

ST 97-18
Tax Type: SALES TAX
Issue: Statute of Limitations Application

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	
v.)	IBT #
)	
TAXPAYER)	NTL #
)	
Taxpayer/Claimant)	Claim for Credit

RECOMMENDATION FOR DISPOSITION

Appearances:, Corporate Counsel for TAXPAYER; Charles Hickman, Special Assistant Attorney General for the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to the protest by TAXPAYER (hereinafter referred to as the "Taxpayer") to a Notice of Tax Liability and two Notices of Department's Tentative Determination of Claim. The Department tentatively denied the claims for a total amount of \$137,398.41 because it had not been definitely established that the tax had been paid in error. The issue herein is whether the taxpayer established that tax that had been paid to the state of Illinois had been also paid to the state of Iowa for use of the same materials. During the time period in question, the taxpayer was undergoing simultaneous audits by the state of Illinois and the state of Iowa. As a result of the audit, the state of Iowa assessed tax on

all items that the taxpayer removed from his warehouse in Iowa. The taxpayer had been paying tax to the various states where the materials were ultimately used. It is recommended that the matter be decided partially in favor of the Department and partially in favor of the taxpayer.

Findings of Fact:

1. The *prima facie* case of the Department, consisting of the Correction and/or Determination of Tax Due and two Notices of Department's Tentative Determination of Claim, was established by the admission of said documents into evidence. (Dept. Ex. No. 1; 9/18/96 Tr. p. 10)

2. On January 3, 1989, the Department issued a Notice of Department's Tentative Determination of Claim to the taxpayer for the periods 06/84, 07/84, and 10/84 through 03/85 in the amount of \$10,724.06. The Department denied the Claim stating that it had not been definitely established that the tax was paid in error or that the issuance of a Credit Memorandum would not result in unjust enrichment to the taxpayer. (Dept. Ex. No. 1)

3. On June 18, 1990, the Department issued Notice of Tax Liability number XXXXX in the amount of \$17,428.00 to the taxpayer. The liability established was for Use Tax for the period of January 1, 1985, through December 31, 1987. (Dept. Ex. No. 1)

4. On June 20, 1990, the Department issued to the taxpayer a Notice of Department's Tentative Determination of Claim for the period of 04/85 through 11/87 in the amount of \$126,674.35. The Department denied the Claim stating that it had not been definitely established that the tax was paid in error or that the issuance of a

Credit Memorandum would not result in unjust enrichment to the taxpayer. (Dept. Ex. No. 1)

5. The taxpayer withdrew the protest to the Notice of Tax Liability No.XXXXX. (9/18/96 Tr. p. 9)

6. The taxpayer is in the business of operating convenience stores in a nine state area. (9/18/96 Tr. p. 13)

7. When the taxpayer erects a new store, many of the building materials used in the construction come from the taxpayer's general warehouse located in Ankeny, Iowa. (9/18/96 Tr. pp. 14-16)

8. During the audit period, or shortly before or after, the taxpayer was undergoing a simultaneous audit by the state of Iowa. (9/18/96 Tr. p. 17)

9. The state of Iowa determined that the taxpayer was incorrectly paying the Use Tax liability to that state. (9/18/96 Tr. pp. 18-19)

10. The state of Iowa determined that they were entitled to tax everything that came through the taxpayer's warehouse. (9/18/96 Tr. p. 18)

11. The taxpayer had been paying the Use Tax liabilities to the various states where the products had been shipped to erect the buildings. (9/18/96 Tr. p. 18)

12. The state of Iowa issued a Notice of Assessment for Sales/Use Tax to the taxpayer on July 14, 1988, for the tax period of July 1, 1982, through June 30, 1987, in the amount of \$527,981.38. (Taxpayer's Ex. No. 1)

13. On December 31, 1990, the taxpayer issued check number 263890 to the Treasurer of the state of Iowa, Audit and Compliance

Division, in the amount of \$621,283.93 in payment of the liability.
(Taxpayer Ex. No. 2)

14. The Department of Revenue and Finance in the state of Iowa subsequently refunded \$51,472.75 to the taxpayer as the portion of the liability attributable to penalty. The taxpayer paid tax to the state of Iowa in the amount of \$390,387.55 for the audit period.
(Taxpayer's Ex. No. 3)

15. The taxpayer changed the way that they file and pay their taxes pursuant to the Iowa audit. (9/18/96 Tr. p. 19)

16. Regarding the Claims for Credit, in the total amount of \$137,398.41, that the taxpayer submitted to the state of Illinois, the taxpayer reduced the amount of the claim to \$53,997.52. The taxpayer substantiated the adjusted claim with the individual store construction records, the Illinois audit work papers, the Iowa audit work papers, and the taxpayer's corporate records for construction.
(12/5/96 Tr. p. 120; Taxpayer's Ex. No. 17)

17. Regarding the corporate records, for each store the taxpayer built, a job cost transaction report was prepared that listed all of the materials that went into the construction of the particular store. The report was a summary of the materials that went into the construction site. The report was supported by withdrawal slips from the warehouse or individual invoices from the supplier. (12/5/96 Tr. pp. 107-108)

18. The taxpayer chose a sample of the stores constructed in the time period at issue and obtained all the records for the stores in the sample. (12/5/96 Tr. p. 108)

19. Based upon the taxpayer's records and summaries, the taxpayer asserted that Iowa taxed \$1,349,938.14 of goods that were taken to Illinois sites. (12/5/96 Tr. p. 109)

20. The taxpayer constructed 42 stores in the state of Illinois during the audit period. (12/5/96 Tr. p. 111)

21. For purposes of this hearing, the taxpayer selected four stores as a sample for projection. The stores were located in Tiskilwa, Bradford, Cherry, and Watterman, Illinois. (12/5/96 Tr. p. 112; Taxpayer's Ex. Nos. 19-22)

22. The job cost transaction report listed the items removed from inventory at the warehouse in Iowa with a reference number that corresponded with the work order used to withdraw the item from inventory. (12/5/96 Tr. p. 113)

23. The job cost transaction report is prepared at the end of the job and lists everything that was used to construct the particular store. It is not broken down by month. (12/5/96 Tr. p. 113)

24. The work orders that correspond to the numbers found in the job cost transaction report note that Illinois tax was paid on the cost of the materials removed from inventory. (Taxpayer's Ex. Nos 19-22)

25. The taxes paid pursuant to the work orders were reflected in the taxpayer's Use Tax summaries. The totals of Illinois tax paid, as shown on the summaries, corresponds to the auditor's summary of returns, as filed with the state of Illinois. (Taxpayer's Ex. Nos. 19-23)

Conclusions of Law:

During the taxable period in question, the Illinois Use Tax Act imposed a tax:

upon the privilege of using in this State tangible personal property,... (Ill. Rev. Stat. ch. 120, para. 439.3)¹

That paragraph of the Act goes on to state:

To prevent actual or likely multistate taxation, the tax herein imposed does not apply to the use of tangible personal property in this State under the following circumstances:... (d) the use, in this State, of tangible personal property which is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase or use of such property, to the extent of the amount of such tax properly due and paid in such other State;...

The Use Tax Act for the state of Iowa, found at Iowa Code §423.1 *et seq* imposes a tax upon:

An excise tax is imposed on the use in this state of tangible personal property purchased for use in this state, at the rate of four percent of the purchase price of the property. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer or the state department of transportation, to a retailer or to the department.... §423.2

Use is defined as:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, ... §423.1

At issue herein is a claim for refund to the Illinois Department of Revenue for taxes paid by the claimant to the State for items taken out of inventory from the taxpayer's warehouse in Iowa and used in construction of buildings in Illinois. An audit of the taxpayer's

¹. The Use Tax Act is currently found at 35 **ILCS** 105/1 *et seq*.

business in Iowa by the Iowa Department of Revenue imposed tax on the same materials for which the taxpayer had paid tax to Illinois.

In order for a taxpayer to qualify for the credit, he must establish that he has borne the burden of the tax. 35 **ILCS** 105/19 By using the path established by individual store construction records, the Illinois audit work papers, the Iowa audit work papers, and the taxpayer's corporate records for construction, the taxpayer was able to prove that a portion of the original claim for credit for taxes paid had in fact been paid on the same transactions in both Iowa and Illinois. The credit and refund section of the statute allows refunds and credits to taxpayers who pay tax under a mistake of law or fact, regardless of the tax liability on the part of others. Blome v. Nudelman, 373 Ill. 220 (1940)

I find that the taxpayer has established that he is entitled to a credit in the amount of \$53,997.52 plus applicable interest. I also recommend that Notice of Tax Liability XXXXX in the amount of \$17,428.00 be upheld in its entirety.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
May 12, 1997