

ST 96-31  
Tax Type: SALES TAX  
Issue: Books & Records Insufficient

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

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

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RECOMMENDATION FOR DISPOSITION

APPEARANCES

Mr. Patrick Mathis and Ms. Iris Miranda-Kirschner for TAXPAYER.

SYNOPSIS

This cause came on to be heard following a Retailers' Occupation and Use Tax audit performed upon TAXPAYER (hereinafter "Taxpayer") by the Illinois Department of Revenue (hereinafter the "Department") for the period of January 1, 1989 through November 30, 1993. The audit process was extended over seventeen months and the Department ultimately issued an assessment whose timely protest by taxpayer resulted in this contested case.

At issue is if a certain document should have been considered by the Department auditor, and relatedly, if said document would negate the entire assessment tax liability. This document was not submitted by taxpayer prior to expiration of an extended deadline established by a Department issued Notice of Demand for Documentary Evidence.

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

## FINDINGS OF FACT

1. Taxpayer conducted business operations in Illinois during the audit period by acting as a construction contractor. (Tr. p. 60; Dept. Ex. No. 2, p. 25)

2. During the audit period, the taxpayer was not registered under the Illinois Retailers' Occupation and Use Tax Acts, and did not file sales/use tax returns with the Department. (Dept. Ex. No. 2, pp. 25-30)

3. The sole owner and president of taxpayer is OWNER. (Tr. p. 58)

4. On February 23, 1994 the Department issued to taxpayer's power of attorney, XXXXX, a Notice of Demand for Documentary Evidence which demanded that certain books and records of taxpayer be made available for review on or before April 25, 1994. (Tr. pp. 28-29, 50; Dept. Ex. No. 2, pp. 21-24, 27, 31, 82-83)

5. The auditor extended several times the Notice of Demand's April 25, 1994 deadline for the benefit of taxpayer, the final deadline extension being until June 15, 1994, at 4:00 p.m. (Tr. pp. 46, 54; Dept. Ex. No. 2, pp. 27-28, 31-36)

6. The taxpayer executed an audit test check/statistical sampling agreement in which he agreed to abide by the projection of a sample review of his purchases, said sample being a "5% random selection of checks in the period 7/92 through 11/93, projected over total material purchases in audit period" (Dept. Ex. No. 2, p. 84)

7. Pursuant to statutory authority, the auditor did cause to be issued an Audit Correction and/or Determination of Tax Due (SC-10-G) and this served as the basis for Notice of Tax Liability (NTL) No. XXXXX issued June 9, 1995 for \$17,884.00, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

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

## CONCLUSIONS OF LAW

Section 7 of the Retailers' Occupation Tax Act establishes requirements and provisions for maintenance of books and records by taxpayers in case of audit by the Department. (35 ILCS 120/7) Relative to Use Tax which was assessed in this case, the Use Tax Act contains its own section on keeping books and records and also incorporates by reference provisions of Section 7 of the Retailers' Occupation Tax Act that are not inconsistent with it (35 ILCS 105/11 and 12). Section 7 states in part:

". . . In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax hereunder, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable hereunder."

The central issue in this hearing, as concisely stated by counsel for taxpayer in their memorandum of law (Taxpayer 4/1/96 Brief, p. 1) is whether Taxpayer Exhibit No. 1, which was offered into evidence and rejected by me, should have been admitted and considered in determining the liability of taxpayer. The taxpayer contends the Department was unreasonable prior to hearing in not considering the exhibit and that I should admit it now. The taxpayer argues that because the only remaining liability is premised upon this one transaction between it and Carpet World, the admission of the exhibit would establish that the tax was paid and would thus result in no liability.

I cannot agree with taxpayer's argument because while counsel questioned auditor Lynn repetitively about this, the auditor would not acknowledge that the exhibit was acceptable audit evidence that tax had been paid on the transaction. (Tr. pp. 38-40) The auditor testified that he was reluctant to acknowledge the exhibit's acceptability as proof of payment of Illinois tax because of its containing a Michigan address. I also note this exhibit is not a copy of a

normal multi-copy business invoice but is instead a handwritten statement that has been altered at least once when "DBA TAXPAYER" was added by someone with different color pen and handwriting than the original writer.

I do not, however, have to decide the acceptability of this document, as Section 7 of the Retailers' Occupation Tax Act is unequivocal about the effect of a taxpayer not submitting documents within the deadline established by a 60 day demand letter. This effect is the matter shall be closed, and the transaction shall be conclusively presumed to be taxable.

Because there is a 60 day demand letter in this record (Dept. Ex. No. 2, pp. 21-24), and the Department auditor made clear his position that he would not extend the deadline for the purpose of reviewing the document (Tr. pp. 48-50), I cannot let the proffered exhibit come into evidence. Although I refused to allow the exhibit into evidence, it was, however, placed into the record in case a reviewing authority were to desire to rule upon its admissibility.

While taxpayer attempts to portray the auditor as unreasonable because he would not grant taxpayer an extension to produce the one item, the auditor had actually granted taxpayer several earlier extensions and he noted in his testimony that a final deadline had to be set sometime. The auditor also noted in his testimony and documented in his report how the taxpayer would use delay tactics and procrastinate for as long as the Department would let him. (Tr. pp. 55-57; Dept. Ex. No. 2, pp. 27, 31-36)

In summary, I find the Department issued a valid Notice of Demand for Documentary Evidence in accordance with the provisions of the statute and I further find the Department is within its rights to have not extended the deadline.

#### **RECOMMENDATION**

Based upon my findings and conclusions as stated above, I recommend the Department finalize NTL XXXXX in its entirety.

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Karl W. Betz, Administrative Law Judge