

ST 97-11
Tax Type: SALES TAX
Issue: Books and Records Insufficient

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	No.
)	IBT No.
v.)	NTL No.
)	NTL No.
TAXPAYER)	
)	Charles E. McClellan
Taxpayer)	Administrative Law Judge
)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Marc Muchin, Special Assistant Attorney General, for the Department of Revenue.

Synopsis:

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notices of Tax Liability (NTL) issued to TAXPAYER by the Department of Revenue dated May 10, 1994 for Retailers' Occupation Tax ("ROT") and Use Tax. These Notices of Tax Liability are numbered as follows: XXXXX and XXXXX. Since the taxpayer failed to pay tax due for the months at issue as shown on taxpayer's Sales and Use Tax Returns (Form ST-1), the issue is whether taxpayer presented sufficient evidence to overcome the Department's determination of tax due as shown on the NTL's for those months, that is, for September and October 1992. 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. Because the taxpayer failed to pay ROT for the months at issue as shown on the Forms ST-1 that taxpayer filed, the Department's *prima facie* case against TAXPAYER, including all jurisdictional elements, was established by the

admission into evidence of the NTL's showing tax due of \$1,207 for September 1992 and \$\$1,207 for October 1992, plus late filing penalty and interest for each month. (Tr. pp. 4, 5; Dept. Exs. No. 1, 2).

2. Taxpayer appeared *pro se*, in the person of TAXPAYER, after being encouraged to retain counsel. (Tr. pp. 3, 5; Dept. Ex. No. 3).

3. Taxpayer did not introduce any documentary evidence to rebut the Department's *prima facie* case. (Tr. p. 11).

Conclusions of Law:

The record in this case, shows that 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 assessments in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that TAXPAYER, owes the assessments shown on the NTL's must stand as a matter of law. In support thereof, the following conclusions are made:

The statutory provision that applies when a taxpayer fails to pay the tax shown on its sales and use tax returns is contained in § 4 of the ROT Act. It states that, "If a notice of tax liability is based on the taxpayer's failure to pay all or a part of the tax admitted by his return or returns (whether filed on time or not) to be due, such notice of tax liability shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the amount of tax due as shown therein." (35 ILCS 120/4). Therefore, when the Department had the NTL's, introduced into evidence, its *prima facie* case was established.

Taxpayer introduced no documentary evidence to rebut the Department's *prima facie* case. Taxpayer did offer a hand written statement which he prepared in which he stated that August of 1992 was the last month in which he conducted business. The Department objected to the admission of this statement on the grounds that it was a self serving statement and the objection was sustained.

(Tr. pp. 8, 9). The document was accepted as an offer of proof, however. (Tr. p. 10).

A taxpayer cannot overcome the Department's *prima facie* case merely by denying the accuracy of the Department's determination. Central Furniture Mart v. Johnson, 157 Ill.App.3d 907 (1st Dist. 1987). Simply questioning the Department's assessment or denying its accuracy is not enough. Quincy Trading Post v. Dept of Revenue, 12 Ill App.3d 725 (4th Dist. 1973). A taxpayer can overcome the Department's *prima facie* case by producing competent evidence identified with the taxpayer's books and records. Vitale v. Department of Revenue, 118 Ill.App.3d 210 (3rd Dist. 1983). In this case the taxpayer introduced no documentary evidence to support his allegation that August of 1992 was the last month that he was in business even though he had been advised that such evidence would be required. (Tr. p. 5; Dept. Ex. 3). Taxpayer presented no documentary evidence whatsoever to show that the Department's determination was arbitrary, capricious or unreasonable.

WHEREFORE, for the reasons stated above, it is my recommendation that the Department's assessment of tax as shown on the NTL's in question must be sustained, with interest and late payment penalties recalculated accordingly.

Date

Charles E. McClellan