spokane, Washington that is unfamiliar to Taxpayer. Tr. pp. 19-20. Taxpayer testified that he reported this alleged fraud to the police. Tr. p. 21. Taxpayer further testified that the police concluded the Customs Power of Attorney document was "not [Taxpayer's] handwriting." *Id.* But no police report or other documentation was presented to substantiate this claim. Taxpayer also testified that he hired an attorney to assist him and that Homeland Security was looking into the matter. Tr. p. 28. Again, no documentation regarding the engagement of counsel or the activities of Homeland Security was proffered at hearing.

Taxpayer offered, into evidence, the Chinese seller's invoice and packing list for the carpet to raise more questions about the transaction. Taxpayer Ex. No. 2; Tr. pp. 19, 55. Taxpayer argues that the Chinese invoice and packing list documents did not list his name. Tr. p. 31. No space however is identified on the documents for such information. Next, Taxpayer points out that the shipper's freight notice incorrectly states his address as 231 Somewhere when his address is 123 Somewhere. Taxpayer Ex. No. 2; Tr. p. 19. This however, could be nothing more than a typographical error. Finally, Taxpayer argues that the Arrival Notice/Freight Invoice and the Customs document give a port of loading date of May 26, 2005 which is earlier than the Chinese seller's invoice and packing documents which are dated June 10, 2005. Taxpayer Ex. No. 2; Tr. p. 32.

Specifically, Taxpayer states that he finds “it difficult to understand how you can ... make a purchase in June and load it at some point in May.” *Id.* However, the Chinese documents do not state a date for the transaction. It is not clear what the June 10, 2005 date on the Chinese documents references. Therefore, the June 10, 2005 date does not support Taxpayer’s conclusion that documents were shipped prior to being ordered.

Taxpayer testified that he attempted to obtain a third party’s verification from the shipper of the carpet stating that he did not purchase the carpet. Taxpayer Ex. No. 5 (Taxpayer’s e-mails with shipper); Tr. pp. 27-28. But he did not submit any verification.

Taxpayer also argues he was “never in China at any point in time during the period of concern.” Tr. p. 20. He presented his passport to show he was in China in December 2007 but not the year 2005. Taxpayer Ex. No. 6 (passport); Tr. p. 30. Whether Taxpayer was in China or not in the year 2005 is irrelevant. The Department rightly points out that Taxpayer did not have to travel to China to purchase the carpet. Tr. pp. 47, 58.

Taxpayer further argues that his bank records for 2005 show he did not pay for the carpet. Tr. pp. 25, 51-52. While Taxpayer’s 2005 bank statements do not reflect payments to the shipper or Chinese seller, Taxpayer could have used a credit card, money order or some other bank account. No records of his credit card activity or other financial accounts were presented at hearing.

The Department presented a *prima facie* case. Taxpayer failed to introduce legally sufficient evidence to overcome the Department’s *prima facie* case.

Recommendation:

For the reasons stated above, it is recommended that the Department's Determination be affirmed.

December 11, 2009

Julie-April Montgomery
Administrative Law Judge