

ST 96-43  
Tax Type: SALES TAX  
Issue: Conditional Sale Inventory

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

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS,	)	
Petitioner	)	No.
	)	
v.	)	IBT No.
	)	
TAXPAYER	)	
Taxpayer	)	Linda K. Cliffler,
	)	Admin. Law Judge
	)	

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RECOMMENDATION FOR DISPOSITION

**APPEARANCES:** Jerome Coleman of Tremayne, Lay, Carr & Bauer for taxpayer.

**SYNOPSIS:**

TAXPAYER (hereinafter "TAXPAYER" or "Taxpayer") was issued a Notice of Tax Liability (XXXXX) for retailers' occupation tax due on conditional sales. TAXPAYER purchased CORPORATION (hereinafter "CORPORATION") in February 1988. CORPORATION was in the "rent-to-own" business. It had been the practice of CORPORATION to pay use tax on the purchase of inventory. After taxpayer purchased CORPORATION, however, it determined that CORPORATION had employed an erroneous method of reporting and remitting use tax, and began reporting retailers' occupation tax ("ROT") on the receipt of lease payments as conditional sales, and it also subtracted a proportion of taxes previously paid on inventory by CORPORATION. On audit, the Department disallowed the credit claimed by the taxpayer on its returns.

On consideration of this matter it is my recommendation that this matter be resolved in favor of the Department.

**FINDINGS OF FACT:**

1. TAXPAYER is in the rent-to-own business for household items, furniture, appliances, stereos, and electronics. (Tr. p. 19)
2. TAXPAYER acquired CORPORATION by stock purchase in February 1988. (Tr. pp. 9, 20)
3. CORPORATION owned two stores in Illinois located in Cahokia and Granite City. (Tr. p. 10)
4. Prior to being acquired by TAXPAYER, CORPORATION paid use tax on inventory purchases and retailers' occupation tax on the purchase option payment received when title was transferred. (Tr. pp. 10-11)
5. On May 31, 1988, shortly after TAXPAYER acquired CORPORATION, CORPORATION had \$298,611 in inventory on its books at the Cahokia store, and \$259,813 in inventory at its Granite City store. (Taxpayer Ex. No. 3, Tr. pp. 12-13, 21-22)
6. In May 1988 TAXPAYER collected ROT from customers based on the rental receipts. On its ROT returns, TAXPAYER reduced this amount by a percentage amount which they calculated was attributable to inventory on which tax was already paid.
7. TAXPAYER calculated taxable receipts by dividing the inventory purchased after May 31, 1988 by the balance of the inventory at May 31 (on which tax had been paid) and multiplying it by the rental receipts. (Tr. p. 23)

**CONCLUSIONS OF LAW:**

TAXPAYER is in the "rent-to-own" business whereby its customers purchase household furnishings by means of making monthly payments for the lease term and the payment of a nominal purchase option price at the end of the lease. Because customers were able to purchase the furnishings for a nominal amount, these "lease" arrangements are considered to be conditional sales.

Illinois imposes retailers' occupation tax on the receipt of each payment in the case of a conditional sale. 86 Ill. Admin. Code ch. I, Sec. 130.2010.

The seller/lessor may give a resale certificate to its supplier for the property that will be transferred subject to the conditional sale so that no tax is due on the purchase of its inventory.

When TAXPAYER purchased CORPORATION, it determined that CORPORATION had been filing its retailers' occupation tax and use tax returns using an erroneous method. CORPORATION paid use tax on its inventory purchases rather than ROT on the receipts from the conditional sales. TAXPAYER correctly reported ROT on the receipts from customers, but also deducted an amount which it calculated had been previously paid by CORPORATION on the purchase of inventory on the portion of inventory that was sold.

The proper means of correcting erroneously paid taxes is through a claim for refund. Section 6a of the Retailers' Occupation Tax Code (35 **ILCS** 120/6a) specifies the procedures for filing a claim for refund, to which taxpayer has not complied. Apparently, since the statute of limitations had run for some of the periods in question, taxpayer instead took an informal approach and subtracted what it determined to be the amount of tax which had previously been paid on the same property which was now generating rental receipts. There is no support in either the statute or Departmental regulations which would provide for such a method. In order to claim a refund, taxpayer must follow the procedures set forth in the statute.

Had taxpayer filed a claim for refund, the Department would have had an opportunity to not only calculate the tax erroneously paid on inventory, but would have also calculated the correct amount of tax that was owed on the rental payments received during the same period. Taxpayer apparently has forgotten that even though taxes were paid on the wrong basis by CORPORATION, taxes were nevertheless due on the rental receipts.

In addition, pursuant to 35 **ILCS** 120/2-40, if a taxpayer overcollects retailers' occupation tax, the excess must be remitted to the state.

...[I]f a seller, in collecting an amount (however designated) that purports to reimburse the seller for retailers' occupation tax liability measured by receipts

that are subject to tax under this Act, collects more from the purchaser than the seller's retailers' occupation tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department.

Thus, since TAXPAYER collected the tax from its customers, it must remit the full amount collected to the State.

It should be noted that Administrative Law Judge Hogan stated at the hearing that the Notice of Tax Liability showed a tax liability of \$49,502 and that with the credit of \$19,132 referred to in the letter from Terry Charlton (Joint Ex. No. 1), the tax liability would be \$30,370. (Tr. pp. 6, 7) The letter from Mr. Charlton to taxpayer's attorney, Mr. Coleman, was in response to taxpayer's settlement proposal and states that the Department has determined that the amount of tax allegedly paid to TAXPAYER's suppliers was \$19,132. The Department did not admit that the \$19,132 was a legitimate credit against ROT owed by the taxpayer.

An ALJ is the finder of fact, not an advocate. In this case, even though the Department was not represented by a litigator, the ALJ does not represent the Department. Furthermore, stipulations of fact are just that, stipulations of *fact*, and cannot be stipulations as to legal conclusions. Whether taxpayer is entitled to a credit for taxes paid to suppliers of inventory is the ultimate issue in this case and cannot be stipulated to by the ALJ. It may be that ALJ Hogan merely was stipulating to the dollar amount of the credit in the case taxpayer ultimately was successful in its argument. In any event, that must be the conclusion as to the import of his statement, inasmuch as he didn't have the power to do more.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Deficiency be finalized in its entirety.

Date: \_\_\_\_\_

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Linda K. Cliffel  
Administrative Law Judge