ST 19-01
TAX TYPE: SALES TAX
TAX ISSUE: DENIAL OF REGISTRATION NUMBER

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **JOHN DOE** **Taxpayer**	Docket No. [redacted] Letter ID: [redacted] Registration Denial

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

John Doe ("taxpayer") applied to the Department of Revenue ("Department") for a certificate of registration to open a new business. The Department issued a Taxpayer Notification of Registration/Renewal Denial indicating that his request was denied on the basis that its records indicate that there is an outstanding liability of $[redacted] from a previous business. The taxpayer timely protested the Notification. An evidentiary hearing was held on November 15, 2018 during which the taxpayer argued that his

previous business was dissolved on April 1, 2002 and without information concerning when the liability was incurred or how it was determined, he cannot properly defend himself from the liability claimed by the Department. After that hearing, on December 26, 2018, the Director of the Department ordered the Department's counsel to provide the taxpayer with information concerning the outstanding liability of the previous business. The liability was incurred after the previous business was dissolved. After the Department's counsel gave the taxpayer the information, a subsequent hearing was held. After reviewing the record of both hearings, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On November 2, 2000, the taxpayer incorporated a business known as ABC Rod & Custom, Inc. ("ABC"). The corporation was involuntarily dissolved on April 1, 2002. (Dept. Ex. #1, p. 6)
2. The Department provided copies of Form ST-1, Sales and Use Tax Returns, for ABC for the time periods of April 2002 through December 2003. For some of the returns, the amount of the liability is zero. For the remaining returns, the following amounts are shown as the total tax owed:

Quarter ending	Tax
March 2003	$[redacted]
June 2003	[redacted]
September 2003	[redacted]
Total	$[redacted] (Dept. Ex. #2)

3. The copies of the Form ST-1 have signatures on them that appear to be the taxpayer's signature. (Dept. Ex. #2)

4. On March 19, 2018, the Department issued a Notification of Registration/Renewal Denial to the taxpayer indicating that his business was denied Illinois registration due to an outstanding liability of $[redacted] for ABC. (Dept. Ex. #1, pp. 2-3)

CONCLUSIONS OF LAW:

Section 2a of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq*.) provides in part as follows:

> It is unlawful for any person to engage in the business of selling tangible personal property at retail in this State without a certificate of registration from the Department. * * * No certificate of registration shall be issued to any person who is in default to the State of Illinois for moneys due under this Act or under any other State tax law or municipal or county tax ordinance or resolution under which the certificate of registration that is issued to the applicant under this Act will permit the applicant to engage in business without registering separately under such other law, ordinance or resolution. 35 ILCS 120/2a.

Section 5 of the ROTA provides that the Department's determination regarding a tax liability is *prima facie* correct. 35 ILCS 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

The record includes a document from the Illinois Secretary of State's office that indicates that ABC was involuntarily dissolved on April 1, 2002. The taxpayer stated that his records relating to the business were destroyed many years ago. After the Department provided the taxpayer with copies of the returns that are the basis of the outstanding liability, the taxpayer expressed concern with the fact that although the

returns are signed, some of the returns do not have dates next to the signature.[1] The taxpayer also said that after the corporation was dissolved in 2002, he sold the assets. The taxpayer testified that he filed a personal bankruptcy petition in 2004. He admitted that the tax returns provided by the Department have signatures with his name, but he believes that the person who purchased the assets of the business may have filed the returns to keep the business going without the taxpayer's knowledge. During that time-period, the taxpayer was trying to get away from the business because he was having mental health issues and just wanted to be finished with the business. The taxpayer also said that he made a written settlement offer to the Department that "was never acknowledged nor was it ever negotiated in good faith." The taxpayer stated that he is confused with the denial because the previous business was operated over 15 years ago, and the liability was dismissed in bankruptcy.

The Department contends that the underlying debt is not at issue in these proceedings, and the only issue is whether the taxpayer can establish that his certificate of registration should not be denied. The Department claims that the taxpayer can only contest his relationship with the underlying company and not the liability. According to the Department, there is a liability associated with ABC, and the taxpayer is the only name associated with that company. The Department stated that the taxpayer did not submit any documents concerning a bankruptcy. The Department acknowledged that there were settlement negotiations "that were not fruitful."

In response, the taxpayer stated that the settlement negotiations were not fruitful because there was no counteroffer. The taxpayer believes that there should be a level of forgiveness for something that happened over 15 years ago when he has done what the

[1] The returns that do not have dates written on them also have no liability. (Dept. Ex. #2)

Department's counsel has asked him to do with respect to this case. The taxpayer contends that the Department is punishing a small business that would be collecting a small amount of taxes, which is a loss for the State. The taxpayer testified that it would be nice to be able to support the State by collecting the taxes. The taxpayer would be willing to collect the taxes on a probationary period. In addition, the taxpayer indicated that he can operate his vehicle repair business with only labor and not sell car parts if necessary. The taxpayer is asking for a chance to work with the State to sell parts. It would be only a small amount of taxes because this business is one that the taxpayer will be doing during his retirement years. He stated that it will take more work and effort to pay the sales tax than to not, but he is willing to do that.

The sole issue in this case is whether the taxpayer's request for a certificate of registration should be denied, and the Department has denied the registration certificate based on the outstanding liability of ABC. Under section 2a, an outstanding liability is a sufficient basis for the Department to deny a certificate of registration. Although the taxpayer stated that he filed a personal bankruptcy petition in 2004, many tax liabilities are not discharged in bankruptcy, and without documentation to substantiate a discharge, it cannot be found that the liability was discharged. With respect to the other contentions that the taxpayer has made, although this tribunal has no authority to direct the Department to accept a settlement offer or put the taxpayer on a probationary period, the Department's regulation concerning settlements in cases pending before the Office of Administrative Hearings includes the following:

> Any offer once received may be accepted, rejected or countered by the Department and the taxpayer or its representative shall be notified of such in writing. 86 Ill. Admin. Code §200.137(d).

Although the Department's counsel indicated that the settlement negotiations were not fruitful, the taxpayer indicated that his settlement offer was not acknowledged nor negotiated in good faith. The Department's counsel did not indicate that he responded to the settlement offer in writing. Considering the amount of time that has passed since the liability was incurred, the amount of the unpaid liability, and the taxpayer's claim that he did not receive a written response to his settlement offer, I believe that the certificate of registration should be granted subject to any bond that the Department may deem appropriate under Section 2a of the Retailers' Occupation Tax Act, not to exceed an amount of $3,000 based on the taxpayer's description of his intended business. 35 ILCS 120/2a.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer receive a certificate of registration subject to any bond that the Department may deem appropriate under Section 2a of the Retailers' Occupation Tax Act, not to exceed an amount of $3,000.

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Linda Olivero
Administrative Law Judge

Enter: May 31, 2019