

ST 95-18

Tax Type: SALES TAX

Issue: Unreported/Underreported Receipts (Non-Fraudulent)  
Tax Collected and Not Remitted

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE      )
OF THE STATE OF ILLINOIS      )
                                )
                                )   Docket #   XXXXX
v.                               )
                                )
XXXXXX                          )   IBT #      XXXXX
                                )
Taxpayer                        )
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, Taxpayer's president XXXXX.

SYNOPSIS: This matter comes on for hearing pursuant to XXXXX's (hereinafter "Taxpayer") timely protest of Notice of Tax Liability No. XXXXX issued by the Illinois Department of Revenue (hereinafter "Department") on March 13, 1992 for taxes due for the period July 1, 1988 through August 31, 1991. The Taxpayer was in the business of renting and selling video tapes and selling sports memorabilia through mail order. At issue is the question whether the auditor's findings of under-reporting taxes on these various transactions was proper. 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.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns. (Dept. Ex. #6).

2. The Taxpayer operated two video rental stores; and a national mail order sports memorabilia business. (Tr. at p. 9).

3. The audit results were based upon rental receipts of video tapes, sales of sports memorabilia, and the purchase of video tapes for use in Illinois. (Dept. Ex. #7).

4. Receipts were examined for April, May and June, 1989. It was noted that there existed invoices for sports items sold at a sports show without taxes charged. In checking purchases of video rental tapes it was noted that the Taxpayer did not pay tax on these. (Dept. Ex. #7).

5. In testimony the Taxpayer's president XXXXX did not dispute that taxes may not have been paid. (See Tr. at p.11).

6. The Taxpayer offered no documentary evidence into the record to rebut the Department's assessment.

7. The Taxpayer asserted that most memorabilia sales were to out-of-store customers, but admitted having no credit card slips or customer lists to verify this. (Tr. at pp. 12,13).

CONCLUSIONS OF LAW: The Retailers' Occupation Tax Act, (35 ILCS 120/1) provides the following:

"As soon as practical after any return is filed, the Department shall examine such return and shall if necessary correct such return according to its best judgment and information, which 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 herein."

The statute has been strictly construed insofar as establishing a prima facie case is concerned, and the Illinois Courts have universally sustained a prima facie case based upon the corrected tax return. *Fillichio v. Department of Revenue*, 15 Ill.2nd 327 (1985).

Once the corrected return is offered into evidence, there is a statutory burden placed upon the Taxpayer to establish by competent evidence that the corrected return of the Department is incorrect, and until the Taxpayer provides such proof, the corrected return is presumed correct. *Masini v. Department of Revenue*, 60 Ill. App.3rd 11 (First Dist. 1978). In order to overcome the presumption of validity attached to the

Department's corrected return, the Taxpayer must produce competent evidence identified with its books and records in showing that the Department's returns are incorrect.

The Taxpayer's oral assertions are totally unsupported by any documentary evidence regarding assessed taxes on the memorabilia sold. The Taxpayer made an admission as to unpaid taxes on video tapes acquired for rental.

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or arguments, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given above, the determination by the Department that XXXXX was properly assessed tax must stand as a matter of law.

RECOMMENDATION: It is my recommendation that Notice of Tax Liability No. XXXXX be finalized in its entirety.

William J. Hogan  
Administrative Law Judge