

MF 01-22

Tax Type: Motor Fuel Use Tax

Issue: Reasonable Cause on Application of Penalties

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 00-ST-0000
v.)	Acct # 0-00000
)	NOA # 00-000000 0
ABC TRANSPORTATION, INC.)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE, pro se, for ABC Transportation Inc.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Assessment (“Notice”) to ABC Transportation, Inc. (“taxpayer”). The Notice assessed a late-payment penalty for failing to timely pay the taxpayer’s monthly motor fuel taxes. The taxpayer timely protested the Notice. An evidentiary hearing was held during which the taxpayer requested that the late-payment penalty be abated. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On March 20, 2000, the taxpayer filed Form RMFT-5, Motor Fuel Distributor/Supplier Tax Return for the month of February 2000. (Taxpayer Ex. #1, Tr. p. 7)

2. A few days after filing the return, the taxpayer discovered that it had under-reported the number of taxable gallons on its original return. The person who was responsible for preparing and filing the return was being trained at the time she prepared the return and discovered her error a few days later. (Tr. p. 7)

3. On March 27, 2000, the taxpayer filed a Form RMFT-5-X, which is an amended return that includes the additional gallons that the taxpayer neglected to include on the original return. The taxpayer paid the additional tax and interest due as a result of the error. (Taxpayer Ex. #2; Tr. p. 8)

4. On July 7, 2000, the Department issued a Notice of Assessment to the taxpayer that included a late-payment penalty. The Notice was admitted into evidence under the certificate of the Director. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Department imposed the penalty for the late payment of the motor fuel tax pursuant to section 21 of the Motor Fuel Tax Law (35 ILCS 505/1 et seq.), which incorporates by reference section 4 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 et seq.). (See also 86 Ill.Admin.Code §500.600, incorporating by reference 86 Ill.Admin.Code §130.901.) Section 4 of the ROTA allows the Department to assess a penalty in an amount determined in accordance with section 3-3 of the Uniform Penalty

and Interest Act (“UPIA”) (35 ILCS 735/3-3). Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

Under the circumstances of this case, an abatement of the penalty is warranted. The original return was timely filed, and within days of discovering the error on the original return, the taxpayer filed an amended return. The taxpayer self-reported the error and paid the additional tax that was due along with interest. The taxpayer made a good faith effort to file and pay his proper tax liability, and therefore has established reasonable cause for penalty abatement.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be abated.

Linda Olivero
Administrative Law Judge

Enter: August 9, 2001