

ST 15-18

Tax Type: Sales Tax

Tax Issue: Reasonable Cause On Application of Penalties

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS
v.**

ABC BUSINESS INC.,

TAXPAYER

**No. XXXX
Reasonable Cause Denial**

**Kelly Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Matthew Crain, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Mr. John Doe appeared *pro se*.

SYNOPSIS: This matter arose when ABC Business Inc. (“Taxpayer”) timely protested the Notice of Tax Liability the Illinois Department of Revenue (“Department”) issued following an audit of ST-556 sales tax returns filed under the Retailers’ Occupation Tax Act (“ROTA”). 35 ILCS 120/3. The issue is whether there is reasonable cause to abate the late filing penalty assessed to Taxpayer for failing to file ST-556 returns for the reporting period January 21, 2012 through May 31, 2014. On September 8, 2015, a formal administrative hearing was held before Administrative Law Judge Ken Galvin¹ with Mr. John Doe (“John Doe”), co-owner of Taxpayer, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

¹ The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witnesses is not at issue.

FINDINGS OF FACT:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence, under the certificate of the Director, of the Department's Notice of Tax Liability ("NTL") showing a liability due and owing through January 7, 2015 for the reporting period January 21, 2012 through May 31, 2014 in the amount of \$XXXX resulting from a Form EDA-556, Sales Tax Transaction Audit Report. Dept. Ex. 1, p. 2.
2. Taxpayer failed to file ST-556 returns on 38 exempt transactions during the period at issue and was assessed \$XXXX for each non-filing in the total amount of \$XXXX. Tr. pp. 8-10; Dept. Ex. 1, p.2.
3. John Doe and the co-owner were in charge of filing ST-556 returns and they knew of the filing requirements but they did not know about the recent law changes concerning the penalty assessment. Tr. pp. 9-10; Dept. Ex. 1, p. 5.
4. Referring to the change in the penalty assessment, John Doe indicated in a letter to the Department that the Department "never gave us any notice of this requirement [at least any that we can find]." (Brackets in the original). Dept. Ex. 1, p. 4.
5. Taxpayer has been in business for 68 years. Tr. pp. 10-11.

CONCLUSIONS OF LAW:

The Department imposed the late filing penalty pursuant to section 3-3 of the Uniform Penalty and Interest Act ("UPIA"), 35 ILCS 735/3-1 *et seq.* Subsection (a-15) of section 3-3 provides, in relevant part, as follows:

(a-15) A penalty of \$100 shall be imposed for failure to file a transaction reporting return required by Section 3 of the Retailers' Occupation Tax Act and Section 9 of the Use Tax Act on or before the date a return is required to be filed; provided, however, that this penalty shall be imposed only if the return when properly prepared and filed would not result in the imposition of a tax. If such a transaction reporting return

would result in the imposition of a tax when properly prepared and filed, then that return is subject to the provisions of subsection (a-10). 35 ILCS 735/3-3(a-15)

Section 3-8 of the UPIA provides a basis for abating penalties, and states, in relevant part, as follows:

Sec. 3-8. No penalties if reasonable cause exists. 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. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability. 35 ILCS 735/3-8

The Department regulation governing reasonable cause provides, in part, as follows:

- a) *The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of the 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 this Section. (Section 3-8 of the Act) (Italics in the original).* 86 Ill.Admin.Code 700.400(a)

The Department's regulation further indicates that the most important factor to be considered in making a determination to abate a penalty depends on whether a 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). A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. 86 Ill.Admin.Code 700.400(c). The burden rests on the taxpayer to show that it acted with ordinary business care and prudence when filing its returns and paying the correct amount of tax when due. 35 ILCS 735/3-8; Hollinger International, Inc. v. Bower, 363 Ill. App. 3d 313, 328 (1st Dist. 2005).

The Taxpayer maintains there is reasonable cause to abate penalties on several grounds: 1) the Department failed to give notice of the statutory change in the penalty assessment; 2) the relevant statute is ambiguous; and 3) the Department has lost no tax revenue from its non-filing since the transactions at issue were exempt transactions. Dept. Ex. 1, pp. 4-5.

While the Department issues informational bulletins to educate the taxpayers of changes in the tax law, my research does not indicate that the Department is statutorily required to individually notify retailers of the changes in the law. Also, the Department points out that the law did not change the filing requirement as it merely added the penalty provision, effective August 16, 2013, which was reported through the Department's Publication 103. Tr. p. 12. John Doe testified that he knew of the filing requirement and was unaware only of the penalty assessment. Accordingly, Taxpayer's first claim is without merit. Taxpayer next claims that the language "a penalty of \$100 shall be imposed" in the subsection a-15 of section 3-3 of the UPIA appears to be "subject to interpretation" because it does not say that "a penalty of \$100 shall be imposed for each transaction not reported." Dept. Ex. 1, p. 5. The subsection of the UPIA states that "A penalty of \$100 shall be imposed for failure to file a transaction reporting return...." It clearly states that a penalty shall be imposed for failure to file *a transaction* reporting return, as in singular transaction. It is settled law in the rule of statutory construction that "a statute should be construed, if possible, so that no word is rendered meaningless or superfluous." Nancy Kean v. Wal-Mart Stores, Inc., et al., 235 Ill.2d 351 (2009). To read the statute the way Taxpayer proposes would render "a transaction" text in the statute meaningless. I find there is no ambiguity in the statute. Taxpayer lastly argues that since the Department has lost no tax revenue from the unfiled tax returns, as they were exempted transactions, the penalty should be abated. It is a novel argument but is against the legislative intent. "When construing these

statutes, our primary objective is to ascertain and give effect to the intent of the legislature. Thus, our inquiry begins with the statutory language, the best indicator of legislative intent.” Nancy Kean at 361, citing Van’s Material Co. v. Department of Revenue, 131 Ill.2d 196, 202 (1989). The statute clearly distinguishes and assigns different penalties for exempt and non-exempt transactions, removing any doubt on the legislative intent to impose a penalty for both exempt and non-exempt transactions. *See* 35 ILCS 735/3-3(a-10) & (a-15). Notwithstanding Taxpayer’s novel argument, I am bound to give effect to the intent of the legislature.

After a thorough review of the evidence presented and the examples of reasonable cause and relevant factors used by the Department in determining the existence of reasonable cause under 86 Ill.Admin.Code 700.400, I find that the record does not support a finding of reasonable cause abatement. In consideration of the clarity of the relevant statute, Taxpayer’s 68 years in business, and John Doe’s admission that he knew of the filing requirement, albeit not of the penalty provision, but did not file the returns, I find that Taxpayer has failed to exercise ordinary business care and prudence in failing to file the tax returns at issue.

Recommendation:

For the foregoing reasons, it is recommended that the NTL be finalized as issued.

Kelly K. Yi
Administrative Law Judge

October 20, 2015