

UT 09-6

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

**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
) NTL No.: 00 000000000000
) IBT No.: 0000-0000

v.

)
) Use Tax
)
) Julie-April Montgomery
) Administrative Law Judge

**JOHN DOE,
Taxpayer**

RECOMMENDATION FOR DISPOSITION

Appearances: Marc L. Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue; John Doe *pro se*.

Synopsis:

This matter arose from a protest filed by John Doe (“Taxpayer”) to the “Audit Correction and/or Determination of Tax Due” (“Determination”) completed on March 5, 2008 and issued to him by the Illinois Department of Revenue (“Department”). The Determination was issued pursuant to the provisions of the Illinois Use Tax Act (“UTA”), 35 ILCS 105/1 *et seq.*, on merchandise purchased outside of Illinois for which no tax was paid. An evidentiary hearing was held on July 17, 2009 at which the Department presented documentary evidence and the Taxpayer presented documentary and testimonial evidence. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof are made the following findings of fact and conclusions of law.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the SC-10-K "Audit Correction and/or Determination of Tax Due" and "Auditor-Prepared Use Tax Report (ST-44)" for the period August 2005, which reflects use tax due of \$15,112, a late filing penalty of \$250, a late payment penalty of \$3,022, and interest through March 31, 2008 of \$2,382 for a total amount due of \$20,766. Dept. Ex. No. 1 ("Audit Correction and/or Determination of Tax Due"), Dept. Gr. Ex. No. 2 ("Auditor-Prepared Use Tax Report (ST-44)"); Tr. pp. 7-8.
2. In August 2005, Taxpayer received, as consignee, jewelry from India. Dept. Gr. Ex. Nos. 2 ("Audit Comments"), 3 ("Customs Power of Attorney" with Grantee CSI International, Inc.), Dept. Ex. No. 4 (e-mails), Taxpayer Ex. No. 4 (invoice); Tr. pp. 17, 22-24.
3. The jewelry was purchased using Taxpayer's name, addresses, social security number, phone number and fax number. Dept. Gr. Ex. Nos. 2 ("Audit Comments," "Westlaw: People Finder-Historic Tracker Record" and "WhitePages.com"), 3 ("Customs Powers of Attorney" dated August 26 and 29, 2005), Taxpayer Ex. No. 4; Tr. pp. 15-16, 18-19.
4. In 2005 Taxpayer used both the address of 1234 Anywhere Drive, Somewhere, Illinois and 1234 Anywhere Court, Somewhere, Illinois. Dept. Gr. Ex. Nos. 2, 3, Taxpayer Ex. No. 4; Tr. pp. 13, 17.

Conclusions of Law:

The UTA is complementary to the Retailers' Occupation Tax Act ("ROTA"). Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63 (1985). "Functionally, the Use Tax Act serves to tax property purchased out of State by Illinois residents that is not taxable under the Retailers' Occupation Tax Act and at the same time attempts to eliminate the competitive disadvantage of in-State businesses." *Id.* at 69.

The UTA makes numerous sections of the ROTA (35 ILCS 120/1 *et seq.*) applicable to the Use Tax. Section 12 of the UTA incorporates sections 5 and 8 of the ROTA. These ROTA sections provide that the admission into evidence of Department records under a certificate of the Director establishes the Department's *prima facie* case and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/5, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Once the Department's *prima facie* case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with their books and records that show the Department's records are incorrect. Copilevitz, supra. Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of tax deemed due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4th Dist. 1990).

The Department's Determination was entered into evidence under the certificate of the Director of Revenue, and as such, the Department's *prima facie* case was established, and the burden of proof shifted to the Taxpayer to overcome the Department's *prima facie* case.

Taxpayer had several responses to the Department's case. First, Taxpayer alleged that another individual used his information to bring the jewelry into Illinois. Tr. pp. 5, 14, 17, 32. Taxpayer, however, did not substantiate this claim through either presentation of the supposed individual, Jones, a man known to Taxpayer, or the filing of a complaint/report regarding the unauthorized use of Taxpayer's personal information. Moreover, Taxpayer testified that he could not explain how Jones obtained his personal information. Tr. p.16.

Taxpayer next asserted because Jones brought the jewelry into the country, not him and the merchandise invoice stated "MR. JONES (PERSONAL CARRY)" he "should not pay tax." Tr. p. 13. To further support this assertion, Taxpayer presented a letter and notarized statement which he authored denying that he brought the merchandise into Illinois. Taxpayer Ex. Nos. 1 ("Taxpayer's February 2, 2009 letter"), 2 ("Taxpayer's notarized statement"). The letter and notarized statement are not documents associated with Taxpayer's own business or personal books and records. These documents are merely Taxpayer's unsubstantiated denials. It should also be noted that whether Jones was the carrier of the merchandise or not does not establish that the jewelry was neither bought by Taxpayer nor brought into Illinois for Taxpayer's use. After all, the merchandise invoice does identify Taxpayer as consignee of the jewelry.

Taxpayer also alleges that he previously proved the signatures on the Customs Powers of Attorney (“Customs Powers”) were not his. Tr. p. 29. This is unsubstantiated. No comparison document with a sample of Taxpayer’s signature or the testimony of a handwriting expert was proffered at hearing in support of this argument.

Taxpayer’s last argument is his contention that the Somewhere address on the Customs Powers was “wrong.” Taxpayer Ex. No. 1. Taxpayer offered no explanation as to why the Somewhere address was wrong nor did he deny having ever used this address. Moreover, the Department showed that the Somewhere address listed on the Customs Powers belonged to Taxpayer. Dept. Gr. Ex. No. 2. Furthermore, Taxpayer’s contention that the Somewhere address is wrong does not negate his admission that the address on the merchandise invoice belongs to him. Tr. 13, 17.

While Taxpayer made various arguments that denied his involvement in the transaction at issue which triggered a use tax liability, he failed to introduce evidence that was legally sufficient to overcome the Department’s *prima facie* case.

Recommendation:

For the reasons stated above, it is recommended that the Department’s Determination be affirmed.

August 28, 2009

Julie-April Montgomery
Administrative Law Judge