

UT 13-03

Tax Type: Use Tax

Tax Issue: Sales v. Resale Issues

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC BUSINESS

Taxpayer

Docket # XXXX

Acct ID: XXXX

Letter ID: XXXX

Letter ID: XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe and Mary Black, *pro se*, for ABC Business.

Synopsis:

The Department of Revenue (“Department”) audited the accounts of ABC Business (“taxpayer”). The Department issued two Notices of Tax Liability (“NTLs”) to the taxpayer that assessed use taxes on purchases that the taxpayer made during the audit period. The taxpayer filed protests in response to the NTLs, and an evidentiary hearing was held. During the hearing, the taxpayer argued that it does not owe use taxes on the purchases because the items were purchased for resale. For the following reasons, it is recommended that this matter be resolved partially in favor of the taxpayer.

FINDINGS OF FACT:

1. ABC Business is a general partnership with John Doe and his wife, Jane Doe, each a 50% owner. (Dept. Ex. #1, p. 14; Tr. p. 31)
2. The partnership owns and operates the business known as XYZ Business (“XYZ Business”). XYZ Business is a dealership that buys, sells, and leases new and used mobile homes. (Dept. Ex. #1; Taxpayer Ex. #1, #4; Tr. pp. 9, 16, 20, 27)
3. XYZ Business is also a mobile home park. It is located in Anywhere, Illinois. The mobile home park has 550 homes. The taxpayer leased 14 of the mobile homes. (Dept. Ex. #1; Tr. pp. 16, 20, 23, 27)
4. The Department conducted an audit of the taxpayer for the three year time period of January 1, 2008 through December 31, 2010. The auditor examined the taxpayer’s purchases that were used in Illinois during the audit period. The auditor reviewed all of the taxpayer’s invoices for which no tax was paid and listed each one of them in the audit report. (Dept. Ex. #1, pp. 12-39)
5. On May 19, 2011, the Department issued two Notices of Tax Liability to the taxpayer that assessed use tax, plus penalties and interest, for each of the purchases for which no tax was paid. The Department’s determination was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, pp. 1-2, 4)
6. The taxpayer provided a “Job Transaction Detail Report” (“Report”) for some of its mobile homes. Each Report includes a list of all the improvements and expenses related to the home (including the date of purchase, vendor and invoice number) and the purchase agreement signed by the customers who purchased the

homes. The tax liability should be reduced for items that were purchased and included in homes that the taxpayer sold. (Dept. Ex. #1; Taxpayer Ex. #3; Tr. pp. 23, 27)

7. For the homes that the taxpayer leased, the taxpayer did not provide documentation to show that purchases relating to those homes qualify for an exemption from the use tax. (Tr. p. 20)

CONCLUSIONS OF LAW:

Under the Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property “purchased at retail” from a retailer. 35 ILCS 105/3. Under the “Definitions” section of the Act, the term “purchase at retail” means “the acquisition of the ownership of or title to tangible personal property through a sale at retail.” 35 ILCS 105/2. The definition of the term “sale at retail” includes the following: “‘Sale at retail’ includes any such transfer made for resale unless made in compliance with Section 2c of the Retailers' Occupation Tax Act, as incorporated by reference into Section 12 of this Act.” *Id.*

Section 2c of the Retailers' Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*) provides, in relevant part, as follows:

If the purchaser is not registered with the Department as a taxpayer, but claims to be a reseller of the tangible personal property in such a way that such resales are not taxable under this Act or under some other tax law which the Department may administer, such purchaser ... shall apply to the Department for a resale number. ...

Upon approval of the application, the Department shall assign a resale number to the applicant and shall certify such number to him. ...

Except as provided hereinabove in this Section, a sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that

number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. *This presumption may be rebutted by other evidence that all of the seller's sales are sale [sic] for resale, or that a particular sale is a sale for resale.* Emphasis added; 35 ILCS 120/2c.

Section 12 of the Act incorporates by reference section 4 of the ROTA, which provides that the Department shall determine the amount of tax due “according to its best judgment and information.” 35 ILCS 105/12; 120/4. A certified copy of the Department’s determination of the amount of tax due “shall, without further proof, be admitted into evidence... and shall be prima facie proof of the correctness of the amount of tax due, as shown therein.” *Id.*

Once the Department has established its *prima facie* case by submitting the certified copy of the Department’s determination into evidence, the burden shifts to the taxpayers to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove his or her case, a taxpayer must present more than testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support his or her claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

The taxpayer has presented documentary evidence to show that some of the items it purchased were not “purchased at retail” because the items were purchased for resale in accordance with section 2c of the ROTA. Some of the items that the taxpayer purchased were used on mobile homes that were subsequently sold, and the taxpayer has paid the

tax related to those sales. For items that were purchased and included in homes that were sold, the amount of the tax, excluding interest and penalties, on NTL Letter ID: XXXX should be reduced by \$XXXX, and the amount of the tax, excluding interest and penalties, on NTL Letter ID: XXXX should be reduced by \$XXXX.

For the XX homes that the taxpayer leased, the taxpayer owes use tax on the purchases for the improvement and maintenance of those leased mobile homes because the taxpayer did not present sufficient documentary evidence to substantiate any exemption under the Use Tax Act.

Recommendation:

For the foregoing reasons, it is recommended that the amount of the tax on NTL Letter ID: XXXX be reduced by \$XXXX, and the amount of the tax on NTL Letter ID: XXXX be reduced by \$XXXX.

Linda Olivero
Administrative Law Judge

Enter: May 9, 2013