

ST 18-09

Tax Type: Sales Tax

Tax Issue: Unreported/Underreported Receipts (Non-Fraudulent)

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

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

v.

THE ABC, INC.

Taxpayer

Docket # 00-ST-000
Acct ID: 0000-0000

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; George Harasz, *pro se*, for The ABC, Inc.

Synopsis:

The ABC, Inc. (“taxpayer”) was registered with the Department of Revenue (“Department”) and filed ST-1’s, Sales and Use Tax and E911 Surcharge Returns. The taxpayer ceased filing returns, and based on prior returns, the Department estimated the retailers’ occupation tax (“ROT”) liability for the taxpayer for the months of April 2014 through December 2014. The Department issued nine Notices of Tax Liability (“NTLs”) to the taxpayer for those months. After the taxpayer received the NTLs, the taxpayer filed ST-1’s for each of the nine months at issue showing a liability of zero for each

month. The taxpayer timely protested the NTLs, and an evidentiary hearing was held during which the taxpayer's owner participated by telephone. During the hearing, the taxpayer argued that the NTLs should be dismissed because the taxpayer ceased operating its business in March 2014 and had zero liability for all the months at issue. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On February 12, 2013, the taxpayer was organized as an Illinois corporation. (Dept. Ex. #1, p. 33)
2. The taxpayer was in the business of breeding and selling puppies. (Recording¹)
3. The taxpayer operated the business out of the owner's home in ANYWHERE, Illinois. (Recording)
4. Near the end of 2013, the taxpayer's owner had decided to close the business. The taxpayer stopped breeding the puppies, and during the beginning of 2014, the taxpayer raised the puppies that were already born. Once the puppies were 8 weeks old they could go to their homes. (Taxpayer Ex. #1; Recording)
5. The last time that the XYZ VETERINARY MEDICAL CENTER saw one of the taxpayer's puppies was on March 11, 2014. This was the last puppy that the taxpayer sold. (Taxpayer Ex. #2; Recording)
6. The taxpayer had part-time employees, and the last one stopped working for the taxpayer on December 31, 2013. (Recording)
7. The taxpayer was involuntarily dissolved on July 10, 2015. (Dept. Ex. #1, p. 33)

¹ The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

8. On February 5, 2015, the Department issued nine Notices of Tax Liability to the taxpayer that assessed additional tax, penalties, and interest for ROT for the months of April 2014 through December 2014. The NTL's were admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1, pp. 4-12)

CONCLUSIONS OF LAW:

The Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. Sections 4 and 5 of the ROTA provide that the certified copy of the corrected return issued by the Department "shall be prima facie proof of the correctness of the amount of tax due, as shown therein." 35 ILCS 120/4; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to overcome this presumption of validity. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 832 (1st Dist. 1988). To prove its case, the taxpayer must present more than testimony denying the accuracy of the Department's assessment. See Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990); A. R. Barnes & Co., *supra*, at 833-34. The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The taxpayer has presented sufficient evidence to show that it ceased operating its business during the nine months at issue. The taxpayer's owner explained that when he decided to close his business, he contacted his attorney. His attorney advised him that there was a process for dissolving the corporation, but if the taxpayer did nothing the

State of Illinois would eventually involuntarily dissolve the corporation. (Taxpayer Ex. #1) The taxpayer's attorney thought this was a good idea in the event that the owner changed his mind and decided to continue with the business. The taxpayer's veterinary verified that the last time the taxpayer brought a puppy in for a health check was on March 11, 2014. (Taxpayer Ex. #2) The evidence supports a finding that the taxpayer ceased operating by the end of March 2014.

Recommendation:

For the foregoing reasons, it is recommended that the nine Notices of Tax Liability for the months of April 2014 through December 2014 be dismissed.

Linda Olivero
Administrative Law Judge

Enter: August 7, 2018