

ST 97-19

Tax Type:

SALES TAX

Issue:

Miscellaneous Accounting Issues

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	IBT #
v.)	
)	Claim for Refund
TAXPAYER,)	
, Executor)	Administrative Law Judge
Claimant)	Linda Olivero

RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Lawrence E. Johnson of Lawrence E. Johnson & Associates for the TAXPAYER.

Synopsis:

The Department of Revenue (Department) received \$29,994.57 from the proceeds of the sale of a residence owned by the TAXPAYER (claimant or Estate). The Department collected the proceeds as a result of a lien that was placed on the property for retailers' occupation taxes (ROT) that were owed by XXXXX, d/b/a TAXPAYER (taxpayer). The claimant requested a refund of the money, and the Department issued a Notice of Tentative Determination of Claim denying the refund.¹ The claimant filed a timely protest. A hearing

¹. The Department's Notice of Tentative Determination of Claim states that TAXPAYER is the claimant. Although the ROT was assessed on TAXPAYER, d/b/a TAXPAYER, the TAXPAYER, through its executor, EXECUTOR, is the party that filed the Claim for Refund. At the

was held during which the claimant presented various documents. The parties subsequently submitted briefs in support of their positions. After a review of the record and the briefs filed herein, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. On September 11, 1981, the Department filed a Notice of Lien with the Recorder of Champaign County wherein the Department claimed a lien on all real and personal property owned by the taxpayer. The lien was for ROT, based on assessment numbers XXXXX, XXXXX, and XXXXX. (Claimant's Ex. No. 1).

2. On October 9, 1981, the taxpayer conveyed to XXXXX by Quit Claim Deed real property described as "Lot 823 in the Second Portion of Weller's Holiday Park Seventh Section a Subdivision in Champaign County, Illinois, as per plat recorded in BOOK "O" of Plats at Page 50 situated in Champaign County, Illinois" (hereinafter referred to as the "real estate"). This real estate is commonly known as 2612 W. Daniel Street, Champaign, Illinois. The deed was recorded on October 15, 1981. (Claimant's Ex. No. 2, 7).

3. The Department filed a complaint on September 9, 1983, in the Champaign County Circuit Court against the taxpayer, case number 83-L-900, for the delinquent taxes owed. (Claimant's Ex. No. 3).

4. Judgment was entered on September 10, 1984 in favor of the Department and against the taxpayer in case number 83-L-900 for \$54,178.15 plus costs. As a result of the judgment, the taxpayer was ordered to pay the Department \$50.00 per month beginning November 1,

hearing, counsel for the TAXPAYER moved to substitute the Estate as the claimant in this matter. The motion was granted.

1984 and on the first of each month thereafter. (Claimant's Ex. No. 3).

5. XXXXX died on December 8, 1989. (Claimant's Ex. No. 4).

6. A petition for the probate of the Will of XXXXX was filed on March 18, 1991 in Champaign County Circuit Court. XXXXX was named the Executor of the TAXPAYER. (Claimant's Ex. No. 5).

7. XXXXX died on January 14, 1992. (Claimant's Ex. No. 6).

8. On July 12, 1992, the Estate, through its executor, EXECUTOR, entered into a contract to sell the real estate to XXXXX. (Claimant's Ex. No. 7).

9. Chicago Title Insurance Company issued a commitment for title insurance for the real estate. The commitment showed an exception for the Notice of Lien filed by the Department on the real estate. (Claimant's Ex. No. 8).

10. On October 15, 1992, the TAXPAYER sold the real estate to XXXXX. \$29,994.57 was paid from the proceeds of the sale to the Department for the ROT lien. (Claimant's Ex. No. 9).

11. The Department released its lien on the real estate after receiving the money. (Claimant's Ex. No. 10).

12. On November 18, 1992, the Department issued a Notice of Tentative Determination of Claim denying the Estate's claim for a refund in the amount of \$29,994.57. (Department's Ex. No. 1).

Conclusions of Law:

Under the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), the Department's Notice of Tentative Determination of Claim constitutes *prima facie* proof of the correctness of the Department's determination, as shown therein. 35 ILCS 120/6b. Once the

Department has established its *prima facie* case, the burden shifts to the claimant to overcome this presumption of validity. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990); Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987).

The claimant argues that it is entitled to a refund for the following reasons: (1) the lien was not valid; (2) the Department failed to file a claim against the Estate; (3) the Department is estopped from collecting the ROT from the claimant; and (4) the claimant is entitled to a refund under section 6 of the ROT Act (35 ILCS 120/6).

Validity of the Lien

The claimant first argues that the lien was not valid because according to the language of the Notice of Lien, the lien ceased to exist when it was reduced to judgment. The Notice of Lien states in part as follows:

"Pursuant to Illinois Revised Statutes, Chapter 120, Sections 444a [now 35 ILCS 120/5a] *** notice is hereby given that there is due the Department of Revenue of the State of Illinois from the above named person(s), \$23,422.73 in tax, \$870.55 in penalty, \$1,148.09 in interest ***

THAT by virtue of the said Sections of the Illinois Revised Statutes, the amount of the above tax and penalty, plus interest on the unpaid tax until the tax is paid or reduced to judgement, is a lien in favor of the Department of Revenue of the State of Illinois upon all the real and personal property of the above named person(s) owned or hereafter acquired by such person(s)" (emphasis added).

The claimant contends that pursuant to the provision "until the tax is paid or reduced to judgement," the lien was only valid until it was reduced to judgment. The claimant argues that the 1984 judgment dissolved the lien "by merging the lien with the judgment."

(Claimant's brief, p. 7) The Department responds by stating that the language merely refers to the fact that once a judgment is rendered on an assessment, interest will accrue at the judgment rate rather than the statutory underpayment rate.

At the time the lien was filed, section 5a of the ROT Act provided in part as follows:

"[t]he Department shall have a lien for the tax herein imposed *** or for any penalty provided for in this Act, or for any amount of interest which may be due as provided for in Section 5 of this Act, upon all real and personal property of any person to whom a final assessment *** has been issued as provided in this Act ***." Ill.Rev.Stat., 1979, ch. 120, par. 444a.

Section 5 of the Act provided that "any amount of tax which is not paid when due shall bear interest at the rate of 1% per month or fraction thereof from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained by the Department ***." Ill.Rev.Stat., 1979, ch. 120, par. 444. Section 5 further provided that once an assessment is reduced to judgment, "[s]uch judgment shall bear the same rate of interest and shall have the same effect as other judgments." Id. The judgment interest rate in effect at the time the lien was filed was 9% per annum. Ill.Rev.Stat., 1979, ch. 74, par. 3.

From the plain meaning of the words in the Notice of Lien and the punctuation surrounding them, it is clear that the provision at issue indicates that a different rate is to be used to calculate the interest once the tax is reduced to judgment. Although the parties disagree over the interpretation of the provision, the language is not ambiguous. Nothing in the Notice of Lien states that the continued validity of the lien is affected by a judgment on the

assessment or that the lien terminates when the tax is reduced to a judgment.

The one case cited by the claimant in support of its argument, Doerr v. Schmitt, 375 Ill. 470 (1941), is distinguishable. In Doerr, the court states that when a judgment is based on a contract or instrument, the instrument merges into the judgment. This doctrine is inapplicable to the instant case because the judgment was not based on the lien itself. The complaint filed by the Department against the taxpayer was not a suit to foreclose the lien, and nothing in the evidence indicates that it was a judgment based on the lien.

Claim Against the Estate

Next, the claimant argues that because the Department did not have a valid lien, it should have filed a claim against the Estate in order to protect its claim against the real estate. Under the foregoing analysis, it has been determined that the Department's lien continued to be valid after the judgment was entered; this argument is therefore without merit.

Estoppel

Third, the claimant argues that the Department is estopped from collecting the ROT from the claimant. The claimant states that the Department failed to take any action to collect the unpaid ROT from the taxpayer until the judgment against him had lapsed. (Claimant's brief p. 11). Instead, the Department improperly asserted its claim against a party who did not owe the tax or penalty. (Id.) After the 1984 judgment was entered, the Department collected \$14,327.28 from the taxpayer. The claimant argues that if the Department had been

diligent, it could have collected the balance owed from the taxpayer during his lifetime. The claimant asserts that it detrimentally relied on the Department's inaction during the taxpayer's lifetime, and therefore the Department should be estopped from enforcing the lien against the claimant.

Furthermore, the claimant contends that it detrimentally relied on an oral contract that existed between the Department and the claimant, and therefore the Department should be estopped from enforcing the lien. The claimant argues that on October 14, 1992, it entered into an oral contract with the Department, through one of its employees, in which the Department agreed to place the \$29,994.57 into an escrow account until this dispute was resolved. On October 15, 1992, which was the date of the closing, another employee of the Department advised the claimant that the amount owed on the assessment would have to be paid in full from the proceeds of the sale. The claimant argues that it had relied on this agreement in deciding to go forward with the sale, and when the Department breached the agreement, the claimant lost the option to terminate the sale.

In response, the Department correctly notes that there is no evidence in the record, whatsoever, concerning the alleged oral contract between the Department and the claimant. As to the inaction of the Department in pursuing its collection efforts against the taxpayer, the Department contends that the enforcement of a valid lien does not constitute fraud or injustice as to warrant application of the doctrine of estoppel.

Generally, the doctrine of estoppel can be invoked "when a party reasonably and detrimentally relies on the words or conduct of another." Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410, 431 (1996). Nevertheless, the doctrine is applied against the State only to prevent fraud and injustice. Id. This is especially true when public revenues are involved. Id.

The facts in this case do not warrant applying estoppel against the Department. When the taxpayer conveyed the real estate to XXXXX, the lien was already on the real estate, and the Notice of Lien had been properly recorded. The lien was a matter of public record, and XXXXX had notice of the lien. Although the Department subsequently received a judgment against the taxpayer, as stated earlier, this judgment did not affect the validity of the lien, and the lien did not cease to exist as a result of the judgment. None of the facts in this case indicate fraud or injustice, and application of estoppel is not warranted.

Section 6 of the ROT Act

Finally, claimant argues that it is entitled to a refund under section 6 of the ROT Act, which provides in part as follows:

"If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person died or became a person under legal disability, to his or her legal representative, as such." (35 ILCS 120/6).

The claimant argues that under this section it is entitled to a refund because the taxes, penalties, and interest were assessed only against the taxpayer and not the claimant. The claimant contends

that the Department "forced" the claimant to pay the taxpayer's taxes through the allegedly invalid lien. (Claimant's brief, p. 14).

In response, the Department refers to the following portion of section 6:

"No claim may be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court." (35 ILCS 120/6 (emphasis added)).

The Department asserts that because the payment was made on a final assessment and there is no statutory authority for a refund of the money, the payment was non-refundable. The Department contends that in the absence of a statute providing for a refund, a tax paid voluntarily cannot be recovered even if it was paid erroneously. See Adams v. Jewel Companies, Inc., 63 Ill.2d 336, 342-44 (1976). This is known as the voluntary payment doctrine. Freund v. Avis Rent-a-Car System, Inc., 114 Ill.2d 73, 79 (1986). Furthermore, the Department claims that there is no requirement in section 6 that the payment must be made by the person who actually owed the tax.

Once again, the claimant's argument is without merit. The Department received the money as a result of a valid lien on the real estate. In addition, the money was received as payment on a final assessment, and the claimant is therefore not entitled to a refund. The claimant asserts that its payment to the Department falls within one of the exceptions to the voluntary payment doctrine. The doctrine does not apply when the tax is paid under duress or compulsion, or if the taxpayer lacked sufficient knowledge to frame a

protest in order to utilize the protest procedure. Getto v. City of Chicago, 86 Ill.2d 39, 49 (1981). The claimant argues that the Department's breach of the alleged oral contract to put the money into an escrow account indicates that the payment was made under duress. As stated earlier, however, there is no evidence in the record concerning the alleged oral contract. Finally, nothing in the statute states that the payment must be made by the person who actually owes the tax.

Recommendation

Because the claimant has failed to present sufficient evidence to overcome the Department's *prima facie* case, it is recommended that the Department's Notice of Tentative Determination of Claim be upheld in its entirety.

Linda Olivero
Administrative Law Judge

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