

ST 07-22

Tax Type: Sales Tax

Issue: Books & Records Insufficient

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 00-ST-0000
IBT# 0000-0000
NTL# 00 00000000000000
00 00000000000000

v.

ABC, INC.,
Taxpayer

Ted Sherrod
Administrative Law Judge

Appearances: Special Assistant Attorney General, Shepard Smith, on behalf of the Illinois Department of Revenue; Philip M. Kiss, Esq. of Philip M. Kiss & Associates, Ltd. on behalf of ABC, Inc.

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter comes on as a result of a timely protest of two Notices of Tax Liability issued to ABC, Inc. on March 31, 2006 for unpaid Retailers' Occupation Tax and related taxes ("ROT") at the conclusion of an investigation of the taxpayer's records for the period July 2002 through November 2004. An evidentiary hearing was held on September 20, 2007. At the evidentiary hearing the taxpayer presented no documentary evidence, and no witnesses appeared on the taxpayer's behalf. As a result of the taxpayer having failed to present any evidence to rebut the Department's determination of its ROT liability, it is recommended that the Notices of Tax Liability at issue be finalized as issued.

Findings of Fact:

1. ABC, Inc. ("taxpayer"), an Illinois domiciled corporation having its place of business in Anywhere Illinois, is engaged in the business of operating a retail tobacco store. Department Exhibit ("Ex.") 1.
2. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of an SC-10-K Audit Correction and/or Determination of Tax Due covering the period July 2002 through November 2004, and related Notices of Tax Liability based on these corrected returns (Notice of Tax Liability ("NTL") number 00 00000000000000 covering July 2002 through November 2003 showing tax due in the amount of \$19,906 plus penalty and interest, and NTL number 00 00000000000000 covering December 2003 through November 2004 showing tax due in the amount of \$16,065 plus penalty and interest).

Conclusions of Law:

This is a case in which the taxpayer has produced no books, records or other documentary evidence and has presented no testimony in support of its claim that the Department's assessment of liability for unpaid Retailers' Occupation and related taxes for the period July 2002 through November 2004 is erroneous. Section 4 the Retailers' Occupation Tax Act provides that the Department's correction of the taxpayer's returns constitutes *prima facie* proof that tax is due in the amount determined by the Department. 35 ILCS 120/4. In this case, the Department established its *prima facie* case when it introduced Department Exhibit 1 consisting of an SC-10-K Audit

Correction and/or Determination of Tax Due (“Correction of Returns”) for the tax period in controversy and related Notices of Tax Liability under the Certificate of the Director. Department Ex. 1. This exhibit, without more, constitutes *prima facie* proof that the taxpayer owes tax in the amount determined by the Department. 35 ILCS 120/4. The Department’s *prima facie* case is overcome, and the burden shifts to the Department to prove its case, only after the taxpayer presents evidence that is consistent, probable and closely identified with books and records, to show that the Department’s determination was not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); A.R. Barnes and Company v. Department of Revenue, 173 Ill. App. 3d 826 (1988); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276 (1943). Accordingly, it is well settled that a corrected return or an NTL as prepared by the Department is a *prima facie* conclusive determination absent documentary evidence to the contrary. Copilevitz, supra; DuPage Liquor Store, supra; Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978); Howard Worthington, Inc. v. Department of Revenue, 96 Ill. App. 3d 1132 (2nd Dist. 1981).

At the hearing, the Department established its *prima facie* case by introducing its Correction of Returns and related NTLs into evidence. The burden thus shifted to the taxpayer to overcome the presumed correctness of the Department’s determination. Masini, supra; Anderson v. Department of Revenue, 370 Ill. 225 (1938). However, the taxpayer, by its own admission, has offered no evidence to overcome the Department’s *prima facie* case. Tr. p. 5 (“Again, as I have not been able to contact – the Taxpayer is out of the country[.] I’ve had no communication with them for almost since the beginning of the proceedings, we’re not able to put on a credible defense[.]”). Therefore, pursuant to the aforementioned statutory and case law authority, the Notices of Tax Liability at issue in this case must be made final.

WHEREFORE, for the reasons stated above, it is my recommendation that Notices of Tax Liability number 00 00000000000000 and number 00 00000000000000 be finalized as issued.

Date: November 2, 2007

Ted Sherrod
Administrative Law Judge