

**Issue:** Books and Records Insufficient  
Unreported/Underreported Receipts (Fraud)

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on June 2, 1993, for ROT tax covering the period December 1, 1989 to October 31, 1991. At issue are the questions: (1) whether the Department can retroactively issue a Notice of Tax Liability to a taxpayer when the taxpayer applies for a new registration number after the commencement of a Department audit; and (2) did the

taxpayer present sufficient evidence to overcome Department's *prima facie* case? Following the submission of all evidence and a review of the record, it is recommended that the issues be resolved in favor of the Department.

**Finding of Facts:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the correction of returns, showing a total liability due and owing in the amount of \$118,409.00 and the revised audit completed September 1, 1995 reducing the tax liability to \$45,756.00. Dept. Ex. No. 2, 3 & 4 and Dept. Ex. No. 6; Tr. pp. 5-7

2. PRESIDENT is president of TAXPAYER Tr. pp. 11-12

3. TAXPAYER operated the business from December 1, 1989 to the present. Tr. pp. 12, 14, 16

4. Notice of sale/purchase of business assets was filed on September 27, 1991. Tr. pp. 12-13

5. Taxpayer applied for Illinois registration number 2291-4315 within the audit period but after the audit was in progress. Tr. p. 20

6. The audit period was December 1, 1989 to October 31, 1991. Dept. Ex. No. 1

## **Conclusions of Law:**

### **Issue No. 1**

Whether the corporation that the NTL was issued against is liable for taxes due during the audit period regardless of whether they had a registration number issued? I find that TAXPAYER is responsible and liable for the tax due based on the fact that they are the corporation that did business during the audit period. The taxpayer argues that they did not receive a registration number and therefore the Notice of Tax Liability should be dismissed. I find nothing in the Retailers Occupation Tax Act that ties a registration number to a tax liability. The significance of the registration number to is an aid to the Department to identify who is in business. Its the person in business who is responsible not the registration number. The facts in the instant case are undisputed that this taxpayer was in business during the audit period and therefore responsible for all taxes due.

### **Issue No. 2**

The second issue presented was whether taxpayer overcame the Department's *prima facie* case. The Retailers' Occupation Tax Act, 35 ILCS 120/4 states in pertinent part:

Sec. 4. As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information, which return so corrected by the

Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.

If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed. The Department shall [or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may] issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 10% thereof: Provided, that if the incorrectness of any return or returns as determined by the Department is due to fraud, said penalty shall be 30% of the tax due...

Proof of such notice of tax liability by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy of the Department's record relating thereto in the name of the Department under the Certificate of the Director of Revenue. Such reproduce copy shall without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be *prima facie* proof of the correctness of the amount of tax due, as shown therein.  
[Emphasis Added]

In the instant case the Department, under the Certification of the Director, introduced its audit package (Dept. Ex. Nos. 1, 2, 3, 4, and 6). A reaudit was performed which reduced the tax liability (Dept. Ex. No 6). The amount of tax and penalty established by reaudit examination is deemed *prima facie* true and correct. The Department having established its case, the burden shifted to the taxpayer to overcome it by producing competent evidence as identified with taxpayer's books and records. Masini v. Department of Revenue, 60 Ill. App. 3d 11, 376 N.E. 2d 324 (1st Dist. 1978). In the instant case, no documentary evidence or testimony was proffered on behalf of the taxpayer to rebutt the Departments *prima facie* case. Thus, the taxpayer failed to prove the Department's audit examination was

incorrect, and the amounts established, therefore, remain as true and correct.

The taxpayer's only argument is that the Department had no authority to use a new registration number retroactively. That argument is without merit since taxpayer admitted they ran the business during the audit period. Taxpayer clearly did not provide sufficient evidence to overcome the Department's *prima facie* case.

Taxpayer has failed to demonstrate through testimony, exhibits or argument any evidence to overcome the Department's *prima facie* case establishing tax liability herein. Accordingly, the amounts set forth in Department's revised amended audit, Department's Exhibit No. 6, stands un rebutted and correct. On the foundation of the foregoing findings of fact and conclusions of law, it is therefore recommended that the revised amended audit be finalized as to this taxpayer plus penalties and interest, if any, to date.

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Daniel D. Mangiamele  
Administrative Law Judge