

ST 02-15

Tax Type: Sales Tax

Issue: Responsible Corporate Officer – Failure to File or Pay Tax

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	IBT # 0000-0000
)	NPL # 0000
JOHN DOE)	
)	
Respondent)	

RECOMMENDATION FOR DISPOSITION

Appearances: James Allen Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Douglas A. Antonik of Antonik Law Offices for John Doe.

Synopsis:

On October 12, 2000, the Department of Revenue (“Department”) issued a Notice of Penalty Liability (“NPL”), number 0000, to John Doe (“respondent”) pursuant to section 3-7 of the Uniform Penalty and Interest Act (“UPIA”) (35 ILCS 735/3-7). The NPL alleges that the respondent was an officer or employee of ABC Materials (“corporation”) who was responsible for wilfully failing to pay the corporation's retailers' occupation taxes (“ROT”) for the months of September, October, November, and December of 1996. The respondent timely protested the NPL. While this case was pending in Administrative Hearings, the parties informed the administrative law judge

that the Department had previously issued an NPL to the respondent for a different time period, and after an administrative hearing in that case, the Department issued a decision that was adverse to the respondent. The respondent filed a complaint in the Circuit Court of Jackson County to contest that decision. In the instant case, the parties agreed to be bound by the Jackson County Circuit Court's determination as to the issue of liability. On December 3, 2001, an Agreed Order was entered in the Jackson County case, and the parties now have a disagreement concerning the effect of that order on the present case. Both parties have filed Motions for Summary Judgment.¹ After reviewing the motions and hearing oral arguments, it is recommended that the Department's Motion for Summary be granted.

FINDINGS OF FACT:

1. On October 12, 2000, the Department issued a Notice of Penalty Liability ("NPL") number 0000 to the respondent that proposed a total penalty liability of \$8,680.43, including tax, interest, and penalty, for failure to pay ROT for the following months: September, October, November, and December of 1996.

2. On June 4, 2001, the Circuit Court of Jackson County entered a Memorandum of Judgment in the case of Kenneth V. Buzbee v. Department of Revenue, Docket number 00-MR-47. The Jackson County case involved the same parties who are involved in the present case and concerned the same issues of whether the respondent was responsible for filing the corporation's returns and paying the taxes, and whether he willfully failed to do so. The Jackson County case involved a different time period than the present case.

¹ The respondent's motion was titled "Motion to Determine Effect of Circuit Court Agreed Order," but he agreed at the hearing on the motion that it should be construed as a Motion for Summary Judgment.

3. The Jackson County court found that the respondent assumed the management of the corporation “in the fall of 1995 and at that time placed himself in a situation similar to that of the Branson Plaintiff.”² The court found the respondent was liable for taxes owed for the third and fourth quarters of 1995.

4. On June 13, 2001, the Department conceded that in the present case concerning NPL number 0000, the respondent does not owe the liability for the time periods at issue except for the first 10 days of September 1996. (Dept. Motion p. 1)

5. On June 13, 2001, the Department agreed to be bound by the final decision of the Jackson County case with respect to the issue of liability. (Order dated 6/13/01)

6. On June 20, 2001, the respondent “agreed to be bound as to the issue of liability as it is finally established in the [Jackson County] case.” (Resp. letter dated 6/20/01)

7. On December 4, 2001, the parties entered an Agreed Order in the Jackson County case that provides as follows:

“IT IS HEREBY ORDERED that the Circuit Clerk’s Office of Jackson County, Illinois, is ordered to deliver to the Illinois Department of Revenue, through the Illinois Attorney General, the sum of \$17,713.49 from the monies being held as a bond submitted by the Plaintiff, John Doe, with the remaining bond proceeds released to Doe. The parties hereto agree that in lieu of either party filing an appeal, the aforementioned sum is agreed upon to satisfy the debt to the Illinois Department of Revenue.”

² The Branson plaintiff refers to the plaintiff in Branson v. Department of Revenue, 168 Ill.2d 247 (1995), where the court found the plaintiff personally liable for the corporation’s taxes.

CONCLUSIONS OF LAW:

The respondent contends that the Agreed Order in the Jackson County case satisfies any alleged liability in the present case based on the language in the Order that states “the aforementioned sum is agreed upon to satisfy the debt to the Illinois Department of Revenue.” The respondent argues that this language is not ambiguous and indicates that the liability owed in this case was included in the Agreed Order and should be dismissed. The respondent contends that all of the parties involved in these proceedings were aware of both cases while they were pending, and therefore they knew that the Agreed Order included the liability in this case.

The Department contends that the Agreed Order does not apply to the liability in this case. The Department states that an agreed order is considered to be a contract between the parties to the litigation, and it must first be determined whether the language at issue is ambiguous. Elliott v. L.R.S.L. Enterprises, Inc., 226 Ill.App.3d 724 (2nd Dist. 1992); Quake Construction, Inc. v. American Airlines, Inc., 141 Ill.2d 281 (1990). If the language is not ambiguous, then the effect of the contract must be based upon the ordinary meaning of the words. Lenzi v. Morkin, 103 Ill.2d 290 (1984). The Department contends that the language of the order is not ambiguous, and the ordinary meaning of the word “debt” is “something owed.” (Webster’s Seventh New Collegiate edition). The Department argues that the proposed liability for NPL number 7362 was not owed, payable or collectible upon the issuance of the Agreed Order because the liability had not been finalized. The Department contends that the only “debt” to which the Agreed Order applies is the debt that was at issue in the Jackson County case.

The Department also states that the Agreed Order “must be interpreted in its entirety, considering all the facts and circumstances surrounding its execution, as well as all pleadings and motions from which it emanates.” (citing Elliott at 729.) The Department states that the amount that the respondent paid under the Agreed Order is exactly the amount that the court had determined was due on the prior NPL and Notice of Deficiency in that case. The Department contends that NPL number 0000 was not at issue in the Jackson County case, and there is no reference to NPL number 0000 or the liability periods covered by it in the court’s Memorandum of Judgment issued on June 4, 2001. The Department therefore contends that the word “debt” in the Agreed Order refers only to the debt that was ever at issue in that proceeding, and not the liability relating to NPL number 0000. Furthermore, although the parties in this proceeding were aware of the Jackson county case, the Department argues that the record does not show that the parties in the Jackson county case were aware of this proceeding.³ Therefore, the Department contends that the Agreed Order does not apply to the liability in this case.

A contract is not rendered ambiguous simply because the parties disagree as to the meaning of its terms. Elliott at 730. As both parties in this case have indicated, the term “debt” in the Agreed Order is not ambiguous even though the parties disagree on its meaning. The term “debt” is defined as a sum of money due by certain and express agreement, or a specified sum of money owing to one person from another. (Black’s Law Dictionary 363 (5th ed. 1979).) The term was used in the Agreed Order that was entered in a proceeding that involved an NPL and Notice of Deficiency that covered a time period that was different from the NPL in the present case. The apparent purpose of

³ Attorneys from the Illinois Attorney General’s office represented the Department in the Jackson County case. The attorney who represents the Department in this case is a Special Assistant Attorney General who works for the Department.

that order was to determine the parties' responsibility with respect to the NPL and Notice of Deficiency that were at issue in that case. Nothing in the Agreed Order refers to the NPL that is at issue in the present case. Nothing in the order indicates that the parties intended to include the current NPL. If the parties had intended to include it, they would have made specific reference to it. The term "debt" as used in the order refers to the amount owed as a result of the liability in that case, and therefore the liability in the present case was not dismissed in that proceeding.

Recommendation:

For the foregoing reasons, it is recommended that the Department's Motion for Summary Judgment be granted, the respondent's Motion for Summary Judgment be denied, and the respondent's liability be upheld for the first 10 days of September 1996.

Linda Olivero
Administrative Law Judge

Enter: July 16, 2002