

ST 96-23

Tax Type: SALES TAX

Issue: Unreported/Underreported Receipts (Fraud Application)

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

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DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	
v.	)	No.
	)	IBT
TAXPAYER,	)	
	)	
Taxpayers	)	Daniel D. Mangiamele
	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** ATTORNEY for TAXPAYER; Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on December 27, 1994, for sales tax covering the period January, 1991 to September 30, 1993. At issue is whether the liability established herein was rebutted by the taxpayer. 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 Facts:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns showing a total liability due and owing in the amount of \$24,586.00. Dept. Ex. 1 and 2
2. Taxpayer on the record stipulated to the finding of the liability contained in the Notice of Tax Liability.
3. Taxpayer withdrew their protest.

**Conclusions Of Law:**

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, 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 below, the determination by the Department that TAXPAYER, is subject to the

standard rate of tax as imposed by the Illinois Sales Tax Act must stand as a matter of law. In support thereof, the following conclusions are made:

Once the Notice of Tax Liability was admitted into evidence, the amount of tax and penalty established was deemed *prima facie* true and correct. The Department having established its case, the burden shifted to the taxpayer to overcome it by producing competent evidence as identified with taxpayer's books and records. Masini v. Department of Revenue (1978) 60 Ill. App. 3d 11, 376 N.E. 2d 324. In the instant case, the taxpayer stipulated to the tax liability and withdrew their protest. Thus, the taxpayer failed to overcome the Department's *prima facie* case.

Based on the above, I recommend that the Notice of Tax Liability plus any penalties and interest to date be affirmed.

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Daniel D. Mangiamele  
Administrative Law Judge