

ST 95-31  
Tax Type: SALES TAX  
Issue: Books and Records Insufficient

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

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THE DEPARTMENT OF REVENUE ) Case No.  
OF THE STATE OF ILLINOIS ) Reg. No.  
v. ) NTL No.  
XXXXXX )  
Taxpayer ) John E. White,  
Administrative Law Judge  
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RECOMMENDED DECISION

SYNOPSIS: This matter arose after Taxpayer ("taxpayer") filed a protest to the Notice of Tax Liability ("NTL") XXXXX, which was issued by the Illinois Department of Revenue ("Department"). That NTL assessed tax on taxpayer's transactions during the period beginning October 1, 1990 through and including November 30, 1992

The hearing in this matter was held at the Department's Office of Administrative Hearings in Chicago on July 13, 1995. At hearing, taxpayer presented documentary and testimonial evidence through one of its officers. I have considered the evidence adduced at that hearing, and I am including in this recommendation specific findings of fact and conclusions of law. I recommend that the issue be resolved in favor of the Department.

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 and/or Determination of Tax Due under the certificate of the Director of the Department. Department Ex. No. 1; Hearing Transcript ("Tr.") p. 5.

2. Most of the tax liability at issue in this matter involves the Department's assessment of Use Tax, 35 ILCS 105/1 et seq., on taxpayer's

purchases of assets or consumable supplies used in its business. See Taxpayer Ex. No. 1, Exhibit A; Tr. p. 9.

3. Additionally, taxpayer was assessed Retailers' Occupation Tax, 35 ILCS 120/1 et seq., for sales taxpayer made during the audit period. Taxpayer Ex. No. 2, at 3.

4. Taxpayer introduced no evidence that the transactions on which use tax was assessed were exempt from taxation.

5. Taxpayer's exhibits reveal that taxpayer did not pay use tax to the retailers which sold taxpayer consumable supplies. Taxpayer Ex. No. 1, Exhibit A.

6. Taxpayer introduced no documentary evidence that it paid use tax to the retailers from whom it made purchases of the assets assessed.

7. Taxpayer's argument that it wrote off \$73,000.00 in sales as bad debts was not supported by any documentary evidence of such a write-off, nor did taxpayer's witness tie any specific debts allegedly written-off to the transactions on which ROT was assessed. See Taxpayer Ex. No. 1, Tr. pp. 8-9.

CONCLUSIONS OF LAW: Section 7 of the Retailers' Occupation Tax Act ("ROTA"), provides, in part:

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be on upon the person who would be required to remit the tax to the Department if such transaction is taxable.

Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability as provided by Sections 4 and 5 of this Act shall be preserved until the expiration of such period unless the Department, in writing, shall authorize their destruction or disposal prior to such expiration.

35 ILCS 120/7. The Use Tax Act ("UTA") incorporates section 7 of the ROTA. 35 ILCS 105/12. Additionally, section 11 of the UTA provides that:

[E]very person using in this State tangible personal property purchased at retail from a retailer on or after the effective date hereof shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered herein and may examine any books, papers, records, documents or memoranda of any retailer or purchaser bearing upon the sales or purchasers of tangible personal property, the privilege of using which is taxed hereunder, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

35 ILCS 105/11.

In this matter, taxpayer failed to present any documentary evidence supporting its claim that use tax was improperly assessed. Taxpayer does not assert that use tax was not due on its purchases. Rather, its argument seems to be that, but for a fire which destroyed taxpayer's invoices (see id.; Tr. pp. 14-15), it would have been able to show that it paid use tax directly to the retailers from whom it made purchases of tangible personal property. See Taxpayer Ex. No. 1 ("It is our policy . . . that Use Tax be paid whenever deemed appropriate. . . .") (emphasis added); Tr. pp. 14-15.

In this case, however, taxpayer's argument that it paid use tax on the transactions assessed directly to the retailers, is not borne out by the documents taxpayer introduced at hearing. Taxpayer's hearing exhibits consist largely of documents prepared by the Department's auditor during the course of the audit of taxpayer's business. See Taxpayer Ex. Nos. 1, 2. Exhibit A to Taxpayer Ex. No. 1 identifies specific invoices the auditor reviewed which document taxpayer's purchases of consumable supplies.<sup>1</sup> The auditor's schedule of those invoices, which invoices taxpayer obviously had in its possession during the audit, reflects that taxpayer did not pay use tax directly to the retailers from whom taxpayer purchased those consumable supplies.

With regard to taxpayer's purchase of fixed assets, Taxpayer Ex. No.

1, Exhibit A, reflects that the auditor was unable to locate and review invoices to determine whether taxpayer paid use tax to the retailers regarding those purchases.<sup>2</sup> The logical persuasiveness of taxpayer's assertion that the asset invoices would have shown that taxpayer paid use tax directly to the retailers is significantly reduced because taxpayer did not similarly make use tax payments directly to the retailers from whom taxpayer purchased its consumable supplies. Taxpayer's Ex. No. 1, Exhibit A.

Finally, taxpayer asserted that it wrote off bad debts during 1993 and 1994. Taxpayer Ex. No. 1; Tr. p. 14-15. Taxpayer's witness, however, never attempted to tie any sales on which ROT was assessed to the debts allegedly written off. Taxpayer may well have written off large amounts of debts after the audit period, however, without some showing that the debts written off involved taxpayer's sales on which ROT was assessed, the fact, as alleged, is irrelevant to any matter at issue here. Moreover, Taxpayer Ex. No. 2 indicates that ROT was assessed on taxpayer's sales for which taxpayer charged and collected tax from its customers.

Once the Department has established its prima facie case, the burden shifts to the taxpayer to show, through evidence which is consistent, probable and identified with its books and records, that the transactions are not taxable. *A.R. Barnes v. Department of Revenue*, 173 Ill. App. 3d 826, 833-34. Oral testimony alone, without sufficient corroborative evidence, will not rebut the Department's prima facie case. *Id.*, at 835. The only documentary evidence taxpayer presented at hearing were the Department's own audit schedules. Those schedules revealed that, based on the books and records available for review, taxpayer did not pay use tax on its purchases directly to the retailers. The documentary evidence introduced by taxpayer supports the prima facie correctness of the Department's determination of tax assessed in this matter. The other

documents offered by taxpayer consisted merely of its written argument that the tax was improperly quantified or assessed. Those arguments are not supported by facts contained in the record.

Based on my review of all the evidence introduced at hearing, I conclude that taxpayer has not rebutted the prima facie evidence of the Department. I recommend, therefore, that the Director finalize the Notice of Tax Liability as issued.

Administrative Law Judge

Date of Entry

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1. Under the column heading titled, "Document Number", the auditor identified the invoice number associated with each purchase reviewed.
  2. I understand the auditor's entries of "N/A", under the column heading "Document Number", to mean that the invoices regarding the asset purchases were not available.