

ST 96-26
Tax Type: SALES TAX
Issue: Disallowed Exemption Certificates
Sales to Exempt Organizations

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

DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
v.)	Docket #
)	
TAXPAYER)	IBT #
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES

TAXPAYER, taxpayer, appeared pro se.

SYNOPSIS

This cause came on to be heard following a Retailers' Occupation and Use Tax audit performed upon taxpayer by the Illinois Department of Revenue (hereinafter the "Department") for the period of July 1, 1987 through December 31, 1989. Taxpayer did not agree with the auditor's determinations causing the Department to subsequently issue an assessment whose timely protest by taxpayer resulted in this contested case.

The major issue is if certain sales of fuel are subject to local Retailers' Occupation Taxes assessed by the Department. Specifically, the question of liability herein concerns if taxpayer produced sufficient documentary evidence to establish that the Department's corrected return is not accurate.

After reviewing this matter, I recommend the issue be resolved in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducted business in Illinois during the audit period by selling petroleum products such as fuel. (Tr. pp. 9-10; Dept. Ex. No. 2)

2. All the fuel taxpayer sold to BUSINESS during the audit period was sold tax-free until November, 1990. (Tr. pp. 10-12; Dept. Ex. No. 2, p. 11)

3. For most of the tax-free sales taxpayer made to BUSINESS, the Department only assessed the one (1) percent local Retailers' Occupation Tax. The five (5) percent State tax was assessed against Raines in a separate audit. (Tr. pp. 16-19; Dept. Ex. No. 2, pp. 11, 16)

4. The Department also assessed the State 5 % Retailers' Occupation Tax against taxpayer on four sales on which the tax was properly collected in November 1989 but then was erroneously deducted as non-taxable on the November 1989 sales tax return. (Dept. Ex. No. 2, p. 11)

5. Pursuant to statutory authority, the auditor did cause to be issued a Correction and/or Determination of Tax Due (SC-10) and this served as the basis for Notice of Tax Liability (NTL) No. F-253538 issued November 18, 1990 for \$2,731.04, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

6. The introduction of the Department's corrected return and NTL into evidence established its *prima facie* case. (Tr. p. 2; Dept. Ex. Nos. 1 & 3)

CONCLUSIONS OF LAW

Retailers' Occupation Tax is imposed upon persons engaged in the business of selling at retail tangible personal property, unless one can document an exemption, 35 ILCS 120/2 and 7. This includes petroleum fuel products such as those sold by the taxpayer herein.

It is well settled under Illinois law that a taxpayer cannot rebut the Department's *prima facie* case with only testimony that denies liability, but must also submit acceptable documentary evidence identified with its books and records. DuPage Liquor Store, Inc. v. McKibbon, 383 Ill. 276, (1943); Copilevitz v. Department of Revenue, 41 Ill. 2d. 154, (1968) The taxpayer's testimony, no matter how sincere, cannot serve to negate the liability unless

accompanied by records that comply with regulatory or statutory documentation requirements.

In this case, taxpayer brought to hearing a group of invoices that covered many of the assessed transactions, and it was decided to admit a sample of these into the record (Taxpayer Ex. Nos. 1-3). Unfortunately for the taxpayer, the tax "exemption" number listed by his purchaser on most of the tickets is a motor carrier number that can only be used under Illinois Retailers' Occupation and Use Tax Regulations to claim tax-free status when purchasing items that qualify for the rolling stock exemption, 86 *Ill. Adm. Code*, ch. I, Sections 130.340 and 150.1201. While a government-issued motor carrier number could be used by an interstate carrier to make purchases of equipment or repair parts tax-free (Tr. pp. 23-24), it cannot be used to purchase fuel tax-free, 86 *Ill. Adm. Code* ch. I, Sec. 130.340(b).

The audit supervisor could not identify the non motor carrier number on the other invoice, and I note it is not a Department Retailers' Occupation Tax registration or reseller number. (Tr. p. 24)

Accordingly, I must conclude the tickets proffered by taxpayer cannot be accepted as adequate documentary evidence to refute the tax liability, and I thus do not have any legal means to reduce this assessment.

RECOMMENDATION

Based upon my findings and conclusions as stated above, I recommend the Department finalize NTL No. XXXXX and issue a final assessment.

Karl W. Betz, Administrative Law Judge