

UT 10-10

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**

v.

JOHN DOE,

Taxpayer.

) No.: 09 ST- 0000

) Account ID:

) Letter ID:

)

) Use Tax

)

) Julie-April Montgomery

) Administrative Law Judge

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”) to the “Audit Correction and/or Determination of Tax Due” (“Determination”) completed on July 13, 2009 and Notice of Tax Liability (“Notice”) dated November 18, 2009 that were issued to Taxpayer by the Illinois Department of Revenue (“Department”). The Determination and Notice were 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 October 18, 2010. Each of the Parties 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. Taxpayer imported a bench-chair and other items he purchased in Thailand to Chicago, Illinois. Department Ex. No. 3 (Department's April 16, 2009 letter), Taxpayer Ex. Nos. 1 (Taxpayer prepared "List of Items Shipped From Thailand to Chicago"), 2 (letter of Taxpayer's mother), 5 (Taxpayer's outline of facts with photographs); Tr. pp. 45, 52, 69.
2. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of both the Determination and Notice for the period June 2006, which reflects use tax due of \$994, a late filing penalty of \$20, a late payment penalty of \$199 and interest through November 18, 2009 for a total amount due of \$1,395.14. Department Ex. Nos. 1 (Determination), 2 (Notice); Tr. pp. 24, 26.

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. 35 ILCS 105/12. 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 (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 to 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 and Notice were entered into evidence under certificates 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.

While Taxpayer acknowledged Use Tax was due, he disagreed with the amount of tax sought by the Department. Tr. pp. 21, 82. Taxpayer alleged that the Department

overvalued the items he imported from Thailand to Chicago. Tr. pp. 21, 54, 83. Taxpayer believed the Department's overvaluation occurred because it: 1) did not take into consideration that Thailand sells items cheap (tr. pp. 58-59, 65); 2) was unaware Taxpayer bargained and as such paid less than the original prices for items he purchased (tr. p. 65); 3) made no allowance for items that were his personal belongings initially shipped from Illinois to Thailand and back to Illinois (tr. pp. 45,54); and 4) included gifts Taxpayer received while in Thailand (tr. pp. 45,55,64).

Taxpayer supported his claim that Thailand prices were cheap by the presentation of a valuation list he prepared. Taxpayer Ex. No. 1. Taxpayer testified the methodology he employed to determine the prices on this list were: 1) what he "thought about each item and how much [he] would have paid" or 2) what he actually paid for each item. Tr. p. 58. However, Taxpayer provided no receipts for the imported items. Taxpayer alleged the lack of receipts was because Thailand did "not have a receipt system for every single item one may purchase." Taxpayer Ex. No. 5; Tr. pp. 58-59. This statement implied that some items would have had receipts. Moreover, Taxpayer failed to provide documentation to substantiate his claim that Thailand lacked a receipt system. In addition, Taxpayer posited his summaries of websites said to reflect prices for a bench-chair shipped from Bali and Britain. However, Taxpayer admitted the bench-chairs listed on these websites were not comparable to the one at issue. Taxpayer Ex. Nos. 3 (websites); Tr. pp. 48, 52. In addition, Taxpayer stated the bench-chair he purchased was a "unique [piece] of furniture." Tr. p. 51. Furthermore, the picture of a set consisting of two chairs and a table was insufficient evidence where no breakdown of each item in the

set was given. Taxpayer Ex. No. 8 (photo of 3 piece set). Taxpayer presented no basis for the prices of items imported save his own valuations. Taxpayer Ex. Nos. 1, 5.

Taxpayer provided no independent appraisal or insurance for the imported items reflective of their value. Tr. pp. 49, 58. Taxpayer admitted that an appraisal could have been performed but presented no appraisal at the hearing. As to insurance, Taxpayer alleged he was not allowed to obtain insurance but no substantiation for this assertion was posited. Taxpayer Ex. No. 5, Tr. p. 49. Moreover, Taxpayer provided no Customs Declaration or shipping documents, even though the Department requested such information. Tr. pp. 33-36.

Taxpayer asserted he “would bargain and reduce the price in all situations” for items purchased. Taxpayer Ex. No. 5; Tr. p. 65. Again, no evidence was presented that substantiated this assertion.

Taxpayer alleged he had personal items that were initially shipped to Thailand before being shipped back to Illinois. This allegation rested upon Taxpayer’s self-prepared list and presentation of a webpage bill of lading which labeled his shipment as containing “COMMODITIES: Used Personal Effects.” Taxpayer Ex. Nos. 1, 4 (Website Bill of Lading Information); Tr. p. 54. But Taxpayer conceded that the bill of lading did not acknowledge the purchases and gifts that Taxpayer admitted he also imported from Thailand. Taxpayer Ex. Nos. 1, 5; Tr. pp. 44-45. Taxpayer provided no documentation to verify what items were initially shipped from Illinois and back again.

Taxpayer asserted some of the goods were gifts from Thais; however, there was no substantiation of this claim.

Recommendation:

Taxpayer failed to introduce legally sufficient evidence to overcome the Department's *prima facie* case. It is, therefore, recommended that the Department's Determination and Notice be affirmed.

November 30, 2010

Julie-April Montgomery
Administrative Law Judge