

UT 12-07

Tax Type: Use Tax

Tax Issue: Use Tax On Purchases, Fixed Assets or Consumables

**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**

v.

**JOHN & JANE DOE**

**Taxpayers**

**Docket #      XXXXX  
Acct ID:       XXXXX  
Acct ID:       XXXXX  
Letter ID:     XXXXX  
Letter ID:     XXXXX**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John & Jane Doe, *pro se*

Synopsis:

The Department of Revenue (“Department”) conducted an audit of the accounts of John & Jane Doe (“taxpayers”). On October 18, 2010, the Department issued a Notice of Tax Liability (“NTL”) to John Doe for use tax on the purchase of various items on June 11, 2007. On October 18, 2010, the Department also issued an NTL to Jane Doe for use tax on the purchase of various items on December 7, 2007. The taxpayers’ request for a late discretionary hearing was granted, and an evidentiary hearing was held. At the hearing, the taxpayers argued that they do not owe use tax on the purchase of the items because the items were purchased for resale. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayers.

FINDINGS OF FACT:

1. The taxpayers operated a business in Illinois known as ABC Business. The Department issued a Certificate of Registration for the business that expired in April 2008. (Taxpayers' Ex. #5)
2. The taxpayers sold various types of items such as puzzles, games, wooden animals, incense, incense holders, tealights, and candles. The taxpayers' business catalogs include pictures of items along with the wholesale price for the items and the suggested retail price. (Taxpayers' Ex. #4)
3. On December 7, 2007, the taxpayers received a container of items from XYZ Business ("XYZ Business"), which is located in Anycountry. The container included a total of 47,981 pieces that were things such as wooden trays, wooden animals, ceramic cups, bamboo flutes, incense, incense holders, tealight holders, and candle holders. The quantity of each item varied from a few to several thousand. (Dept. Ex. #2)
4. On June 11, 2007, the taxpayers received another container of items from XYZ Business. The container included several thousand pieces that were similar to those received in the December 7, 2007 shipment. (Dept. Ex. #2)
5. The taxpayers provided invoices from November 2007 through January 2008 that show that the taxpayers sold items that were included on the list of items received from Anycountry. The taxpayers sold these items to customers throughout the United States. The prices for the items were the same as the wholesale price of the items in the taxpayers' catalogs.<sup>1</sup> (Dept. Ex. #3; Taxpayers' Ex. #2, 4)

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<sup>1</sup> For example, the taxpayers' catalog listed the wholesale price for a 1.5" natural frog as \$2.00 (Taxpayers' Ex. #4, p. 2), and the taxpayers sold the same item for \$2.00 (Taxpayers' Ex. #2, p. 3).

6. On October 18, 2010, the Department issued a Notice of Tax Liability to John Doe that assessed use tax in the amount of \$1,031, plus penalties and interest, on the items that were purchased on June 11, 2007. The Department's determination was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)
7. On October 18, 2010, the Department issued a Notice of Tax Liability to Jane Doe that assessed use tax in the amount of \$1,818, plus penalties and interest, on the items that were purchased on December 7, 2007. The Department's determination was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

#### CONCLUSIONS OF LAW:

Under the Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property "purchased at retail" from a retailer. 35 ILCS 105/3. Under the "Definitions" section of the Act, the term "purchase at retail" means "the acquisition of the ownership of or title to tangible personal property through a sale at retail." 35 ILCS 105/2. The definition of the term "sale at retail" includes the following: "'Sale at retail' includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act, as incorporated by reference into Section 12 of this Act." *Id.*

Section 2c of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) provides, in relevant part, as follows:

If the purchaser is not registered with the Department as a taxpayer, but claims to be a reseller of the tangible personal property in such a way that such resales are not taxable under this Act or under some other tax law

which the Department may administer, such purchaser ... shall apply to the Department for a resale number. ...

Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. ...

Except as provided hereinabove in this Section, a sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. *This presumption may be rebutted by other evidence that all of the seller's sales are sale [sic] for resale, or that a particular sale is a sale for resale.* Emphasis added; 35 ILCS 120/2c.

Section 12 of the Act also incorporates by reference section 5 of the ROTA, which provides that if the taxpayer fails to file a return, the Department shall determine the amount of tax due "according to its best judgment and information." 35 ILCS 105/12; 120/5. A certified copy of the Department's determination of the amount of tax due "shall, without further proof, be admitted into evidence... and shall be prima facie proof of the correctness of the amount of tax due, as shown therein." *Id.* Once the Department has established its *prima facie* case by submitting the certified copy of the Department's determination into evidence, the burden shifts to the taxpayers to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1<sup>st</sup> Dist. 1987). To prove his or her case, a taxpayer must present more than testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4<sup>th</sup> Dist. 1990). The taxpayer must present sufficient documentary evidence to support his or her claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1<sup>st</sup> Dist. 1981).

The taxpayers have presented sufficient documentary evidence to show that when they purchased the items, the purchase was not a “purchase at retail” because the items were purchased for resale in accordance with section 2c of the ROTA. Under section 2c, if the purchaser is not registered with the Department as a taxpayer, then the purchaser must apply to the Department for a resale number. The taxpayers in this case were registered with the Department and provided their Certificate of Registration. The taxpayers, therefore, did not need to apply for a resale number. See also 86 Ill. Admin. Code §130.1405(b) (Certificate of Resale must contain, *inter alia*, purchaser’s registration number or resale number).

Although the taxpayers had an active registration number, it is unclear whether they provided it along with a certification to the seller that the items were to be resold. Nevertheless, under section 2c the failure to present an active registration number and a certification to the seller that a sale is for resale only creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that the sales were for resale. An example of the other evidence that might be used to document that a sale is for resale is provided in the Department’s regulation. The regulation indicates that an invoice from the purchaser to his customer showing that the item was resold could be evidence that the sale was for resale. See 86 Ill. Admin. Code §130.1405(d).

In this case, the taxpayers presented invoices to their customers that showed that items that they had purchased were actually resold. The taxpayers also provided their business catalogs that included pictures and prices of the items that were resold. In addition, the unusually large quantity of items that were purchased also supports the

conclusion that the items were purchased for resale. The taxpayers, therefore, have presented sufficient evidence to overcome the Department's *prima facie* case.

Recommendation:

For the foregoing reasons, it is recommended that the liability be dismissed.

Linda Olivero  
Administrative Law Judge

Enter: November 28, 2012