

UT 09-1

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

) No.: 07- ST- 0000
) NTL No.: 00 00000000000000
) IBT No.: 0000-0000

v.

)
) Use Tax
)
) Julie-April Montgomery
) Administrative Law Judge

**JOHN DOE,
Taxpayer.**

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe *pro se*; Marc M. Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter arose from a protest filed by John Doe (“Taxpayer”) to the “Audit Correction and/or Determination of Tax Due” (“Determination”) completed on April 4, 2007 and issued to him by the Illinois Department of Revenue (“Department”). The Determination was issued pursuant to the provisions of the Illinois Use Tax Act (“UTA”), 35 ILCS 105/1 *et seq.*, on merchandise purchased outside of Illinois for which no tax was paid. An evidentiary hearing was held on September 30, 2008 at which the Department presented documentary evidence and the Taxpayer presented documentary and testimonial evidence. 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. In support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the SC-10-K "Audit Correction and/or Determination of Tax Due" for the period September 2003, which reflects use tax due of \$2,950, a late filing penalty of \$59, and a late payment penalty of \$590 for a total amount due of \$3,599. Department Ex. No. 1; Tr. p. 6.
2. In September 2003, Taxpayer went to retrieve jewelry that was shipped to him from overseas. He presented his name, address, social security number and driver's license to obtain release of the jewelry. Taxpayer Ex. No. 5 (sworn affidavit of Taxpayer); Tr. pp. 13-14, 22-24.
3. Taxpayer retained the jewelry for two months before he shipped it to New Jersey. Taxpayer Ex. No. 3 (UPS "Parcel Shipping Order"); Tr. pp. 31, 50.

Conclusions of Law:

The UTA is complementary to the Retailers' Occupation Tax Act ("ROTA"). Chicago Tribune Co. v. Johnson, 106 Ill. 2d 63 (1985). "Functionally, the Use Tax Act serves to tax property purchased out of State by Illinois residents that is not taxable under

the Retailers' Occupation Tax Act and at the same time attempts to eliminate the competitive disadvantage of in-State businesses." *Id.* at 69.

The UTA makes numerous sections of the ROTA (35 ILCS 120/1 *et seq.*) applicable to the Use Tax. Section 12 of the UTA incorporates sections 5 and 8 of the ROTA. These ROTA sections provide that the admission into evidence of Department records under a certificate of the Director establishes the Department's *prima facie* case and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/5, 120/8; Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). Once the Department's *prima facie* case is established, the burden of proof is shifted to the taxpayer to overcome the Department's *prima facie* case. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773 (1st Dist. 1987).

In order to overcome the presumption of validity attached to the Department's *prima facie* case, taxpayer must produce competent evidence, identified with their books and records that show the Department's records are incorrect. Copilevitz, *supra*. Testimony alone is insufficient to overcome the Department's *prima facie* case. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st Dist. 1991). Rather, documentary proof is required to prevail against a Department determination of tax deemed due. Sprague v. Johnson, 195 Ill. App. 3d 789 (4th Dist. 1990).

The Department's Determination was entered into evidence under the certificate of the Director of Revenue, and as such, the Department's *prima facie* case was established, and the burden of proof shifted to the Taxpayer to overcome the Department's *prima facie* case.

Taxpayer's response to the Department's case was to deny that he made the purchase. Taxpayer testified that the merchandise was shipped to him by a man he knew from India named XXXX. Taxpayer testified that he merely helped XXXXX obtain release of the jewelry shipment and held the merchandise for two months until instructed to ship the jewelry to New Jersey. Tr. pp. 11-14, 22-24, 31-31. Taxpayer further testified that he attempted to secure details regarding the entry of the merchandise into the United States without success. Taxpayer's Group Exhibit No. 4 (e-mails with ABC International, Inc., the ABC Service Center); Tr. pp. 26-30.

Taxpayer also presented the testimony of his brother-in-law and co-worker, Jim Doe. Taxpayer lived with his brother-in-law during the months of September through November 2003 when the events of concern occurred. Tr. pp. 36-37, 39. The brother-in-law testified that he never saw Taxpayer use or make a payment for the jewelry. Tr. pp. 43. The brother-in-law further testified that he had conversed with XXXXX, when he visited in September 2003, and learned that XXXXX's family was in the jewelry business but XXXXX himself was a pilot who "when he goes to places he takes the jewelry for exhibition purposes." Tr. pp. 45-46.

Taxpayer presented testimonial evidence that he lacked an ownership interest in the jewelry and had not paid for the merchandise. Tr. pp. 4, 12, 15. Taxpayer also admitted that he received the jewelry, which could only be released to him (tr. pp. 13-14, 22-24) and retained the merchandise for two months before he shipped it to New Jersey. Taxpayer alleges the jewelry was for exhibition purposes (tr. pp. 5, 14, 40-41, 45-46) but presented no evidence of any exhibitions at which the jewelry was presented. Taxpayer also alleges the jewelry was sent from overseas on consignment (tr. pp. 7) but presented

no evidence to establish who acted as the consignee. Taxpayer further claims his only business was that of a computer software engineer (tr. pp. 15, 50) but presented no documentary evidence to substantiate this assertion.

Taxpayer failed to provide documentary evidence, associated with his own business or personal books and records, which substantiated any of his allegations. Moreover, some of his assertions seem in conflict with one another. For example, Taxpayer's testimony that the jewelry was sent for exhibition purposes seems to contradict his assertion that the jewelry was shipped "as a consignment to New Jersey." Tr. p. 7. Another contradiction appears to exist between the brother-in-law's testimony that XXXXX came to the United States to exhibit the jewelry (tr. pp. 40-41) but left the jewelry with Taxpayer for two months before it was shipped to New Jersey and no instructions regarding exhibition were ever issued. This lack of documentary support, combined with the conflicting testimonial evidence, render all of Taxpayer's arguments meritless. Hence, Taxpayer failed to introduce evidence that was legally sufficient to overcome the Department's *prima facie* case.

Recommendation:

For the reasons stated above, it is recommended that the Department's Determination be affirmed.

December 10, 2008

Julie-April Montgomery
Administrative Law Judge