

HT 18-01

Tax Type: Hotel Operators Occupation Tax

Tax Issue: Denial of Registration Number

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

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

v.

**JANE DOE ,
Taxpayer**

**No. XX-ST-XXX
Letter ID XXXXX
DENIAL OF REGISTRATION
CERTIFICATE**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Konstantina Tsatsoulis and Seth Schriftman, Special Assistant Attorneys General, on behalf of the Illinois Department of Revenue; Akram Zanayed of Akram Zanayed & Associates on behalf of JANE DOE.

Synopsis:

JANE DOE (“Taxpayer”) applied to the Department of Revenue (“Department”) for a certificate of registration for Hotel Operators’ Occupation Tax. In response to the Taxpayer’s application, the Department issued a Taxpayer Notification Registration/Renewal Denial indicating that the Taxpayer’s application request was denied on the basis of records showing that the Taxpayer had been an officer of a retailer registered with the State of Illinois that has an outstanding liability owed to the State. Taxpayer timely protested the Department’s Notification Registration/Renewal Denial

and requested a hearing. A hearing to consider this matter was held on August 3, 2017 during which the Taxpayer and her husband, JOHN DOE, testified on behalf of the Taxpayer and both the Department and the Taxpayer submitted documentary evidence. After reviewing the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, the following findings of fact and conclusions of law are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's Taxpayer Notification Registration/Renewal Denial denying the Taxpayer a certificate of registration for Hotel Operators' Occupation Tax issued May 18, 2016. Department Exhibit ("Ex.") 2.
2. ABC GAS INC. ("ABC GAS"), an Illinois domestic corporation having its principal place of business in CITY, Illinois was a retailer engaged in the retail sale of gasoline and other products and the performance of automobile repair services from 1994 until 2012. Tr. p. 30; Department Ex. 3, 4; Taxpayer's Ex. 6. ABC GAS commenced doing business in August, 1994 and ceased doing business in 2012. Department Ex. 3, 4.
3. On November 7, 1994, ABC GAS submitted an application for certificate of registration on form NUC-1, Illinois Business Registration. Department Ex. 3. Taxpayer is named as a corporate officer, President, in this application for certificate of registration. *Id.* This document also names JOHN DOE as the Secretary and Treasurer of ABC GAS. *Id.* The information contained in this document was

submitted under oath by JOHN DOE who swore that the information contained in this document was true and correct. Department Ex. 3.

4. During the calendar years 2007 through 2009, ABC GAS incurred a tax liability to the State of Illinois in the amount of \$XXX,XXX.XX which has never been paid. Tr. pp. 49, 50; Department Ex. 5. As of May 18, 2016, ABC GAS had an outstanding unpaid balance due to the Department of \$XXX,XXX.XX for Illinois Sales and Use Tax and E911 Surcharge, Illinois Withholding Income Tax and Illinois Business Income Tax. Department Ex. 2. This liability has not been paid and remains due and owing. Tr. pp. 49, 50. No payment plan or other agreement has been reached with the Department to pay all or any portion of this unpaid liability. Tr. pp. 49, 50, 54.
5. JOHN DOE was the owner of ABC GAS throughout the company's existence, from 1994 until 2012 when the company ceased business operations. Tr. pp. 30, 53; Department Ex. 4; Taxpayer's Ex. 6. JOHN DOE is married to MARY DOE a/k/a the Taxpayer, JANE DOE (see Department Ex. 1). Tr. pp. 29, 65. JOHN DOE and the Taxpayer, JANE DOE have been married since the late 1980s. Tr. p. 66.
6. Taxpayer is the operator of a hotel located in Illinois and has been engaged in the operation of this hotel for 15 years. Tr. p. 60.
7. On May 18, 2016, the Department issued to the Taxpayer a Taxpayer Notification Registration/Renewal Denial denying the Taxpayer a registration for Hotel Operators' Occupation Tax effectively barring the Taxpayer from continuing to operate a hotel in Illinois. Department Ex. 2. The reason given for the Department's registration/renewal denial was the unpaid liability of ABC GAS which, as noted above, on May

18, 2016 had an outstanding unpaid tax liability to the Department in the amount of \$XXX,XXX.XX. Department Ex. 2.

8. The Department's records indicate that the Taxpayer was shown as the President of ABC GAS on Renewal Applications for State of Illinois Liquor License from 2006 through 2012, and that a "Change of Corporate Officer" form indicating that she was no longer President was not filed until 2012. Department Ex. 7.
9. During the hearing, the Taxpayer introduced documentary evidence that JOHN DOE, her husband, acted as an officer by executing applications, or was designated as an officer of ABC GAS in corporate minutes and on applications by the company for local liquor, vending and business licenses and on the company's 2009 Federal income tax return. Taxpayer's Ex. 1-6. None of this documentary evidence indicates whether or not the Taxpayer was also an officer of the company.
10. The Taxpayer testified that she had no involvement in the business of ABC GAS and never was, or agreed to be, an officer of this company. Tr. pp. 58-61, 63. During the hearing, the Taxpayer introduced into the record a letter she testified documented her lack of affiliation with ABC GAS. Tr. pp. 64, 65; Taxpayer's Ex. 7. The document submitted for this purpose states as follows: "I, JANE DOE, currently an officer of ABC GAS INC., hereby resign from all offices of ABC GAS INC. Said resignation shall be effective immediately." Taxpayer's Ex. 7. This document is dated August 1, 2008. *Id.*

Conclusions of Law:

Section 145/5 of the Hotel Operators' Occupation Tax Act, 35 ILCS 145/5 provides as follows:

It shall be unlawful for any person to engage in the business of renting, leasing or letting rooms in a hotel in this State without a certificate of registration from the Department.

All of the provisions of Sections 2a and 2b of the Retailers' Occupation Tax Act, in effect on the effective date of this Act, as subsequently amended, shall apply to persons in the business of renting, leasing or letting rooms in a hotel in this State, to the same extent as if such provisions were included herein.

35 ILCS 145/5

On May 18, 2016, the Department issued to the Taxpayer a Taxpayer Notification Registration/Renewal Denial letter denying the Taxpayer's request for a certificate of registration required to operate a hotel pursuant to section 145/5 noted above. The Taxpayer has operated a hotel in Illinois for 15 years (Tr. p. 60), and the effect of the Department's denial of her request for a certificate of registration to operate a hotel in Illinois is to make a continuation of her operation of a hotel in this State illegal. The basis for the Department's determination was its finding that the Taxpayer was an officer of a corporation that has unpaid tax debts owed to the State. The Taxpayer has protested the Department's determination. The issue presented in this case is whether the Department properly denied the Taxpayer's request to renew her Hotel Operators' Occupation Tax registration based upon its finding that the Taxpayer was an officer of another corporation having unpaid tax debts owed to the State.

As noted above, section 145/5 of the Hotel Operators' Occupation Tax Act incorporates by reference section 120/2a of the Retailers' Occupation Tax Act ("ROTA") which states, in relevant part, as follows:

The Department may deny a certificate of registration to any applicant if a person who is named as ...a corporate officer of the applicant on the application for the certificate of registration is or has been named as ... a corporate officer on the application for the certificate of

registration of another retailer that is in default for moneys due under this Act or any other tax or fee Act administered by the Department.
35 ILCS 120/2a

The record in this case indicates that ABC GAS INC. (“ABC GAS”), an Illinois corporation having its principal place of business in CITY, Illinois until it ceased operating in 2012, has \$XXX,XXX.XX in unpaid tax debts owed to the State of Illinois. Department Ex. 2. During the hearing in this case, the Department introduced a copy of the application for registration under the ROTA, form NUC-1 Illinois Business Registration filed by ABC GAS to apply for a certificate of registration for this company when it commenced operations in 1994. Department Ex. 3. MARY DOE a/k/a JANE DOE (see Department Ex. 1) is named as the President of ABC GAS in this document.

Id.

During the hearing in this case, held on August 3, 2017, the Department introduced its Taxpayer Notification Registration/Renewal Denial denying the Taxpayer’s request to register as a hotel operator based upon its determination that she was an officer of a delinquent corporate taxpayer and Notices of Tax Liability evidencing this corporate tax delinquency. Department Ex. 2, 5. The Department’s determination is supported by its exhibit 3 which is a copy of ABC GAS’s application for registration naming the Taxpayer as the President of this company at the time the company’s application for registration was filed on November 7, 1994. Section 4 of the ROTA (incorporated by reference into the Hotel Operators’ Occupation Tax Act at section 145/7 of the Hotel Operators’ Occupation Tax Act) provides that the Department’s determination regarding a tax liability is *prima facie* correct. 35 ILCS 120/4.

The burden shifts to the taxpayer contesting the Department's determination to overcome the presumption of validity of the Department's finding once the Department has established its *prima facie* case by submitting its determination of liability into evidence. Clark Oil & Refining v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987). A taxpayer cannot overcome the Department's *prima facie* case merely by denying the accuracy of the Department's assessment. Smith v. Department of Revenue, 143 Ill. App. 3d 607 (5th Dist. 1986). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Documentary proof is required in order to prevail against a determination of liability by the Department. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990).

During the hearing, the Taxpayer testified that she was never an officer of ABC GAS and had no involvement in any of the company's affairs. Tr. pp. 58-61, 63. As noted above, this testimony alone is insufficient to rebut the Department's *prima facie* case. Mel-Park Drugs, supra.

In support of her testimony, the Taxpayer presented what the Taxpayer purports to be documentary evidence of her lack of affiliation with ABC GAS. Tr. pp. 64, 65; Taxpayer's Ex. 7. This documentary evidence consists of a letter which reads as follows:

RESIGNATION OF JANE DOE

I, JANE DOE, currently an officer of ABC GAS INC., hereby resign from all offices of ABC GAS INC. Said resignation shall be effective immediately.

Taxpayer's Ex. 7.

This document was signed by JANE DOE and was dated August 1, 2008.

With respect to this documentary evidence, the Taxpayer testified as follows:

Q. At some point in 2008, you learned on the annual report you were listed as an officer, correct?

A. Yes.

Q. You were never an officer?

A. Never.

Q. So you wanted to make it very clear you were not an officer?

A. Right.

Q. You signed that document to show that whatever it showed on the annual report, you were never an officer, correct?

A. Yes.

Tr. pp. 64, 65.¹

Despite the aforementioned testimony, a perusal of the documentary evidence propounded by the Taxpayer (Taxpayer's Ex. 7) to support her assertions that she was never a corporate officer indicates that it fails to corroborate her claim. On the contrary, this documentation, dated August 1, 2008, directly contradicts the Taxpayer's testimony that she was never an officer of ABC GAS by expressly describing the Taxpayer as "currently an officer of ABC GAS INC." on that date. Rather than corroborating her claim that she was not an officer of ABC GAS, the documentation presented constitutes an express admission that the Taxpayer was an officer of ABC GAS and shows that she did not resign from office as an officer of ABC GAS until August 1, 2008, the date this document was executed. *Id.* In light of this admission, I do not find credible the Taxpayer's testimony denying that she was an officer of ABC GAS prior to the date her letter of resignation was signed, August 1, 2008. The credibility of her claim is further undermined by the fact that she was named as President on the company's application for registration and that her husband, JOHN DOE, who was named as Secretary and

¹ Other documentary evidence, including corporate minutes dated August 1, 2008, presented by the Taxpayer established that JOHN DOE, the Taxpayer's husband, was an officer and owner of ABC GAS, that he signed agreements with local authorities in this capacity along with the company's 2009 Federal income tax return, and that he was involved in the operation of this business, but does not indicate whether or not the Taxpayer was also an officer of the company and involved in the company's business operations prior to August 1, 2008. Taxpayer's Ex. 1-6.

Treasurer, attested that all of the information contained in the registration application was true and correct. Department Ex. 3.

Moreover, even if the Taxpayer's letter of resignation were accepted as evidence that the Taxpayer was not an officer on August 1, 2008, the date that this document was executed, it does not refute documentary evidence plainly showing that the Taxpayer was named as the President of ABC GAS on the company's application for registration filed in 1994, and thus barred from licensure by the plain language of section 2a of the ROTA barring registration of persons named as officers on applications for registration by corporate taxpayers that are in default.

In sum, under section 2a of the ROTA, incorporated into the Hotel Operators' Occupation Tax Act pursuant to section 145/5 of that Act, a person can be denied licensure if that person has been "named as ...a corporate officer on the application for the certificate of registration of another retailer that is in default" for liabilities due the state of Illinois. The record contains evidence showing that ABC GAS is in default to the state of Illinois, having incurred an unpaid liability in the amount of \$XXX,XXX.XX. Department Ex. 2. The Taxpayer has admitted that this liability was incurred by ABC GAS and has not been paid. Tr. p. 66. The record also contains documentary evidence from the Department's records that the Taxpayer is shown as the President of ABC GAS on ABC GAS's NUC-1 Illinois Business Registration application for registration.² Under section 2a of the ROTA, the fact that the Taxpayer is named as a corporate officer on ABC GAS's application for registration constitutes a sufficient basis for the

² While Form REG-1, Illinois Business Registration Application is currently prescribed for use to apply for registration with the Department for a business registration, Form NUC-1, Business Registration was used for this purpose prior to 2004. See Illinois Department of Revenue Bulletin No. FY 2004-22, 1/1/04.

Department to deny a certificate of registration to the Taxpayer. For the reasons enumerated above, I do not find credible the Taxpayer's assertion that she was indicated to be President of ABC GAS on this document in error. Given the foregoing evidence, and the absence of documentary evidence rebutting the Department's determination, I find that the Taxpayer has failed to overcome the Department's *prima facie* case and recommend that the Department's denial of a Hotel Operators' Occupation Tax certificate of registration be upheld.



Ted Sherrod
Administrative Law Judge

Date: September 6, 2017