

**ST 04-15**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

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

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

v.

**ABC, INC.,**

**Taxpayer**

**No. 03-ST-0000**

**IBT # 0000-0000**

**NTL #s 00 00000000000000**

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**0000000000000000**

**Charles E. McClellan**

**Administrative Law Judge**

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**RECOMMENDATION FOR DECISION**

**Appearances:** Shepard K. Smith, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); John Doe, *pro se*.

**Synopsis:**

This matter arose from a protest filed to the three Notices of Tax Liability identified above that were issued on June 22, 1993 to ABC, Inc., a sole proprietorship operated by Jim Doe ("Taxpayer"), for the months of February, March and April of 1992. Jim Doe died on April 7, 2003. An evidentiary hearing was held on June 25, 2004. Jim Doe's father, John Doe, testified at the hearing.

I recommend that the Notices of Tax Liability be made final.

**Findings of Fact:**

1. The Department issued Notices of Tax Liability 00 0000000000000, 00 00000000000000, and 0000000000000000 to Taxpayer on June 22, 1993 assessing unpaid Retailers' Occupation Tax, ("ROTA")<sup>1</sup>, penalties and interest for the months of February, March and April of 1992. Dept. Group Ex. No. 1.
2. John Doe opened the business operated as ABC, Inc. for his son, Jim Doe, who owned the business and operated it as a sole proprietorship. Tr. pp. 6, 8.
3. Taxpayer was in business for 12 weeks and closed due to it incurring a loss. Tr. p. 5.
4. Jim Doe died on April 7, 2003. Taxpayer Ex. No. 1.

**Conclusions of Law:**

The record in this case is extremely sparse. However, the record establishes that Taxpayer was engaged in a retail business. The ROTA imposes a tax, commonly referred to as a *sales tax*, upon the occupation of retail selling within the State. 35 ILCS 120/2. In this case, the Department determined that Taxpayer failed to remit the sales tax as required by statute. The Department then issued the Notices of Tax Liability at issue in this matter.

It is well established that a corrected return as prepared by the Department is deemed *prima facie* correct. *Masini v. Dept. of Revenue*, 60 Ill.App.3d 11, 14, 376 N.E.2d 324 (1<sup>st</sup> Dist.1978) At an evidentiary hearing, the Department without more, establishes its *prima facie* case by introducing the Department's corrected return into evidence. The

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<sup>1</sup> 35 ILCS 120/1 *et seq.*

burden of proof then shifts to the taxpayer to overcome the Department's *prima facie* case. *Id.*

In this case, the Department's *prima facie* case was established when it introduced into evidence the Notices of Tax Liabilities and the corrected returns. Dept. Group Exhibit No. 1. Taxpayer offered no evidence to overcome the Department's *prima facie* case. Therefore, I find that Taxpayer has failed to overcome the Department's *prima facie* case.

**Recommendation:**

For the reasons set forth above, I recommend that the Notices of Tax Liability be made final.

Date: 7/23/2004

Charles E. McClellan  
Administrative Law Judge