

ST 14-24

Tax Type: Sales Tax

Tax Issue: Retailers Occupation Tax On Tire Disposal Fees

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

THE DEPARTMENT OF REVENUE	)	Docket No.	XXXX
OF THE STATE OF ILLINOIS	)	Reg. No.	XXXX
	)	Letter ID Nos.	XXXX,
v.	)		XXXX,
	)		XXXX,
ABC BUSINESS, INC.,	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Edward J. Krzyminski, Edward J. Krzyminski, Ltd., appeared for ABC Business, Inc.; George Foster, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

Following an audit of its business, the Department of Revenue (Department) issued five notices of tax liability (NTLs) to ABC Business, Inc. (Taxpayer). The NTLs assessed retailers' occupation tax (ROT), use tax, late payment penalties and interest for the months July 2006 through and including June 2009. Taxpayer timely protested the NTLs, and asked for a hearing. The parties agreed that the sole issue to be resolved at hearing was whether the Department properly disallowed the deductions Taxpayer reported for amounts it charged and collected from customers as tire disposal fees.

The hearing was held at the Department's office in Anyplace. Taxpayer offered the testimony of three witnesses, and also offered documentary evidence. After hearing, the matter

was assigned for reaudit, to review books and records, and to eliminate tax previously assessed on tire disposal charges that were realized from transactions that were, themselves, exempt from ROT. That reaudit was completed, and the results presented to Taxpayer and the ALJ, as an exhibit, which represented the Department's revised correction of Taxpayer's returns.

After considering the evidence, I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director revise the NTLs to coincide with the Department's reaudit determinations, which significantly reduced the amount of tax due.

Findings of Fact:

Facts Regarding Taxpayer's Business

1. Taxpayer is an Illinois corporation with its corporate headquarters in Someplace, Illinois. Department Ex. 1 (copies of NTLs and Auditor's Narrative Report), p. 6. It also has two other sales offices in Happyplace and Busyplace, Illinois, and another in Indiana. *Id.*
2. Taxpayer was engaged in the business of selling and servicing tires, to and for a variety of commercial users, including material handling dealers, railroads, trucking firms, manufacturers, steel mills, and other commercial users. Department Ex. 1, p. 6; Taxpayer Ex. 10 (copies of Taxpayer's invoices); Hearing Transcript (Tr.) pp. 58-59, 64-65 (testimony of John Doe (John Doe), Taxpayer's president).
3. A small percentage of Taxpayer's business included the sale of light truck and passenger tires, which, John Doe explained, was primarily done as an accommodation to Taxpayer's commercial customers. Department Ex. 1, p. 6; Tr. pp. 56-58 (John Doe).
4. Taxpayer has a fleet of 13 trucks, which it dispatches to customer locations when customers call for service. Department Ex. 1, p. 6; Tr. p. 58 (John Doe).

5. Taxpayer's drivers also sell Taxpayer's products and services, which includes soliciting commercial businesses to hire Taxpayer to come to their businesses when vehicles and equipment in their fleet require tire replacement and/or service or repair. Department Ex. 1, p. 6; Tr. p. 58 (John Doe).
6. As a seller of tires, and as a regular part of its business, Taxpayer was required to accept for recycling the old tires it replaced with new tires sold to customers, at the point at which it transferred the new tires. Department Ex. 1, pp 6, 8; Taxpayer Ex. 10; Tr. pp. 19-20, 48 (testimony of Jack Black, Taxpayer's accountant), 58, 64-65 (John Doe); 415 ILCS 5/55.8.
7. Taxpayer's customers had the option of having Taxpayer dispose of their used tires or disposing of them without Taxpayer's assistance. Tr. pp. 58, 59, 65 (John Doe).
8. Taxpayer charged customers a tire disposal fee, which it commonly denoted as a "junk tire disposal" on its invoices. Taxpayer Ex. 10; Tr. pp. 19, 40-42 (Jack Black), 59, 65-66 (John Doe).
9. Taxpayer listed the junk tire disposal fee as a separate item on invoices to customers. Taxpayer's Ex. 10; Tr. p. 41 (Jack Black).
10. The amount of the tire disposal fee charged to each customer varied between \$1 and \$200, depending upon the weight of the old tires Taxpayer accepted. Taxpayer's Ex. 10; Tr. pp. 41 (Jack Black), 59, 65-66 (John Doe).
11. The vast majority of customers purchasing tires from Taxpayer elected to have Taxpayer recycle their old tires. Tr. p. 65 (John Doe).
12. After Taxpayer accepted customers' old tires for recycling, it stored them for a period of time at its business, and then transported them to another business, where Taxpayer paid the other business to take the old tires for further recycling. Taxpayer Ex. 3 (copy of Taxpayer's

schedule titled, Profitability on Tire Disposal, and supporting documents); Taxpayer Ex. 5 (copies of five photos showing old tires Taxpayer collected from customers, at different areas at Taxpayer's business); Tr. pp. 74-81 (testimony of Gene Green (Gene Green)).

13. Since Taxpayer's expenses related to its storage, transportation, and transfers of old tires for further recycling, were less than the tire disposal fees it charged and collected from customers, Taxpayer generated a profit from accepting old tires for recycling. Taxpayer Ex. 3, pp. 1-2, 7-10.

14. Taxpayer reported its receipts from tire disposal fees as part of its total receipts, on line 1 of its monthly sales tax returns, and deducted them on page 2, line 16, of those returns. Taxpayer's Exs. 6-9 (copies of Taxpayer's monthly returns for the audit period); Department Ex. 1, pp. 7-8; Tr. p. 40 (Jack Black).

Facts Regarding The Department's Audit

15. In 2010, the Department conducted an audit of Taxpayer for the period July 1, 2006 through June 30, 2009. Department Ex. 1, pp. 6-10. Jonette Bartulis (Bartulis) performed the audit. *Id.*, p. 10.

16. Bartulis described Taxpayer's business as follows:

The taxpayer would be considered a serviceman, by definition. Even though, the taxpayer primarily sells and installs tires. The extent of the taxpayer's service work is their MOBILE REPAIR service. ABC Business will be dispatched to a commercial truck customer that has a flat tire. ABC Business will go to the site with a new tire and either install it or possibly repair the existing tire. The taxpayer collects full selling price on all repair materials sold.

ABC Business performs NO mechanical repairs of any kind.

Department Ex. 1, p. 6.

17. In her audit narrative, Bartulis noted that Taxpayer claimed the following deductions on its returns: tax collected; resale; mobile services (labor); tire disposal fee; and tire user fee. Department Ex. 1, p. 7.
18. Bartulis selected a two month period to test the deductions Taxpayer claimed on its returns. Department Ex. 1, pp. 7-8. The two test months were June of 2007 and November of 2008. *Id.*, p. 8.
19. After reviewing Taxpayer's books and records for the two month period, Bartulis determined that:
- Taxpayer properly reported all deductions claimed for tax collected, mobile services (labor), and tire user fees. Department Ex. 1, pp. 7-8.
 - Taxpayer's books and records did not support all of the deductions Taxpayer reported as being from exempt sales for resale. Department Ex. 1, p. 8; *see also* 35 ILCS 120/2c; 86 Ill. Admin. Code § 130.120(c). Bartulis noted five transactions for which Taxpayer did not have documentary evidence to support the claimed exemption. *See* Department Ex. 1, p. 8. As a result, Bartulis determined that the receipts from those five transactions were taxable, and that Taxpayer's reported deductions for receipts from sales for resale, for the whole audit period, were not correct. *Id.* She used two different methods (average exceptions per month and percentage of error) to estimate a percentage of Taxpayer's total reported resale deductions for the audit period that should be disallowed, because some of the receipts reported as being exempt were similarly taxable. *Id.*
 - Taxpayer was not entitled to the deductions claimed for its receipts from tire disposal fees, and that such receipts were taxable. Department Ex. 1, p. 8.
20. Regarding Taxpayer's deductions for tire disposal fees, Bartulis wrote:

*TIRE DISPOSAL FEE = The tire disposal fees deducted, were disallowed in detail.

This auditor researched the taxability of these fees. Letter Rulings ST 06-0039 and ST 06-0176, were presented to Jack Black, which state that these disposal fees are "A COST OF DOING BUSINESS".

The taxpayer disagreed and has chosen to go to ICB. All the appeal rights were explained to Jack Black, along with the ICB 1.

The taxable results are as follows:

The total TIRE DISPOSAL FEES claimed for the audit period total \$XXXX.

The taxpayer's ST-2 returns were used to calculate the taxable percentage to be allocated to SOMEPLACE, HAPPYPLACE & BUSYPLACE. Here are the taxable percentages:

SOMEPLACE	= 78% of \$XXX	= \$XXX	Tax Due \$XXX (STT-10-202)
HAPPYPLACE	= 11% of \$XXX	= \$XXX	Tax Due \$ XXX (STT 10-200)
BUSYPLACE	= 11% of \$XXX	= \$XXX	Tax Due \$ XXX (STT 10-201)

The total tax due [from disallowed tire disposal fee deductions] is \$XXXX.

Department Ex. 1, p. 8.

21. Following audit, the Department issued five NTLs to Taxpayer, which assessed the following amounts of tax, penalties and interest for the following periods:

Period	NTL No.	Tax	Late Payment Penalty	Interest	Unpaid Balance
7/06 – 2/09	XXX	XXX	XXX	XXX	\$ XXX *
3/09	XXX	XXX	XXX	XXX	XXX
4/09	XXX	XXX	XXX	XXX	\$ XXX*
5/09	XXX	XXX	XXX	XXX	\$ XXX
6/09	XXX	XXX	XXX	XXX	\$ XXX

Department Ex. 1, pp. 1-5. *Unpaid Balance gives credit for prior payments.

22. At hearing, Taxpayer's counsel notified the Department and conceded on the record, that Taxpayer did not contest the any amounts assessed other than the tax assessed regarding the

Department's disallowance of the deductions claimed for the tire disposal fees. Tr. pp. 13-14, 19.

23. At hearing, Taxpayer offered a schedule that Jack Black caused to have prepared, which reflected the entries reported on Taxpayer's filed returns for each month in the audit period. Taxpayer Ex. 1. Taxpayer titled that schedule, Alternate Position on Tire Disposal Fee (hereafter, Taxpayer's schedule). *Id.* Taxpayer also offered copies of the returns, themselves. Taxpayer Exs. 6-9.
24. Taxpayer's schedule, Taxpayer's returns, and Bartulis' audit narrative showed that most of the total receipts Taxpayer realized from its business came from making exempt sales of tires for resale. Taxpayer Ex. 1, p. 2; Department Ex. 1, pp. 7-8.
25. Taxpayer's schedule calculated that only approximately 32% of Taxpayer's total receipts were taxable under the retailers' occupation tax act (ROTA). Taxpayer Ex. 1, p. 2.
26. Taxpayer charged and collected tire disposal fees when making exempt sales of tires to customers for purposes of resale. Tr. pp. 30-37 (Jack Black); *see* Department Ex. 1, pp. 7-8.
27. Bartulis did not take into account that, by disallowing all deductions for tire disposal fees, her audit determined tax was due on receipts from tire disposal fees that Taxpayer realized from sales transactions that were, themselves, exempt from ROT. *See* Department Ex. 1, pp. 6-10.
28. During closing argument, when asked about Taxpayer's evidence showing that the NTLs assessed tax on tire disposal fees that were collected regarding transactions that were exempt from tax, Department counsel agreed that an adjustment should be made in this case, and asked that the matter be assigned for reaudit. Tr. pp. 91-92.

Facts Regarding The Department's Reaudit

29. Following consideration of the evidence admitted at hearing, the matter was assigned for a reaudit of Taxpayer's books and records, to eliminate any tax assessed on disallowed deductions claimed for tire disposal fees that were charged and collected in transactions that were exempt from ROT. Order, dated October 10, 2012.
30. Following reaudit of Taxpayer's books and records, the Department prepared audit workpapers and presented them to Taxpayer and Department counsel. Department Ex. 2 (copies of Department's reaudit comments and schedules, and other documents); Orders, dated on and after March 12, 2014.
31. After receiving the Department's reaudit schedules, Taxpayer did not agree with the Department's determination that the tire disposal fees it charged and collected regarding taxable transactions were subject to ROT, but agreed that, in the event the agency determined that such charges were subject to ROT, the Department's reaudit correctly identified the amount of tax due on the fees collected from taxable transactions. Department Ex. 2, p. 6 (copy of "Addendum to [audit narrative] Comments II," in which the auditor noted, "The taxpayer was shown the new calculations and understood them. He is still of the position that this should all be exempt, but would agree with the new findings, if they held up.")).
32. The Department prepared and submitted to Taxpayer and to the ALJ Department Exhibit 2, which included revisions to Bartulis' original determinations of tax due from tire disposal fees. Department Ex. 2; *see also* Order, dated June 27, 2014.
33. A reaudit schedule titled, Computation of taxable tire disposal fees (Taxable Fees Schedule), reflects that, of the \$XXXX in tire disposal fees that Taxpayer deducted on returns filed for

the audit period, a total of \$XXXX were realized from transactions that were subject to ROT.

Department Ex. 2, p. 7.

34. More specifically, the Taxable Fees Schedule provides, substantively, as follows:

	7-12/2006	2007	2008	1-6/2009	TOTALS
Total Non-Taxables	XXX	XXX	XXX	XXX	XXX
Audit Additions	XXX	XXX	XXX	XXX	XXX
Computed Non-Taxables	XXX	XXX	XXX	XXX	XXX
Total Receipts	XXX	XXX	XXX	XXX	XXX
Computed Non-Taxable %	XXX	XXX	XXX	XXX	
Total Tire Disposal Fee	XXX	XXX	XXX	XXX	XXX
Non-Taxable-Computed	XXX	XXX	XXX	XXX	XXX
Taxable-Computed	XXX	XXX	XXX	XXX	XXX
Allocation to Locations by %					
Someplace (78%)	XXX	XXX	XXX	XXX	XXX
Happyplace (11%)	XXX	XXX	XXX	XXX	XXX
Busyplace (11%)	XXX	XXX	XXX	XXX	XXX
					XXX

Department Ex. 2, p. 7.

35. On other reaudit schedules, the Department calculated the amounts of tax due on the tire disposal fees Taxpayer realized from transactions that were subject to ROT. Department Ex. 2, pp. 8-11. On these schedules, the Department took into account the different local tax rates, for each of Taxpayer's three locations, as well as the relative level of sales at each location. *Id.*

36. For July through and including December of 2006, the Department determined that Taxpayer owed tax in the amount of \$XXXX for the tire disposal fees Taxpayer realized from taxable transactions. Department Ex. 2, pp. 11-12.
37. For all of 2007, the Department determined that Taxpayer owed tax in the amount of \$XXXX for the tire disposal fees Taxpayer realized from taxable transactions. Department Ex. 2, pp. 8,¹ 12.
38. For all of 2008, the Department determined that Taxpayer owed tax in the amount of \$XXXX for the tire disposal fees Taxpayer realized from taxable transactions. Department Ex. 2, pp. 9, 12.
39. For January through and including June of 2009, the Department determined that Taxpayer owed tax in the amount of \$XXXX for the tire disposal fees Taxpayer realized from taxable transactions. Department Ex. 2, pp. 10, 12.
40. In total, the Department's reaudit reduced the amount of tax due, based on Taxpayer's receipts from tire disposal fees, from \$XXXX to \$XXXX. Department Ex. 2, pp. 8-11 (X + X + X + X = XX).

Conclusions of Law:

The issue is whether the tire disposal fees charged by Taxpayer were exempt from ROT. Tr. pp. 13-14, 19; Pre-Hearing Order. The Department initially determined that all of the tire disposal fees Taxpayer deducted during the audit period were taxable. Department Ex. 1, p. 8. It later conceded that Taxpayer had shown that a significant amount of such fees were charged and collected in transactions that were, themselves, exempt sales of tires for resale. Department Ex. 2, pp. 7-12; Taxpayer Ex. 1; Tr. pp. 91-92. As a result of that concession, and of the

¹ The reaudit schedule for 2007 erroneously provides that it was for the months of July through December 2007, but uses the taxable portion of tire disposal fees realized for all of 2007. *Compare* Department Ex. 2, p. 7 *with id.*, p. 8.

Department's reaudit, the Department significantly reduced the tax assessed regarding Taxpayer's tire disposal fees.

At hearing, the Department introduced a copy of the NTLs it issued to Taxpayer into evidence under the certificate of the Director. Department Ex. 1. Following reaudit, the Department revised the tax assessed in the NTLs, to correspond with Taxpayer's books and records. Department Ex. 2. Pursuant to § 4 of the ROTA, the revised NTLs constitute the Department's prima facie case in this matter. 35 ILCS 120/4. The Department's prima facie case is a rebuttable presumption. 35 ILCS 120/7; Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276, 279, 48 N.E.2d 926, 927 (1943).

A taxpayer cannot overcome the statutory presumption merely by denying the accuracy of the Department's assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053.

Arguments and Analysis

Taxpayer argues that its tire disposal fees were derived from a service business that was separate and distinct from its retail tire sales business, and were revenues from its non-taxable performance of services. Tr. pp. 6, 83. Taxpayer emphasizes that its charges for tire disposal fees were separately stated on its invoices, that its customers had the option to dispose of used tires themselves, and that it made a separate, distinct and identifiable profit from its tire disposal business, which did not arise from the exchange of any type of tangible personal property. Tr. pp.

83, 93-96. It also contends that its tire disposal fees are nontaxable pursuant to § 130.450(b) of the Department's ROT regulations (ROTR). Tr. p. 96.

The Department responds that Taxpayer's tire disposal fees are not deductible because § 1 of the ROTA, and ROTR § 130.410 provide that the selling price or the amount of sale "shall be determined without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost or any other expense whatsoever" 35 ILCS 120/1; 86 Ill. Admin. Code § 130.410; Tr. pp. 84-87. It also reasoned that the tire disposal fees were charges that Taxpayer passed on to customers to recoup its costs of recycling the old tires it was replacing with the new tires that Taxpayer sold to such customers, at retail. Tr. p. 86; 415 ILCS 5/55.8.

Before addressing the parties' arguments, it is important to clarify that the Department's significant reduction of the amount of tax due does not reflect the Department's determination that some of Taxpayer's tire disposal fees were deductible because the ROTA authorizes an exemption or deduction for tire disposal fees. Rather, it reflects the Department's concession that most of the amounts Taxpayer deducted, on page 2, line 16 of its monthly returns, as tire disposal fees, were properly includable on page 2, line 3 of those returns, as being part of the total receipts Taxpayer realized from transactions in which Taxpayer sold tires for resale. Department Ex. 2, pp. 7-11; Taxpayer Exs. 6-9 (p. 2, lines 3, 16 of each monthly return). The receipts from such transactions are exempt from ROT. 35 ILCS 120/2c; 86 Ill. Admin. Code § 130/120(c).

In a similar context, Taxpayer offered testimony that it occasionally charged tire disposal fees to customers to whom it did not sell new tires, at retail. Tr. pp. 47-49 (colloquy between ALJ and Taxpayer's counsel), 49 (Jack Black), 61-62 (John Doe). That testimony, however, was never corroborated by documents, like the invoices Taxpayer offered and admitted as Taxpayer

Exhibit 10. But even if Taxpayer had presented such documentary evidence, what that would have supported was a conclusion that the receipts from those particular transactions were not subject to ROT, because Taxpayer had sold only services, and not tangible personal property. The receipts from such transactions are not subject to ROT (35 ILCS 120/1-2; 86 Ill. Admin. Code § 130/120(d)), and are properly deducted on page 2, line 9 of a taxpayer's return. *See* Taxpayer Exs. 6-9 (p. 2 of each return).

Moving now to Taxpayer's arguments, I cannot agree that the evidence supports Taxpayer's claim that its tire disposal fees were charges for non-taxable special services, under ROTR § 130.450. Tr. p. 96. That regulation provides, in pertinent part:

Section 130.450 Installation, Alteration and Special Service Charges

a) When Taxable

Where the seller engages in the business of selling tangible personal property at retail, and such tangible personal property is installed or altered for the purchaser by the seller (or some other special service is performed for the purchaser by the seller with respect to such property), the gross receipts of the seller on account of his charges for such installation, alteration or other special service must be included in the receipts by which his Retailers' Occupation Tax liability is measured, if such installation, alteration or other special service charges are included in the selling price of the tangible personal property which is sold. This is true whether the charge for the property which is sold and the charge for installation, alteration or other special services are billed by the seller to his customers as separate items (except when the purchaser signs an itemized invoice so as to make it a contract reflecting the intention of both the seller and the purchaser), or whether both items are included in a single billed price.

b) When Not Taxable

On the other hand, where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not a part of the "selling price" of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

86 Ill. Admin. Code § 130.450.

Taxpayer offered no credible evidence that it and its customers make an agreement about the amount of the tire disposal fee, separately from their agreement over the selling price of new tires. To the contrary, John Doe testified that Taxpayer's salesmen are trained to avoid discussing the amount of the tire disposal fee to be charged in a given transaction. Specifically, John Doe was asked the following questions and gave the following answers, on cross-examination:

Q: Do you specifically discuss with the customer how much it's going to cost them for the tire disposal fee?

A: Well, what the guys are trained to say is that there is a disposal fee to take your old tires away. If they ask how much, then they could be, you know, held into a bartering system how much we're going to charge.

Q: Basically you tell them there is a tire disposal fee, but you don't tell them what the tire —

A: We're not going to volunteer too much. We do tell them there is a tire disposal fee.

Q: You tell them there is a tire disposal fee, you don't give them a specific amount?

A: We do if the guy —

Q: You do if the guy asks though?

A: Yes.

Tr. pp. 65-66 (John Doe). There was simply no evidence, and only argument, offered to show that any of the tire disposal fees — let alone all of them — were separately contracted for, as described in ROTR § 130.450(b).

Further, the law referred to by Jack Black (Tr. p. 19) and by the Department (Tr. p. 86) is especially instructive on Taxpayer's argument that its tire disposal fees are for services that are separate or distinct from its business of selling new tires at retail. *See* Tr. pp. 6, 83. Section 55.8 of the Illinois Environmental Protection Act (IEPA), 415 ILCS 5/1 *et seq.*, provides, in pertinent part, as follows:

(a) Any person selling new or used tires at retail or offering new or used tires for retail sale in this State shall ...

- (2) accept for recycling used tires from customers, at the point of transfer, in a quantity equal to the number of new tires purchased; and
- (3) post in a conspicuous place a written notice at least 8.5 by 11 inches in size that includes the universal recycling symbol and the following statements: “DO NOT put used tires in the trash.”; “Recycle your used tires.”; and “State law requires us to accept used tires for recycling, in exchange for new tires purchased.”

415 ILCS 5/55.8(a).

The IEPA requires retailers of tires to accept used tires for recycling, at the point of transfer, up to the number of new tires purchased. 415 ILCS 5/55.8(a)(2). Taxpayer’s duty to accept customers’ tires for recycling was not separate and apart from its business of selling tires to customers, at retail — the statutory duty is imposed on Taxpayer *because* it was engaged in that business. *Id.* Since Taxpayer was required by law to accept customers’ old tires for recycling when it sold new tires to such customers — at the point at which it transferred the new tires to the customer — it is difficult to accept Taxpayer’s mere argument that its tire disposal fees were charged for services that had nothing to do with its retail sales of new tires. Tr. p. 83; Velde Ford Sales, Inc. v. Department of Revenue, 136 Ill. App. 3d 589, 593, 483 N.E.2d 721, 724 (4th Dist. 1985) (when considering whether fees charged by a motor vehicle dealer for the service of filing applications for new vehicle licenses and certificates of title, the court concluded, “as a matter of law, [such] services were an incident of the sale of a vehicle.”).

For the same reason, ROTR § 130.450(a), and not (b), is more applicable to the service charges Taxpayer collected and deducted as tire disposal fees. Here, Taxpayer is engaged in the business of selling new tires at retail, and the tire disposal fees are includable as Taxpayer’s charge for “some other special service ... performed for the purchaser by the seller with respect to” Taxpayer’s retail sale of new tires. 86 Ill. Admin. Code § 130.450(a). Taxpayer’s duty to accept old tires from a customer for recycling is, under the IEPA, an integral part of engaging in

the business of selling tires at retail. 415 ILCS 5/55.8(a)(2); *see also* Velde Ford Sales, Inc., 136 Ill. App. 3d at 593, 483 N.E.2d at 724. Since Taxpayer includes its tire disposal fees on the invoices it presents to customers, then, pursuant to ROTR § 130.450(a), “such special service [charges] must be included in the receipts by which his Retailers’ Occupation Tax liability is measured” 86 Ill. Admin. Code § 130.450(a).

The Department’s determination that Taxpayer’s charges for tire disposal fees are subject to ROT is also consistent with the text of ROTA § 7, which provides, in pertinent part:

* * *

To support deductions made on the tax return form, or authorized under this Act, on account of receipts from ... any other kind of transaction that is not taxable under this Act, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show ... such other information as may be necessary to establish the non-taxable character of such transaction under this Act.

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. ***

* * *

35 ILCS 120/7.

Here, Taxpayer has identified no section of the ROTA which expressly authorizes an exemption or deduction for receipts realized in the form of tire disposal fees. As a result, it has not established the non-taxable character of such transactions, under the ROTA. *See id.* Even if Taxpayer’s tire disposal fees could be considered special service charges, under ROTR § 130.450, the evidence does not show that Taxpayer and its customer made a separate agreement for such services, or for the fees to be charged for such services. 86 Ill. Admin. Code § 130.450; Tr. pp. 65-66 (John Doe). Instead, Taxpayer’s salesmen were trained to notify a customer that there would be a charge for taking the customers’ old tires after a sale, and to avoid discussing

the amount of the fees for that service. Tr. pp. 65-66 (John Doe). The evidence does not support Taxpayer's claim that its receipts from tire disposal fees are exempt from ROT. Department Ex. 2; 35 ILCS 120/4; 35 ILCS 120/7; Velde Ford Sales, Inc., 136 Ill. App. 3d at 593, 483 N.E.2d at 724.

Finally, the evidence fully supports the Department's determination that the tire disposal fees were charges that Taxpayer imposed to recoup some of its costs of doing business. Department Ex. 2, p. 3; 86 Ill. Admin. Code § 130.410(a) ("Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer."). Specifically, those charges more than paid for Taxpayer's expenses related to complying with its statutory duties associated with accepting its customers' old tires for recycling. Taxpayer Ex. 3; Tr. p. 86; 415 ILCS 5/55.8(a), (b) ("A person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days."). Based on the law and the evidence, Taxpayer's tire disposal fees were properly includable as part of the "gross receipts from sales of tangible personal property made in the course of business," as that phrase is used in ROTA § 2-10, and as the terms "gross receipts" and "selling price" are defined in ROTA § 1. 35 ILCS 120/1; 35 ILCS 120/2-10.

Conclusion

I respectfully recommend that the Director revise the NTLs so as to take into account the results of the reaudit, and to assess the reduced amounts of tax determined to be due. I recommend that the NTLs be finalized as so revised.

September 8, 2014

John E. White

Administrative Law Judge