

ST 18-11

Tax Type: Sales Tax

Tax Issue: Abatement of Penalties/Interest Only

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

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DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

ACME CO., LLC

Taxpayer

Docket # [ ]

Acct ID: [ ]

Letter ID: [ ]

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; ADAM SMITH, *pro se*, for ACME Co., LLC

Synopsis:

In July 2017, ACME Co., LLC (“taxpayer”) began operating a business in Chicago. Based on its location, the taxpayer is responsible for filing Form ST-4, Metropolitan Pier and Exposition Authority (MPEA) Food and Beverage Tax Return, and paying the tax. The taxpayer was unaware of its responsibility to file this return and pay the tax until October 2017. When the taxpayer discovered its error, it filed with the Department of Revenue (“Department”) its ST-4 returns for July, August, and September 2017. The Department assessed penalties against the taxpayer for failing to timely file

and pay the taxes for these three months. The taxpayer requested an abatement of the penalties on the basis that it acted with reasonable cause, and the Department granted the abatement for July 2017. The Department issued a Reasonable Cause Denial with respect to the late-filing and late-payment penalties for August and September 2017. The taxpayer timely protested the Denial, and an evidentiary hearing was held during which the taxpayer's representative participated by telephone. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer operates a business in Chicago that is located in the area that is required to collect the MPEA Food and Beverage tax (Form ST-4). (Recording<sup>1</sup>)
2. The taxpayer started its business in July 2017. (Recording)
3. When the taxpayer started its business, it registered with the Department online. The taxpayer was unaware at that point of its obligation to file the ST-4 and pay the tax. (Recording)
4. In October 2017, the taxpayer discovered on its own (*i.e.*, not from the Department) its responsibility to file the ST-4 and pay the tax. (Recording)
5. The taxpayer was late filing the ST-4's for July, August, and September 2017. The Department imposed late-filing and late-payment penalties for those three months. (Recording; Dept. Ex. #1)
6. The taxpayer asked the Department to abate the penalties for all three months on the basis that the taxpayer acted with reasonable cause. The Department granted the abatement for July 2017. (Recording; Dept. Ex. #1)

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<sup>1</sup> The hearing was recorded using a digital recorder instead of a court reporter; the citations will be to the recording rather than a transcript.

7. The penalties for August 2017 are \$[ ], and the penalties for September 2017 are \$[ ]. (Recording)
8. On January 4, 2018, the Department issued a Reasonable Cause Denial with respect to the August and September 2017 penalties. The Denial was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Department imposed penalties for the late filing of the return and the late payment of the tax pursuant to section 3-3 of the Uniform Penalty and Interest Act (“UPIA”) (35 ILCS 735/3-1 *et seq.*). Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalties and states, in part, as follows:

The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 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 regulation concerning reasonable cause provides, in part, 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).

The taxpayer asks that the penalties be abated on the basis that it acted with reasonable cause. The taxpayer registered with the Department online when it opened the business in July 2017, and the MPEA Food and Beverage tax is based on the taxpayer’s location in Chicago. The taxpayer contends that the Department was aware of the

taxpayer's address when it registered online, but the forms that became available upon the taxpayer's registration did not include the ST-4. The taxpayer claims that after it contacted the Department in October 2017, the ST-4 was added to the taxpayer's account. The taxpayer believes that the penalties are excessive because the taxpayer could have collected the tax, which amounted to more than \$[ ], from its guests if it had been aware of the tax. Also, the taxpayer argues that if the Department found that the taxpayer acted with reasonable cause for July 2017, then it should have also found that it acted with reasonable cause for August and September 2017.

The Department argues that it abated the penalty for July as a way of giving some amount of leniency, but the penalties were properly imposed for August and September. The Department contends that the taxpayer is required to collect and pay all the taxes that are owed, and claiming that it was unaware of its responsibilities is not a basis for finding reasonable cause. The Department claims that the amount of time that it takes the Department to discover the unpaid taxes does not change the obligations of the taxpayer, and any additional leniency in this case would be improper.

The taxpayer registered its business online in July 2017 as an attempt to determine its tax responsibilities. The MPEA Food and Beverage tax is not a commonly known tax and is based on a specific location in Chicago. The taxpayer timely filed and paid all of its other business taxes that it was responsible for paying, and within 3 months it discovered on its own that it was responsible for paying the MPEA Food and Beverage taxes. It notified the Department and paid the MPEA Food and Beverage taxes as soon as it discovered that they were owed. Considering all these facts, the taxpayer made a

good faith effort to determine its proper tax liability. The penalties for August and September should be abated.

Recommendation:

For the foregoing reasons, it is recommended that the penalties for August and September 2017 be abated.

Linda Olivero  
Administrative Law Judge

Enter: July 24, 2018