

ST 14-17

Tax Type: Sales Tax

Tax Issue: Sales v. Service Issues

Use Tax On Purchases, Fixed Assets or Consumables

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

THE DEPARTMENT OF REVENUE	)	Docket Nos.	XXXX
OF THE STATE OF ILLINOIS	)	IBT No.	XXXX
	)	NTL Nos.	XXXX,
v.	)		XXXX,
ABC BUSINESS,	)		XXXX
	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Fred Marcus, Horwood Marcus & Berk, Chartered, appeared for ABC BUSINESS, Inc.; Michael Coveny, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

The Illinois Department of Revenue (Department) issued three Notices of Tax Liability (NTLs) to ABC BUSINESS, Inc. (ABC BUSINESS), following an audit of ABC BUSINESS's business. The NTLs assessed tax, penalties, and interest for the months of January 2003 through August 2007. Taxpayer protested the NTLs, and requested a hearing.

In lieu of hearing, the parties submitted a Stipulation of Documents (Stip.), as exhibits. After considering the record, I am including in this recommendation findings of fact and conclusions of law. I recommend the tax shown due on the NTLs be finalized as revised by the Department's reaudit, and that the NTLs be finalized as so revised, with interest to accrue pursuant to statute.

Findings of Fact:

1. The Department conducted an audit of ABC BUSINESS for a period that began in January 2003 through August 2007 (the audit period). Pre-Hearing Order; Department Ex. 1.

2. As a result of the audit, the Department issued three NTLs to ABC BUSINESS, which assessed tax in the aggregate amount of \$XXXX for the audit period, plus statutory interest. *See* Pre-Hearing Order.
3. ABC BUSINESS made sales of services and sales of tangible personal property to customers. Department Ex. 1; Stip., *passim*.
4. Some of ABC BUSINESS's sales were to customers who were exempt from Illinois use tax, or who purchased goods from ABC BUSINESS for resale. Stip. Exs. Z, DD-EE.
5. After ABC BUSINESS protested the NTLs, the Department conducted a reaudit of books and records ABC BUSINESS produced for that purpose. *See* Department Ex. 1 (copy of Department reaudit schedules), pp. 1-4 (copy of schedule titled, Global Taxable Exceptions Detailed Report), 5 (copy of schedule titled, Schedule 1 – Summary Analysis), 6-7 (copy of schedule titled, Schedule 2A – Interest Computation).
6. Prior to hearing, the parties entered into a pre-hearing order which set forth the issues to be resolved at hearing. Pre-Hearing Order. That Pre-Hearing Order provided, in pertinent part:

- 1) The parties believe the following issues are presented for review at trial.
 - A. Whether Taxpayer is liable for combination of Retailers Occupation Tax, Use Tax and or related Taxes in the amount of \$XXXX for the period 1/03-8/07 plus statutory interest.
 - B. Whether the Taxpayer is liable for Late filing Penalties in the amount of \$XXXX during the above period.
 - C. Whether Taxpayer is liable for Late Payment penalties of \$XXXX during the above period.

Pre-Hearing Order.

7. At the time of hearing, the parties had not received all of the Department schedules that were prepared regarding the reaudit, so the parties expressly agreed to supplement the stipulated record with copies of additional Department reaudit schedules. Stipulation of Documents (Stip.), preamble; *see also* 86 Ill. Admin. Code § 200.155(f).

8. The parties supplemented the stipulated record by tendering to the ALJ copies of additional schedules, which included a copy of a form EDA-105-R, ROT Audit Report (Audit Reports), and a form EDA-104-R, Multiple Location Schedule, for each of the periods covered by the NTLs. Stip., preamble.¹ For convenience, I will refer to the Audit Reports as Stipulated Exhibit GG.
9. The parties' supplementation also included a copy of a Department schedule titled, Global Taxable Exceptions, regarding transactions subject to different Illinois taxes, including retailers' occupation tax (ROT), and use tax. This schedule appears to have been prepared during the original audit, provided to ABC BUSINESS and/or its counsel, and then resubmitted to the Department for review during reaudit. For convenience, I will refer to the parties' supplemented Global Taxable Exceptions schedule as Stipulated Exhibit HH.
10. Collectively, the Audit Reports reflect the Department's corrections to the amounts of tax, penalties and interest assessed in the NTLs. *Compare* Stip. Ex. GG with Pre-Hearing Order.
11. With regard to the amounts of tax due, the Audit Reports provide, in pertinent part, as follows:

Entries on Audit Reports (correcting the NTL issued for each period)	Period Covered by NTL L 01291 70624 1/2003 – 11/2003	Period Covered by NTL L 01362 48512 12/2003 – 11/2004	Period Covered by NTL L 12099 90336 12/2004 – 8/2007
Total ROT/SOT due on receipts from sales of general merchandise	XXXX	XXXX	XXXX
Total use tax due on purchases of general merchandise	XXXX	XXXX	XXXX
Total tax due	XXXX	XXXX	XXXX

Stip. Ex. GG.

12. The Audit Reports reflect a significant decrease in the amount of tax previously assessed in the NTLs. *Compare* Stip. Ex. GG (Total tax due in the amount of \$XXXX) (XXXX +

¹ The parties' supplementation also included copies of two documents (the Global Taxable Exceptions Detailed Report, and Schedule 2A – Interest Computation) that were previously included within Department Exhibit 1.

XXXX + XXXX = XXXX) *with* Pre-Hearing Order (one of the issues to be resolved at described as being “Whether Taxpayer is liable for combination of Retailers Occupation Tax, Use Tax and or related Taxes in the amount of \$XXXX for the period 1/03-8/07 plus statutory interest.”).

Conclusions of Law:

This matter involves the Department’s assessment of both ROT and use tax to Taxpayer. Stip. Ex. GG; Pre-Hearing Order. Section 4 of the Retailers’ Occupation Tax Act (ROTA) authorizes the Department to examine a taxpayer’s returns and, if necessary, to correct such returns according to its best information and information. 35 ILCS 120/4. Section 12 of the Use Tax Act (UTA) incorporates several sections of the complementary ROTA, including ROTA § 4. 35 ILCS 105/12. Section 4 of the ROTA further provides that, “In the event that [a taxpayer’s] 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.” 35 ILCS 120/4.

The Department introduced documents, under the certificate of the Director, showing that it corrected the amounts of tax originally assessed on the NTLs it previously issued to Taxpayer. Department Ex. 1. The parties agreed to supplement the stipulated documents they admitted at hearing (Stip.), and they thereafter supplemented the record by providing the ALJ with, among other documents, copies of the Audit Reports. Stip. Ex. GG. Those Audit Reports reflect the Department’s revised determination, using the best available information, of the correct amounts of tax due for the periods at issue. Stip. Ex. GG; 35 ILCS 120/4.

Pursuant to ROTA § 4, the Audit Reports constitute the Department’s prima facie case in this matter. 35 ILCS 120/4; 35 ILCS 105/12. The Department’s prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207

(1968). A taxpayer cannot overcome the statutory presumption merely by denying the accuracy of the Department's assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217, 577 N.E.2d 1278, 1287 (1st Dist. 1991).

After considering the documents included with Stip. Exs. A-HH, including the documents supplemented by the parties, I cannot recommend making any further revisions to the amounts of tax shown to be due on the Audit Reports. To the extent the documents included within Stipulated Exhibits A-FF relate to transactions for which the Department had previously assessed tax to ABC BUSINESS, such documents appear to have been taken into account when the Department conducted its reaudit, and reduced the amounts of tax assessed in the NTLs. Department Ex. 1; Stip. Exs. GG-HH; Pre-Hearing Order. Obviously, the amounts of interest stated on the Audit Reports must be revised, pursuant to statute.

Conclusion:

I recommend that the Director revise the NTLs to reflect the amounts of tax and penalties shown due on the Audit Reports, and finalize those NTLs as so revised, with interest to accrue pursuant to statute.

April 30, 2014

John E. White
Administrative Law Judge