

ST 13-17

Tax Type: Sales Tax

Tax Issue: Responsible Corporate Officer – Failure To File Or Pay Tax

**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.

**JOHN DOE,  
Taxpayer**

**No. XXXX  
Account ID XXXX  
NPL Penalty ID XXXX  
Period 9/09-2/10**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Attorney General John Alshuler on behalf of the Illinois Department of Revenue; James J. Riebandt, Esq. of Riebandt & DeWald, P.C. on behalf of John Doe.

**Synopsis:**

The Illinois Department of Revenue (“Department”) on April 11, 2011, issued notice of penalty liability NPL Penalty ID number XXXX to John Doe (the “taxpayer”) as a responsible officer of ABC Business, Inc. (“ABC Business”) for the unpaid tax liabilities of ABC Business incurred during the period 9/09 through 2/10. The taxpayer protested this notice of penalty liability and requested a hearing. A hearing to consider this matter was held on June 20, 2013 during which the taxpayer testified and both parties submitted documentary evidence. I have reviewed this testimony and evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the notice of penalty liability at issue be finalized as issued.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of notice of penalty liability NPL penalty ID number XXXX determining that a personal liability penalty is due and owing for the period 6/09 through 2/10. Department Exhibit (“Ex.”) 1.
2. For the period listed on the notice of penalty liability, the taxpayer was a person responsible for filing returns for ABC Business, an Illinois domiciled corporation, under the Retailers Occupation Tax Act and for paying over the tax due within the meaning of section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7 (“section 3-7”).  
*Id.*<sup>1</sup>
3. For the period listed on the notice of penalty liability, the taxpayer willfully failed to make payment of the Retailers’ Occupation Tax due from ABC Business within the meaning of section 3-7. *Id.*

**Conclusions of Law:**

The Uniform Penalty and Interest Act (“UPIA”) imposes a liability upon corporate officers that have the control, supervision or responsibility of filing returns and making payments of a corporation’s taxes. Specifically, section 3-7 of the UPIA states as follows:

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who wilfully fails to file the return or to make the payment to the Department or wilfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and

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<sup>1</sup> The taxpayer is not contesting the Department’s *prima facie* correct determination that the taxpayer was a responsible officer of ABC Business who willfully failed to file returns and pay taxes that were due and owing for the tax period in controversy; his only argument is that this company was improperly assessed because it was not in business during the entire period covered by the notice of penalty liability at issue. Tr. pp. 4,5,8,9, 14.

penalties thereon. The Department shall determine a penalty due under this section according to its best judgment and information, and that determination shall be *prima facie* correct and shall be *prima facie* evidence of a penalty due under this section.

35 ILCS 735/3-7

The notice of penalty liability is *prima facie* correct and the burden is on the taxpayer to rebut this presumption. Branson v. Department of Revenue, 168 Ill. 2d 247 (1995). The liability at issue arises from unpaid taxes assessed ABC Business. In the instant case, the taxpayer does not argue that he was not a responsible officer of ABC Business or that he did not willfully fail to pay the taxes due. Tr. pp. 4, 5, 8, 9, 14. Rather, his argument involves an identification of the nature of the tax assessment the Department determined was due from, and unpaid by, ABC Business. Specifically, the taxpayer contends that ABC Business ceased doing business on November 20, 2009 and incurred no further sales tax liability after that date. Tr. pp. 4, 5, 8, 9, 14.

It is well settled in Illinois that a taxpayer cannot rely upon a claim that the underlying corporate liability in an officer liability case is incorrect as a basis for the rebutting a determination of officer liability. Department of Revenue v. Dombrowski, 202 Ill. App. 3d 1050 (1<sup>st</sup> Dist. 1990). Dombrowski stands for the proposition that, where the Department properly issues a notice of tax liability and a final assessment to the corporation incurring the underlying corporate liability, any issues as to the correctness of th9s final tax deficiency can be challenged only pursuant to the Illinois Administrative Review Act (“ARA”). Dombrowski, *supra* at 1054 (“Having failed to file such an action, he has instead improperly sought judicial review of the Department’s action as part of his defense to the instant lawsuit; but because of the defendant’s failure to comply with the ARA, we are not empowered to review the merits of the Final Assessment or the Revised Final Assessment.”). If the corporate taxpayer incurring the liability

underlying a notice of penalty liability fails to appeal the Department's final assessment, and Department thereafter seeks to collect the unpaid corporate liability from a responsible officer of the corporation, that individual cannot challenge the amount of the final tax deficiency as part of the subsequent collection case. *Id.* at 1054. Consequently, in the instant case, ABC Business's failure to contest the Department's final assessment pursuant to the Illinois ARA acted as a waiver of its right to contest the amount of that unpaid liability. This waiver nullifies the taxpayer's attempt to rely upon a claim that the Department has incorrectly assessed ABC Business or to contest this unpaid liability when the Department subsequently seeks to collect this amount from the taxpayer personally.

In the instant case, I find that all of the documentary and testimonial evidence produced by the taxpayer addresses the correctness of Department's notice of tax liability issued ABC Business which, for the reasons enumerated above, constitutes no defense to the notice of penalty liability that has been issued in the instant case. Since the taxpayer has offered insufficient evidence to rebut the *prima facie* correctness of the Department's determination regarding the taxpayer's status as a responsible officer or regarding the taxpayer's willful failure to pay taxes that were due, I find that Department's *prima facie* case has not been rebutted.

### **Conclusion**

For the reasons stated above, I recommend that the notice of penalty liability at issued be affirmed.

**Ted Sherrod**  
**Administrative Law Judge**

**Date: August 22, 2013**