

**UT 09-7**

**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**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

) No.: 00- ST- 0000  
) NTL Nos.: 00 00000000000000  
) 00 00000000000000  
) 00 00000000000000  
) IBT No.: 0000-0000

v.

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

**JOHN DOE,**

**Taxpayer.**

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**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis:**

This matter arose from a protest filed by John Doe (“Taxpayer”) of the “Audit Correction and/or Determination of Tax Due” (“Determination”) dated June 17, 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.*, with respect to merchandise purchased by Taxpayer outside of Illinois for which no tax was paid. An evidentiary hearing was held on September 25, 2009 at which the Department presented documentary evidence and the Taxpayer presented only his testimony. 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 finding of fact and conclusions of law:

**Finding 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" for the periods March 2004 and September 2004, which reflect use tax due of \$1,662, a late filing penalty of \$34, and a late payment penalty of \$332 for a total amount due of \$2,028. Department Ex. No. 1; Tr. p. 6.

**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 4 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 120/4, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1<sup>st</sup> 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 (1<sup>st</sup> Dist. 1987).

To overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with his 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 (1<sup>st</sup> 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 (4<sup>th</sup> 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 Taxpayer to overcome the Department's *prima facie* case.

Taxpayer does not deny that he owes use tax nor does he dispute the correctness of the amounts sought by the Department. Rather, Taxpayer's response to the Department's case was to assert that he had previously settled this matter in 2007 with the Department's Tammy Hill. Tr. pp. 5, 7-9, 20. Taxpayer testified that he had "an agreement that [he] would pay \$2,772...and part of this agreement is that's all I owe...and [Tammy Hill] said yeah." Tr. p. 7. Taxpayer further testified that he sent Ms. Hill an unsolicited letter which stated that his accompanying check represented the "full and final payment on all Illinois state taxes due through 2005 for John Doe." Tr. p. 9.

Taxpayer acknowledged that Ms. Hill did not sign a settlement agreement or any other document that evidenced resolution of the matter. Tr. p. 8.

Taxpayer presented no documentation to evidence a settlement with the Department. He did not submit a copy of the letter and cancelled check that he testified he sent Ms. Hill. Taxpayer did not present the testimony of Ms. Hill to collaborate his allegation of a settlement. Taxpayer failed to present any legally sufficient evidence and no case law can be found to support the assertion that once the Department cashed Taxpayer's check there was an agreement that should be characterized as a settlement agreement between the Department and Taxpayer.

The Department presented a *prima facie* case. Taxpayer failed to introduce legally sufficient evidence to overcome the Department's *prima facie* case. In addition, Taxpayer did not substantiate his claim that he had a settlement or any other type of agreement with the Department for the use tax liability.

**Recommendation:**

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

November 2, 2009

Julie-April Montgomery  
Administrative Law Judge