

ST 14-18

Tax Type: Sales Tax

Tax Issue: Revocation of Certificate of Registration

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

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

RECOMMENDATION FOR DISPOSITION

Appearances: Victor Ciardelli, Ciardelli & Cummings, appeared for ABC BUSINESS; Paula Hunter, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when ABC BUSINESS (ABC BUSINESS or Taxpayer) protested the Notice of License Revocation the Illinois Department of Revenue (Department) issued to it, to revoke ABC BUSINESS's tobacco products distributor's license. The Department revoked ABC BUSINESS's license after an agent of ABC BUSINESS pled guilty, on ABC BUSINESS's behalf, to filing two fraudulent tobacco products tax returns for August and September 2009.

The hearing was held at the Department's Office of Administrative Hearings in Chicago. Taxpayer offered the testimony of a witness, JOHN DOE, as well as documentary evidence. After considering all of the evidence, I am including in this recommendation findings of fact and conclusions of law. I recommend that ABC BUSINESS's license be revoked.

Findings of Fact:

1. In 2009, ABC BUSINESS was a corporation licensed to do business in Illinois, and was also licensed as a tobacco products distributor with the Department. Department Ex. 1, pp. 4-5 (certified copies of Anywhere County, Illinois, Grand Jury instruments charging ABC BUSINESS with two counts of Filing a Fraudulent Illinois Tobacco Products Tax Return), 6-7 (copy of Anywhere County, Illinois, Certified Statement of Conviction of JOHN DOE).
2. JOHN DOE (JOHN DOE) was a managerial employee and officer of ABC BUSINESS in 2009 and thereafter. Department Ex. 1, pp. 4-5, 16-17 (certified copy of transcript of proceedings before the Circuit Court of Anywhere County, Illinois, Criminal Division, in the case of People v. JOHN DOE, XXXX, on October 4, 2011); Taxpayer Exs. 2-3 (copies of, respectively, schedules of tobacco products tax paid to Illinois and to Anywhere County by ABC BUSINESS in 2012 and 2013); Hearing Transcript (Tr.), pp. 10, 13 (testimony of JOHN DOE).
3. While acting in the scope of his employment and on ABC BUSINESS's behalf, JOHN DOE filed two tobacco products tax returns with the Department, one for each of the months of August and September 2009. Department Ex. 1, 4-5, 16-17; Tr. pp. 12-13 (JOHN DOE). On the return for each of those months, JOHN DOE knowingly overstated the amount of ABC BUSINESS's wholesale sales, and thereby understated the amount of sales on which tobacco products tax was measured and paid. Department Ex. 1, 4-5, 16-17; Tr. pp. 12-13 (JOHN DOE). For each month of August and September 2009, the amount of unpaid tobacco products tax was in excess of \$XXXX. Department Ex. 1, 4-5, 16-17.
4. In March 2011, ABC BUSINESS and JOHN DOE were each charged with two counts of Filing a Fraudulent Illinois Tobacco Products Tax Return, in violation of 35 ILCS 143/10-50,

regarding returns ABC BUSINESS filed for August and September 2009. Department Ex. 1, pp. 2-5, 6-7.

5. On October 4, 2011, JOHN DOE, on behalf of ABC BUSINESS, pled guilty to two counts of Filing a Fraudulent Illinois Tobacco Products Tax Return, regarding returns ABC BUSINESS filed for August and September 2009. Department Ex. 1, pp. 16-17; Tr. pp. 15-16 (JOHN DOE). ABC BUSINESS was sentenced to twelve months of conditional discharge, and ordered to pay restitution to the Department in the amount of \$XXXX. Department Ex. 1, pp. 9-10 (copy of Sentencing Order); Taxpayer Ex. 1 (copy of certified check, dated October 18, 2011, drawn by ABC BUSINESS and made payable to the Department in the amount of \$XXXX).
6. On October 25, 2011, the Department issued a Notice of License Revocation (Notice) to ABC BUSINESS. Department Group Ex. 1, p. 1 (copy of Notice).
7. The Notice stated, in pertinent part, “We are revoking your Tobacco Products License in accordance with the Other Tobacco Products Tax Act because your business knowingly submitted fraudulent Tobacco Products Tax returns (Form TP-1) to the Illinois Department of Revenue.” Department Ex. 1, p. 1.

Conclusions of Law:

The Tobacco Products Tax Act of 1995 (TPTA) imposes a tax on any person engaged in business as a distributor of tobacco products, which, prior to July 2012, was based on the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in Illinois. 35 ILCS 143/10-10(a); 86 Ill. Admin. Code § 660.5(a) (2010). This dispute involves the Department’s determination to revoke ABC BUSINESS’ distributor’s

license, based on ABC BUSINESS's violation of § 10-50 of the TPTA. Department Ex. 1, pp. 1, 4-7, 9-10, 16-17.

Section 10-25 of the TPTA provides, in part:

The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor who violates any of the provisions of this Act. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based.

35 ILCS 143/10-25. Next, § 10-50 of TPTA provides:

Sec. 10-50. Violations and penalties.

When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class 3 felony.

35 ILCS 143/10-50.

There is no dispute that JOHN DOE, on ABC BUSINESS's behalf, and as its agent, pled guilty to two counts of filing a fraudulent tobacco products tax return, one count for each of the months of August and September 2009. Department Ex. 1, pp. 1, 4-7, 9-10, 16-17. Each of those counts charged a felony violation of § 10-50 of the TPTA. *Id.*, pp. 4-5, 9-10. The criminal restitution ABC BUSINESS paid to the Department, after its guilty plea, was over \$XXXX. Taxpayer Ex. 1. Nor is there any dispute that § 10-25 of the TPTA grants the Department discretionary authority to "revoke, cancel, or suspend the license of any distributor who violates any of the provisions of [the TPTA]." 35 ILCS 143/10-25.

At hearing, ABC BUSINESS argued that revocation was too severe a penalty, and that a fine would be more appropriate. Tr. pp. 33-36 (closing argument). ABC BUSINESS asked that

the violations for which it pled guilty be considered a mistake, which it made shortly after ABC BUSINESS obtained its license. Tr. pp. 38, 29. On this point, ABC BUSINESS offered JOHN DOE's testimony that the mistake occurred because he believed a purchaser's representations that it had a license that would allow it to purchase products without paying tax to ABC BUSINESS, at a time when the purchaser did not have such a license. Tr. pp. 11-13 (JOHN DOE).

As Department counsel pointed out, however, the TPTA provides the procedure that a distributor must use when it reports sales that are exempt. Tr. pp. 37-38. Specifically, § 10-15 provides:

*** The wholesaler or retailer making the exempt sale of tobacco products other than little cigars shall document this exemption by obtaining a certification from the purchaser containing the seller's name and address, the purchaser's name and address, the date of purchase, the purchaser's signature, the purchaser's tobacco products tax license number, if applicable, and a statement that the purchaser is purchasing for resale other than for sale to consumers or is purchasing for delivery outside of Illinois.

35 ILCS 143/10-15. The Department argued that ABC BUSINESS did not follow the statutory procedure for documenting exempt sales, and that its guilty plea constitutes an admission that it knowingly filed fraudulent tax returns for August and September 2009. Tr. p. 38. The Department contends that ABC BUSINESS's guilty plea negates any argument that its felonies were, or should be treated as, a mere mistake.

It is reasonable to understand ABC BUSINESS's argument that one who trusts another's false representation has made a mistake. But what made JOHN DOE's claimed mistake a crime was ABC BUSINESS's knowing misstatements of fact, on two returns, and under oath, which allowed it to evade paying substantial amounts of tax that were properly due. Department Ex. 1, pp. 4-5, 9-10; 35 ILCS 143/10-50. Moreover, JOHN DOE testified that he learned, in October 2009, that the purchaser at issue had just received its license in October 2009, and that it had not

had one when ABC BUSINESS made sales to it in August and September 2009. Tr. p. 13 (JOHN DOE). Thereafter, neither ABC BUSINESS nor JOHN DOE ever attempted to correct the returns it had previously filed for August and September, 2009.

Finally, § 10-25 grants the Department the discretion to revoke, cancel, or suspend the license of any distributor who violates any of the provisions of the TPTA; it does not authorize a fine. 35 ILCS 143/10-25. The Department exercised its discretion consistent with statutory authority, and revoked ABC BUSINESS's license. *Id.*; Department Ex. 1, p. 1. The evidence shows that ABC BUSINESS twice violated § 10-50 of the TPTA, by knowingly filing fraudulent tobacco products returns for the months of August and September 2009. Department Ex. 1, *passim*. That evidence fully supports the Department's determination to revoke ABC BUSINESS's license, based on those violations.

Conclusion:

I recommend that the Director finalize the Department's determination to revoke ABC BUSINESS's tobacco products distributor's license.

June 20, 2014

John E. White
Administrative Law Judge