

UT 95-3

Tax Type: USE TAX

Issue: Use Tax Liability On Purchases (Non-Filer) 1981 Limit
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      )   Case No.
                               )   IBT No.
                               )
                               )   Administrative Law Judge
XXXXXX                         )   Mary Gilhooly Japlon
Taxpayer                       )
-----

```

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, taxpayer, pro se.

SYNOPSIS: This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Tax Liability XXXXX issued by the Department of Revenue (hereinafter "Department") on April 17, 1992, for Use Tax on the purchase of tangible personal property in the form of plumbing supplies from an out-of-state supplier, which was shipped to an Illinois job location and incorporated into an Illinois shopping mall. At issue is the question of whether Use Tax is due on the out-of-state purchase of tangible personal property by an out-of-state construction contractor when such material is used for building purposes. Following submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Return, showing a total tax liability due and owing in the amount of \$1,354.00, plus a penalty in the amount of \$406.00. (Dept. Ex. No. 1).
2. The taxable period at issue is March 1984 through December 1991.

(Dept. Ex. No. 1).

3. XXXXX, taxpayer herein, is a plumbing contractor. (Tr. p. 11).

4. In 1985, the taxpayer performed some work at an Illinois shopping center for a construction company known as XXXXX; this was the taxpayer's only contact with the State of Illinois. (Tr. p. 11; Dept. Ex. No. 6).

5. The job materials were purchased in Indiana, shipped to Illinois and incorporated into a shopping mall. (Taxpayer's Ex. No. 1; Dept. Ex. No. 6).

6. The taxpayer paid Indiana tax on its purchases to the Indiana based supplier. (Tr. p. 12-13, 15; Dept. Ex. No. 6; Taxpayer's Ex. No. 1).

7. XXXXX is not registered as a taxpayer in Illinois. (Tr. p. 13-14).

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that XXXXX, is subject to the Use Tax Act must stand as a matter of law. In support thereof, the following conclusions are made.

The taxpayer contends that no tax is due to the State of Illinois because it paid tax (albeit Indiana tax) to its Indiana based supplier. The taxpayer argued at hearing that the supplier should have remitted the tax it received from XXXXX to Illinois, if Illinois was the correct taxing authority.

The taxpayer's position does not alter the law as applied to this case, however. Section 130.2075(c) of 86 Admin. Code ch. I is on point and provides as follows:

(c) Use Tax on Out-Of-State Purchases

Tangible personal property bought outside this State either by Illinois or out-of-State construction contractors or builders in such a way that the seller does not incur Retailers' Occupation Tax liability and used in this State for building purposes is subject to the Use Tax. If the purchaser buys such tangible personal property from an out-of-State seller who is registered with the Department as a Use Tax collector, the purchaser should pay the Use Tax to such seller unless the purchaser is also a retailer and elects to assume responsibility for accounting for all the tax on such materials. If the purchaser buys such materials outside Illinois from an unregistered seller, the purchaser should pay the Use Tax directly to this Department. No local Retailers' Occupation Tax is applicable in this situation.

The invoices reflecting the purchases at issue indicate that Indiana tax was collected (Taxpayer's Ex. No. 1). The taxpayer's protest asserts that Illinois Use Tax is not due because of the exemption set forth in 35 ILCS 105/3-55(d). Said statutory section provides in pertinent part that the Illinois Use Tax is not applicable to the use of tangible personal property in Illinois under the following circumstance:

(d) The use, in this State, of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State.

However, as the tax was not properly due to Indiana, but rather to the State of Illinois, the above-cited provision is inapplicable and the transactions at issue are not exempt from Illinois Use Tax. As the taxpayer failed to prove its entitlement to the exemption it seeks, the prima facie case of the Department of Revenue is not rebutted.

RECOMMENDATION: Based upon the foregoing, it is my recommendation that Notice of Tax Liability No. XXXXX stand as issued.

Administrative Law Judge