ST 08-15
Tax Type: Sales Tax
Issue: Audit Methodologies and/or Other Computational Issues
Books And Records Insufficient

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**No. 06-ST-0000**
	IBT# 0000-0000
v.	**NTL# 00 0000000000000**
	00 0000000000000
ABC, INC. D/B/A XYZ,	
	Ted Sherrod
Taxpayer	**Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General George Foster on behalf of the Illinois Department of Revenue; Kathleen M. Lach of Arnstein & Lehr on behalf of ABC, Inc. D/B/A XYZ.

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by ABC, Inc. D/B/A XYZ ("ABC" or "taxpayer") of Notices of Tax Liability number 00 0000000000000, number 00 0000000000000, number 0000000000000000, number 00 0000000000000, number 00 0000000000000, number 0000000000000000 and number 00 0000000000000 issued by the Department of Revenue ("Department") on December 14, 2005. At issue is whether the Department's audit met a "minimum standard of reasonableness" as required by law and if it did, whether the taxpayer rebutted the

Department's *prima facie* case established by the introduction of the Notices of Tax Liability at issue into the record. At the hearing held on March 19, 2008, after the Department entered its *prima facie* case into evidence, two witnesses testified on behalf of the taxpayer, John Doe, the taxpayer's owner and Jane Doe, the taxpayer's accountant. Nancy Shanks, an auditor employed by the Department who conducted the audit of the taxpayer giving rise to the liability at issue, testified on behalf of the Department.

The taxpayer introduced no documentary evidence of any kind into the record during the hearing proceedings. Upon consideration of all of the evidence comprising the record in this case, it is recommended that the Notices of Tax Liability at issue be affirmed. 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, was established by the admission into evidence, under the certificate of the Director, of the Department's Audit Correction and/or Determination of Tax Due showing a liability due and owing under section 4 of the Retailers' Occupation Tax Act from ABC in the amount of $114,624 including penalties for the period 7/1/99 through 12/31/01, and in the amount of $116,906 including penalties for the period 1/1/02 through 11/30/04. Department Ex. No. 1.[1]

2. ABC owns and operates a tavern located in downtown Anywhere, Illinois. Tr. p. 12. The tavern's clientele is primarily blue collar workers. *Id.* The tavern consists of

[1] Unless otherwise noted, findings of fact apply to the periods covered by the Department's Audit Correction and/or Determination of Tax Due which comprise the audit periods at issue.

2400 square feet of space and has seating capacity for 140 persons. Tr. pp. 11, 12. Most of its sales are from the sale of beer, wine and other liquors. Department Ex. 2. ABC also sells food, cigarettes and cigars, and receives additional revenues from one or more vending machines and phones. Tr. pp. 53, 63, 81; Department Ex. 2.

3. ABC is owned by John Doe ("John Doe"). Tr. pp. 10, 11. John Doe has been the owner of ABC for twelve and one half years and has been in the tavern business for twenty-two years. *Id*. John Doe is also an employee of the business. Tr. p. 23. The business also employs three bartenders and two additional personnel. Tr. pp. 13, 14, 19.

4. The taxpayer's hours of operation are from 8 p.m. until 4 a.m. Tr. p. 12. The taxpayer is open 7 days a week. *Id.*

5. Jane Doe is an Accountant with the accounting firm of Doe Accounting, Inc. Tr. p. 27. She was the taxpayer's accountant during the audit periods at issue in this case. *Id*.

6. Nancy Shanks is an auditor employed by the Illinois Department of Revenue. Tr. p. 43. She has been employed by the Illinois Department of Revenue for over 16 years. *Id*. She has performed over 500 audits during her tenure including approximately 50 audits of cash businesses such as bars and restaurants. Tr. pp. 43, 44.

7. Commencing in March, 2002, Nancy Shanks performed an audit of ABC covering the audit periods enumerated in the Department's Audit Correction and/or Determination of Tax Due (7/1/99 – 11/30/04). Tr. p. 44. In response to the Department's request to make all records of business activities available, the taxpayer's accountant, Jane Doe provided the auditor with several boxes of records. Department Ex. 1 (Auditor's

Narrative). The records provided consisted primarily of envelopes containing lines for entries indicating the taxpayer's daily gross receipts. Tr. pp. 29, 30, 35. The envelopes contained separate lines for bar and other liquor revenues, and for revenues from food sales, cover charges and vending machines as well as lines for payments to suppliers and for other disbursements. *Id*. Contained inside each envelope were sales receipts, and invoices evidencing daily expenditures including inventory purchases. Tr. pp. 35, 36. The envelopes also showed which sales were cash sales and which ones were credit card sales. Tr. p. 30. Since the information contained on these envelopes was reconciled to the taxpayer's bank account information by the taxpayer's accountant, the taxpayer's accountant also provided the auditor with bank records including records of the taxpayer's bank deposits and spread sheets she prepared tying amounts shown in the daily envelopes to bank records. Tr. pp. 30, 31. The auditor was also provided with a general ledger for each month, bank reconciliations and financial statements. Tr. p. 31. The envelopes provided to the Department's auditor by the taxpayer's accountant constituted the taxpayer's only daily record of its sales activities. Tr. pp. 29, 30, 46.

8. During her audit of the taxpayer, the Department's auditor was advised that there were days on which liquor was sold at a discount from its regular price, referred to as "specials", during each of the weeks during the audit period and was provided by the taxpayer with the days on which these "specials" took place. Tr. pp. 17, 18, 46 – 49; Department Ex. 1 (Auditor's Narrative). However, the auditor was not given any documentary evidence in the form of cash register tapes showing the amount sold as "specials" or the amount by which "specials" sales were discounted from the regular price. Tr. p. 46.

9. The taxpayer tendered no cash register tapes indicating total sales. Tr. p. 46; Department Ex. 1 (Auditor's Narrative). The taxpayer's accountant advised the auditor that the taxpayer had not kept or maintained cash register tapes providing a daily record of the gross amount of sales as required by law. See 86 Ill. Admin. Code, ch. I, section 130.805; Tr. p. 29.

10. Due to the lack of adequate records in the instant case, the auditor projected the taxpayer's tax liability. Tr. p. 46. In order to arrive at the amount of the taxpayer's gross receipts, the auditor employed a mark-up of purchases method of estimating receipts. Tr. p. 46. Utilizing this method, the auditor applied a mark-up determined by the taxpayer's average sales price per unit sold multiplied by the amount of units purchased, as indicated by the taxpayer's books and records, during a test period consisting of the months of June and October, 2000. Tr. pp. 46 – 48, 52 – 54; Department Ex. 1 (Auditor's Narrative). Once the average sales price per unit of inventory sold was established, this price was multiplied by the total number of inventory units purchased during the audit period to come up with the taxpayer's total sales. Tr. pp. 65, 66. The amount of the taxpayer's purchases was taken directly from the taxpayer's own records. Tr. pp. 46, 47.

11. Subsequent to the tax periods in controversy, the taxpayer installed a cash register system and began maintaining cash register tapes. Tr. p. 29. The taxpayer's accountant noted that a comparison between the sales shown on the taxpayer's cash register tapes and the taxpayer's sales reflected by information on daily envelopes maintained by the taxpayer for a 14 month period after the cash register system was installed indicated that sales shown on the taxpayer's envelopes underreported actual sales indicated on the taxpayer's register tapes by $119,000. Tr. pp. 34. 35.

12. The Department determined the mark-up applicable to the taxpayer's purchases in order to project the taxpayer's gross sales by determining the taxpayer's average sales price per drink. Tr. p. 47. Average sales price per drink was determined from the taxpayer's records. *Id*. In determining the average sales price per drink the auditor used the "specials" prices given her by the taxpayer's owner, John Doe, and applied them during the percentage of time during the test period John Doe indicated units were sold at a discounted price, and used the regular prices shown by the taxpayer's records for the remainder of the test period examined. Tr. pp. 47 – 49, 65 – 69; Department Ex. 1 (Auditor's Narrative).

13. The Department's accountant factored in a "spillage" allowance of 10 percent in determining a mark-up on the taxpayer's purchases. Tr. p. 49. This allowance was designed to account for broken bottles of liquor, overflow on initial pulls on draft kegs, discarded beer, complimentary drinks and bartender errors resulting in amounts poured for drinks exceeding the amounts ordered by customers. Tr. pp. 50, 51. This is the Department's maximum allowance for "spillage" based upon its accumulated experience concerning cash businesses as imparted to auditors during instructions concerning the conduct of cash business audits. Tr. pp. 49, 50.

14. The auditor determined that the taxpayer received promotional bottles of beer from beer suppliers without charge from distributors during June and October 2000. Tr. pp. 54, 55. She factored in sales from free inventory by estimating the number of free bottles received based on information developed for the test period (June and October 2000) and marking up the sales attributable to the estimated number of units received without charge by 100%. Tr. pp. 54 – 56; Department Ex. 2.

15. The results determined for the period 7/1/99 – 12/31/01 based upon the auditor's mark-up of purchases analysis was projected to the subsequent period under audit, 1/1/02 – 11/30/04, in arriving at an audit liability for the subsequent period. Tr. p. 71.

Conclusions of Law:

The Department of Revenue prepared a corrected return for Retailers' Occupation Tax ("ROT") liability pursuant to section 4 of the Retailers' Occupation Tax Act ("ROTA"), 35 **ILCS** 120/4. Said section provides in pertinent part as follows:

> As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information … In the event that the return is corrected for any reason other than a mathematical error, any return so corrected by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.
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> …
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> Proof of such correction by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy or computer print-out of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue … Such certified reproduced copy or computer print-out shall without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein.

As the court stated in Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978):

> The statue (section 4 of the ROTA) has been strictly construed insofar as establishing a prima facie case is concerned and the Illinois courts have uniformly sustained a prima facie case based on corrected tax returns. Fillichio v. Department of Revenue, 15 Ill. 2d 327 (1958); Quincy Trading Post, Inc. v. Department of Revenue, 12 Ill. App. 3d 725 (1973). There is no statutory requirement that the Department substantiate the basis for the corrected return or produce the auditor who computed the corrected return in order to support its prima facie case. Tarz v. Department of Finance, 391 Ill. 131 (1945); Rentra Liquor Dealers, Inc. v. Department of Revenue, 9 Ill. App. 3d 1063 (1973). However, the Illinois Supreme Court has suggested that, when it is called into question, the method employed by the Department in correcting a taxpayer's return must meet some minimum standard of reasonableness. (Fillichio v. Department of Revenue; Anderson v. Department of Finance.) The reasonableness standard is based upon a statutory provision which requires that the Department's corrected returns be made "according to its best judgment and information." Ill. Rev. Stat. 1975, ch. 120, par. 443; Grand Liquor Co. v. Department of Revenue, 36 Ill. App. 3d 277 …, aff'd, (1977), 67 Ill. 2d 195 … [.]
> Masini, *supra* at 14.

In the case at bar, the taxpayer claims that the Department failed to use its best judgment and information in correcting the taxpayer's returns. Tr. pp. 7, 100, 102. Accordingly, the taxpayer is contending that the Department's audit was not conducted in a manner meeting a "minimum standard of reasonableness" and therefore the Department failed to make its *prima facie* case.

The ROTA has a specific requirement for maintaining books and records, which provides as follows:

> Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents.
> 35 **ILCS** 120/7

The statutory provision enumerated above has been construed to require that the taxpayer maintain cash register tapes and other data providing a daily record of the gross amount of sales. 86 Ill. Admin. Code, ch. I, section 130.805. In the instant case, the taxpayer's accountant admitted that the taxpayer did not keep or maintain such information with respect to the tax periods at issue. Tr. pp. 29, 45, 46. A taxpayer's duty to keep such books and records is mandatory. Smith v. Department of Revenue, 143 Ill. App. 3d 607 (5th Dist. 1986). If the taxpayer does not have adequate books and records to support its monthly tax returns, the Department is justified in going outside the taxpayer's books and records to obtain information to correct the taxpayer's returns. Young v. Hulman, 39 Ill. 2d 219 (1968).

As the taxpayer had inadequate books and records to tender to the Department's auditor, Nancy Shanks, she had to use an alternative method to compute liability. Tr. pp. 45, 46. In the absence of statutorily required records, the auditor elected to use a purchase and mark-up method pursuant to which the auditor developed a mark-up based upon a comparison of the taxpayer's per unit sales prices to its costs and applied this mark-up to purchases indicated by the taxpayer's records. Tr. pp. 45 – 47, 52 – 54, 65, 66.

The taxpayer acknowledges that, utilizing the methodology employed by the auditor, it does owe some additional tax above that reported to the Department for the audit periods in controversy. Tr. p. 100. At no point during the hearing in this case did the taxpayer take issue with the type of method of estimation used by the auditor, i.e., the purchase and mark-up method. Rather, the taxpayer takes issue with the average price of draft and bottled beer and other liquor assigned by the auditor to beer and liquor sales, insisting that this price determination was not based on the best information available. Specifically, the taxpayer contends that the gross receipts determined based upon the average prices utilized by the auditor are inconsistent with the location and size of the taxpayer's tavern, with the type of clientele the bar attracted and with the taxpayer's owner's relatively modest standard of living the tavern's revenues supported Tr. pp. 7, 100 – 102.

The auditor assigned a per unit price to individual sales of beer, whether by the glass or bottle, and liquors used to prepare mixed drinks. Department Ex. 6. The auditor used the regular sales prices of these items indicated in the taxpayer's own books and records. Tr. p. 47; Department Ex. 1 (Auditor's Narrative). The auditor adjusted the regular prices shown by the taxpayer's records to account for promotional events when the price of drinks was discounted (so-called "specials") and for beer and liquor that was unsold due to complimentary drinks and waste (so-called "spillage"). Tr. pp. 48, 49. With respect to the methodology she used to adjust the regular price of beer and liquor to account for "specials" and "spillage" the auditor testified as follows:

> Q. And how did you basically calculate the markup percentage?
> A. The markup was figured by trying to establish an average drink price, applying that to their purchases, so I knew what the sales price was, calculated it out, divide it by the costs to come up with the markup.
> Q. And in determining that average drink price, did you look at the Taxpayer's records to determine what they were selling drinks for?
> A. Yes.
> Q. And did you take into account the drink specials?
> A. Yes.
> Q. And how did you know what their drink specials were?
> A. It was provided to me.
> Q. So you relied on what the Taxpayer told you their drink specials were?
> A. Yes.

Q. Did you take into account what days they had their different percentages of sales on?
A. Yes, I did.
Q. And how did you do that, basically?
A. Basically, I took two months in the audit period, October of 2000 and June of 2000, and I scheduled out what their envelopes reported as sales to establish what they said their percentages of sales was for a given Monday or a given Tuesday or Wednesday, so that I could apply the drink specials to those days in coming up with the average price per drink.
Q. And did you then calculate what percentage of their sales was on Monday?
A. Yes.
Q. What percentage of their sales were on Tuesday?
A. Yes, I did.
Q. And that was so that you could take into account –
A. The percentage of business during that period of time.
Q. So you could take into account that their drink specials were such and such on Monday and, therefore, take into account what percentage of sales were on Monday in terms of certain drink specials were on Monday versus Tuesday? Is that basically how that works?
A. Yes.
Q. Okay. Now, did you allow any type of spillage allowance in coming up with your markup that you used?
A. Yes. 10 percent.
Q. Okay. And did you consider that an adequate spillage allowance?
A. Yes, I did.
Q. And why did you consider that?
A. In the course of training to do the cash business, we were given several different methodologies of coming up with the numbers of a spillage, and anywhere between two and ten percent is what we allowed on the bars, depending on the type of bar it was. I mean, if they had more draft beers or they had more mixed drinks. So we allowed between two and ten percent.
Q. You allowed for the very high end for this particular bar?
A. Yes.
Q. And what types of things would have been encompassed in the spillage allowance?
A. Well, it would be your initial draft pull on a keg, broken bottles of liquor, over-pours.
Q. So the various things that Mr. John Doe testified about, for example, that he would allow a certain amount of beer out of each keg at the beginning of the day, and the breakage, and the over-

> pour, all of those things that he testified about would have been encompassed in this ten percent spillage allowance?
>
> A. Yes.
>
> Q. So you did take that into account in calculating your markup and recalculating the underreporting of sales that you calculated?
>
> A. Yes.
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> Tr. pp. 47 – 51

The auditor applied the average sales price for each unit of beer and liquor sold by the taxpayer determined in the manner described above to the taxpayer's purchases as shown in its records for the months of June and October 2000 to determine a mark-up on the taxpayer's purchases during this audit test period. Tr. pp. 63 – 66; Department Ex. 1 (Auditor's Narrative), 2 – 6. The auditor then applied this mark-up to purchases during all of the other months during the period 7/1/99 – 12/31/01 she audited. *Id*; Tr. pp. 52 – 54. Based on this analysis, which was projected to the subsequent period under audit (1/1/02 – 11/30/04) (Tr. p. 71) the auditor determined that the taxpayer had substantially underreported gross receipts for the audit period giving rise to the tax assessment at issue in this case. *Id*.

Again, the taxpayer does not take issue with the method employed by the auditor in determining liability, i.e., applying average sales prices to units of beer and hard liquor purchases. However, the taxpayer contends that, even though she was aware of "specials" and "spillage", the auditor failed to properly consider them in determining the taxpayer's average per unit sales prices used in arriving at the mark-up she applied to the taxpayer's purchases. Tr. p. 7 ("Given this business and this type of business, we believe that it did not account for any breakage, spillage, overpours, specials, things like that, that are common in this type of business, tavern business."). The record in this case does not support this claim. As indicated by the excerpt from the record noted above, the auditor took pains to adjust the taxpayer's regular sales prices as shown by the taxpayer's records to account for "specials" and "spillage." Indeed, even though the taxpayer indicated the length of time during days on which there were "specials" or produced any advertisements or other evidence that each of the "specials" identified by the taxpayer actually took place, the auditor treated all sales during the entire day on which the taxpayer claimed "specials" occurred as having been made at a discounted price. Tr. pp. 48, 49. Moreover, she accepted the taxpayer's claims regarding the amount charged for beer and liquor when "specials" were in effect (Tr. pp. 17, 18), even though these could not be corroborated by the taxpayer's inadequate records.

The taxpayer also contends that the auditor failed to take into account the fact that the taxpayer did not sell all of the beer and liquor it purchased. John Doe, the taxpayer's owner, testified that ABC lost a considerable amount of beer each day. Tr. p. 16. He explained the reason for this loss as follows:

> A. Well, when you tap a keg, you get -- you got beer in the line, and our lines are 15 feet, 20 feet. And you have to pour off the beer in the line everyday. You can't pour beer that's been sitting in the line all day, and we have 12 handles. … So everyday those 12 handles we have to pour off about 24 ounces off each one, just to start the night.
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> Q. You have 12 handles. That means you have 12 different kegs and 12 different types of draft beer?
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> A. Right.
>
> Q. And –
>
> A. Yes.
>
> Q. And when you put a new keg in, is there a similar process that you have to go through?
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> A. It depends on if it's to start the day. I mean, to start everyday we have to pour off at least two beers, which are 12 ounces a piece. If it's in the middle of the night, we start a new keg.
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> Tr. pp. 16, 17

John Doe also testified that ABC lost some beer and liquor by giving away drinks, through "over pours" by its bartenders exceeding the amount of liquor orders by customers, and due to returned drinks resulting from bartender errors. Tr. pp. 13 – 15. The taxpayer estimated the amount of waste and "spillage" to be "at least 40%" during the audit period (Tr. pp. 32, 33, 99) but produced no books or records to support this claim.[2] In the absence of anything more than the taxpayer's guess as to the amount of "spillage", the auditor, using techniques normally employed by the Department to estimate "spillage" in the absence of any probative books and records, factored in a "spillage" percentage of ten percent of purchases in determining the taxpayer's average sales price. Tr. pp. 49, 50.

Due to the lack of records, the auditor had to rely upon her best judgment and information based upon all available evidence to arrive at a corrected amount of gross receipts. The taxpayer argues that the average sales price and mark-up determined by the auditor was incorrect. In spite of all of the evidence in the record to the contrary, it claims that, because she failed to take into account undocumented estimates of "spillage" given her by the taxpayer, and did not take into account "specials" she did not employ a "minimum standard of reasonableness" in correcting the taxpayer's sales tax returns. Tr. pp. 7, 100 – 102.

[2] The taxpayer claims to have records prepared during a special study of its operations targeting waste, showing that the amount of "spillage" during all or a portion of the audit periods was dramatically greater than estimated by the auditor. Tr. pp. 32, 33. However, the taxpayer made no effort to introduce any of this evidence into the record during the hearing.

As indicated above, the auditor's primary source of information in arriving at an assessment was the taxpayer's available books and records. She also relied upon uncorroborated statements from the taxpayer's owner regarding "specials" which were taken into account in arriving at an assessment, and allowed the maximum amount permitted under procedures ordinarily utilized by the Department to estimate the taxpayer's "spillage." Given the lack of adequate documentary evidence of the taxpayer's actual average sales price and mark-up, it is my determination that the auditor used her best judgment, and the best information available (i.e. the taxpayer's own books and records, and statements given by the taxpayer's owner) in correcting the taxpayer's returns and determining the tax due. The record indicates that the auditor used the limited information she had in a fair-minded manner. She surveyed what books and records the taxpayer had to determine the amount purchased by the taxpayer, and the taxpayer does not dispute the purchases used by the Department in arriving at a mark-up. She figured out how the purchases would translate into per unit sales and applied a mark-up which was based upon the taxpayer's own records and took into account the taxpayer's "specials" and "spillage" to arrive at the tax amount assessed. As stated in Vitale v. Illinois Department of Revenue, 118 Ill. App. 3d 210 (3rd Dist. 1983):

> This is all the law requires. (Citation omitted). To place a greater burden on the Department would reward the taxpayer for failing to keep the business records the law requires. *Id* at 213.

Given the lack of adequate evidence of the taxpayer's actual mark-up in the form of statutorily mandated records which the taxpayer failed to maintain, it is my determination that the auditor used her best judgment, and the best information available

- the taxpayer's records and statement's by the taxpayer's owner, along with estimates based on the Department's guidelines for comparable businesses. Accordingly, I find that the method used by the Department's auditor met a "minimum standard of reasonableness" as required by Illinois law.

Having determined that the audit methodology employed by the auditor met a minimum standard of reasonableness, I find that the Department's *prima facie* case was established upon the admission into evidence of the corrected return showing additional tax due. 35 **ILCS** 120/4. The next question is whether the taxpayer rebutted the Department's *prima facie* case. The Vitale case, *supra*, sets forth well settled case law concerning what is necessary to overcome the Department's *prima facie* case.

> The taxpayer can overcome the Department's prima facie case, but only if he produces competent evidence, identified with the taxpayer's books and records, showing that the Department of Revenue's corrected returns are inaccurate. (Masini v. Department of Revenue (1978), 60 Ill. App. 3d 11, 17 Ill. Dec. 325, 376 N.E. 2d 324.) A taxpayer does not overcome the Department's prima facie case merely by denying the Department's case or by suggesting hypothetical weaknesses. He must establish by documentary evidence that the hypothetical weaknesses are relevant to his business.
> Vitale, *supra* at 213

In lieu of documentary evidence, the taxpayer has attempted to rebut the Department's *prima facie* case through testimony designed to provide a plausible explanation for a lower assessment determination such as the size of the taxpayer's tavern, the tavern's clientele, its location, and the amount of waste attendant to the taxpayer's normal business operations. Tr. pp. 6, 7, 11-24, 31-42, 98-102. However, case law in Illinois clearly indicates that merely denying the accuracy of the Department's assessments, offering alternative hypotheses or arguing that its audit methodology is flawed is not enough to overcome the Department's *prima facie* case. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987); Quincy Trading Post Inc. v. Department of Revenue, 12 Ill. App. 3d 725 (4th Dist. 1973). A taxpayer can overcome the Department's *prima faice* case only by producing competent evidence closely identified with the taxpayer's books and records. A.R. Barnes & Co., *supra*; Central Furniture Mart, *supra*; Vitale, *supra*.

In the instant case, the taxpayer has presented no such documentary evidence. The taxpayer introduced no such evidence of any kind into the record during the hearing proceedings. Tr. p. 40 ("Ms. Lach, do you have any evidence that you would like to have entered into the record? … MS. LACH: We don't have anything …[.]"). Oral testimony without corroborating books and records is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991) ("To overcome the Department's prima facie case, the taxpayer must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions."). The taxpayer's unsubstantiated oral testimony based on the taxpayer's guesses and circumstantial evidence is simply not sufficient to meet the taxpayer's burden in this case. *Id.*

In sum, the taxpayer herein has challenged the Department's corrected return, but has offered no documentary evidence to substantiate its claim. For the reasons enumerated above, the testimonial evidence the taxpayer has produced is insufficient to rebut the Department's *prima facie* case of liability.

The taxpayer has requested that judicial notice be taken of several cases in which the courts have held that state laws, such as the ROTA, should not be interpreted to sanction an absurd result not intended by such legislation. The cases cited are Harris v. Manor Healthcare Corporation, 111 Ill. 2d 350 (1986); People v. Floom, 52 Ill. App. 3d 971 (1st Dist. 1977), and State Farm Fire and Casulaty Co. v. Yapejian, 152 Ill. 2d 533 (1992). These cases are not in point. In the instant case, the Department's determination was *prima facie* correct as a matter of law pursuant to 35 **ILCS** 120/4. In order to come within the cases the taxpayer has cited, it would have to either show that the Department's audit failed to meet a minimum standard of reasonableness or rebut the Department's *prima facie* case. For the reasons enumerated above, I find that the taxpayer has done neither in this case.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's Notices of Tax Liability be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: May 28, 2008