

ST 10-07

Tax Type: Sales Tax

Issue: Denial of Registration Number

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

THE DEPARTMENT OF REVENUE)	No.:
OF THE STATE OF ILLINOIS)	Letter ID:
)	
v.)	Registration Denial
)	
ABC RESTAURANT, INC.,)	Julie-April Montgomery
Taxpayer.)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe on behalf of ABC Restaurant, Inc.; Paula Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

ABC Restaurant, Inc. (“Taxpayer”) applied to the Illinois Department of Revenue (“Department”) for a certificate of registration. The Department issued a “Taxpayer Notification: Registration Denial” (“Denial”) that denied the request. Taxpayer’s request was denied because Department records reflected Taxpayer had an outstanding liability.

Taxpayer timely protested the Denial. The Parties agreed that the sole issue to be decided is whether the Department properly denied Taxpayer’s request. January 6, 2010 Order. An evidentiary hearing was held at which Taxpayer presented documentary and testimonial evidence. The Department presented documentary evidence. Following a review of the evidence, it is recommended that the Denial be affirmed. In support thereof, the following finding of fact and conclusions of law are made.

Finding of Fact:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Denial dated October 28, 2009. Department Ex. No. 1; Tr. p. 6.

Conclusions of Law:

Section 2a of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) states:

It is unlawful for any person to engage in the business of selling tangible personal property at retail in the State without a certificate of registration from the Department...No certificate of registration shall be issued to any person who is in default to the State of Illinois for moneys due under this Act... under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such...law. 35 ILCS 120/2a.

The Department of Revenue Civil Administrative Code of Illinois provides:

The Department has the power to refuse to issue... after notice and an opportunity for a hearing...a certificate of registration...authorized to be issued by the Department if the applicant for...the certificate of registration...fails to...pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by the tax...Act under which the certificate of registration...is required [for]...any ... tax...administered by the Department. 20 ILCS 2505/2505-380.

Section 5 of ROTA provides that the Department's determination regarding a tax liability is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 120/5. Once the Department establishes its *prima facie* case, the burden

of proof shifts to the Taxpayer to prove, by sufficient documentary evidence, that the tax assessed, including penalty and interest, is not correct. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

The Department's *prima facie* case was established when a certified copy of the Denial was admitted into evidence. Once this document was admitted into evidence, the Department's position is legally presumed to be correct.

Taxpayer admitted the outstanding liability was owed. Taxpayer Ex. No. 3 (Taxpayer's January 15, 2003 letter to Board of Appeals); Tr. pp. 7-9. Taxpayer's admitted liability is basis of the Denial. Hence, the Department acted properly when it denied Taxpayer's request for a certificate of registration.

WHEREFORE, for the reasons stated above, it is recommended that the Department's Denial be upheld.

April 22, 2010

Julie-April Montgomery
Administrative Law Judge