

UT 05-4

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**

v.

JANE DOE,

Taxpayer

**No. 05-ST-0000
IBT #: 0000-0000
NTL # 0 0 0000000000000**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: John D. Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue (the “Department”); Carlos A. Vazquez for Jane Doe (“Taxpayer”).

Synopsis:

This matter arose from a protest filed by Taxpayer to a Notice of Tax Liability issued to her by the Department on November 12, 2004. The Notice of Tax Liability assessed use tax under the provisions of the Illinois Use Tax Act¹ on merchandise purchased outside of Illinois for which use tax had not previously been paid. An evidentiary hearing was held on April 13, 2005. I recommend that the Notice of Tax Liability be made final.

Findings of Fact:

1. The Department issued Notice of Tax Liability to Taxpayer on November 12, 2004 assessing use tax of \$613 plus penalties and interest. Dept. Ex. No. 1.

Conclusions of Law:

The UTA is complementary to the Retailers' Occupation Tax. *Chicago Tribune Co. v. Johnson*, 106 Ill.2d 63, 477 N.E.2d 482 (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 Use Tax Act makes numerous sections of the Retailers' Occupation Tax Act (120 ILCS 120/1 *et seq.*) applicable to the Use Tax. 35 ILCS 105/12, including §§ 120/4 and 120/8. Accordingly, the admission into evidence of the records of the Department under the certification of the Director at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. 35 ILCS 120/4, 120/8; *Copilevitz v. Department of Revenue*, 41 Ill.2d 154, 242 N.E.2d 205 (1968); *Central Furniture Mart v. Johnson*, 157 Ill.App. 3d 907, 510 N.E.2d 937 (1st Dist. 1987).

In this case, when the Department's Notice of Tax Liability (Dept. Ex. No. 1) was entered into the record under the certificate of the Director its *prima facie* case was established, and the burden shifted to the taxpayer to overcome the Department's *prima facie* case. *Anderson v. Dept. of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938); *Masini v. Dept. of Revenue*, 60 Ill.App.3d at 14, 376 N.E.2d 325. 35 ILCS 120/4

¹ Unless otherwise noted, all statutory references are to the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*, sometimes referred to as *use tax*.

In order to overcome the presumption of validity attached to the Department's *prima facie* case, Taxpayer is required to introduce into the record competent evidence, identified with her books and records showing that the Department's records are incorrect. *Masini v. Dept. of Revenue*, 60 Ill.App.3d at 15, 376 N.E.2d 324; *Copilevitz v. Dept. of Revenue*, 41 Ill.2d 154, 242N.E.2d 205 (1968); *Dupage Liquor Store, Inc. v. McKibbin* 383 Ill.276, 48 N.E.2d 926 (1943); *Howard Worthington, Inc. v. Department of Revenue*, 96 Ill.App.3d 1132, 421 N.E.2d 1030 (2nd Dist. 1981). A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Central Furniture Mart v. Johnson, supra*. To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id.*

In this case, Taxpayer failed to introduce any documentary evidence to overcome the Department's *prima facie* case. The only evidence Taxpayer offered into evidence is a telephone bill from Ameritech that was offered as Taxpayer's Exhibit No. 1. The account is in the name of Manuel E. Velez, not the Taxpayer. That document is not relevant or persuasive. In conclusion, Taxpayer has failed to introduce into the record documentary evidence sufficient to overcome the Department's *prima facie* case.

Therefore, I recommend that the Notice of Tax Liability be made final.

Date: 6/10/2005

Charles E. McClellan
Administrative Law Judge