

**UT 12-01**

**Tax Type: Use 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.

**JOHN DOE,  
Taxpayer**

**No. XXXXX  
Account ID XXXXX  
Letter ID XXXXX  
Period XXXXX**

**Ted Sherrod  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; J. Joseph Little, Esq. on behalf of John Doe.

**Synopsis:**

The Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) for use tax owed by the taxpayer, John Doe, on a purchase made by the taxpayer on January 4, 2008. The taxpayer timely protested this NTL, and an evidentiary hearing was held to consider the taxpayer’s protest on August 17, 2011. During the evidentiary hearing, the taxpayer did not contest the tax but requested that the penalties assessed pursuant to the NTL be abated due to reasonable cause. The Department contends that the circumstances the taxpayer avers for his late filing and late payment of tax do not constitute reasonable cause for the abatement of penalties under Illinois law. After considering the testimony and the documents of record in this case, I conclude that this matter should be resolved in favor of the Department.

### **Findings of Fact:**

1. On December 10, 2010, the Department mailed the taxpayer an NTL assessing the taxpayer tax and penalties for his failure to timely report and remit use tax due on a purchase made by the taxpayer on January 4, 2008. Department Exhibit (“Ex.”) 1. The NTL indicates a late payment penalty due in the amount of \$2,644 and a late filing penalty due in the amount of \$250. *Id.*
2. When the NTL was delivered to the taxpayer in December 2010, the taxpayer was out of the country. Tr. pp. 2, 3, 6, 8.
3. Upon returning to the country in January 2011, the taxpayer learned of the Department’s NTL and reported and paid the taxes that had not been timely reported and paid. Tr. pp. 4, 8; Department Ex. 1. However the taxpayer did not pay any of the penalties assessed for late filing and late payment of this tax. *Id.*
4. On March 16, 2011, the taxpayer received a statement of penalties and interest due showing the payment of tax assessed by the NTL and indicating that the penalties assessed remained due and owing. Tr. p. 7; Department Ex. 1.
5. A hearing in this matter was held on August 17, 2011 during which the taxpayer contested the penalties and interest assessed but did not contest the Department’s assessment of tax. Tr. p. 4.

### **Conclusions of Law:**

On December 10, 2010, the Department mailed an NTL to the taxpayer assessing the taxpayer for his failure to timely remit use tax due on a purchase made by the taxpayer on January 4, 2008. Department Ex. 1. The taxpayer subsequently paid the tax that had not been

timely reported and paid, but did not pay any of the penalties assessed for late filing and late payment of this tax. Tr. p. 4; Department Ex. 1. Because the taxpayer's purchase occurred in January, 2008, the tax due on the taxpayer's purchase at issue was required by law to be reported and paid no later than the end of the month following the date of purchase which was February 29, 2008. 35 ILCS 105/10. Since the taxpayer failed to file any return and pay the tax when due by February 29, 2008, the Department assessed late filing and late payment penalties for the taxpayer's failure to timely report and pay the tax indicated in the NTL.

During the evidentiary hearing in this case, the Department introduced its NTL assessing the tax liability at issue. When the Department introduced its NTL into evidence under the certificate of the Department's Director of Revenue, it presented *prima facie* proof of all of the elements necessary for a determination that the unpaid taxes shown in the NTL, along with penalties and interest shown therein, are due and owing. Branson v. Department of Revenue, 168 Ill. 2d 247, 260 (1995).

The Department's *prima facie* case is a rebuttable presumption. *Id.* at 262. After the Department introduces its *prima facie* case, the burden shifts to the taxpayer to establish that one or more of the elements required for the imposition of the tax and penalties assessed are lacking. Branson, *supra* at 261-62. A taxpayer cannot overcome the Department's *prima facie* case by merely denying the accuracy of the Department's assessment, or by merely denying conscious awareness that the tax was due. Branson, *supra* at 267. Instead, the taxpayer must present evidence that is consistent, probable, and closely identified with its books and records. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16 (1<sup>st</sup> Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1<sup>st</sup> Dist. 1981).

Section 3-8 of the Uniform Penalty and Interest Act ("UPIA"), 35 ILCS 735/3-8

(“section 3-8 of the UPIA”) provides a basis for the abatement of penalties for failing to comply with the State’s reporting and payment requirements where “reasonable cause” is shown, stating 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.

As noted above, the taxpayer paid the tax shown to be due on the NTL but did not pay any of the penalties the NTL assessed. Subsequent to the taxpayer’s payment of the tax assessed, the taxpayer received a statement indicating that he remained liable for the penalties assessed pursuant to the NTL. Department Ex. 1. The taxpayer seeks abatement of the penalties assessed for “reasonable cause” pursuant to section 3-8 of the UPIA noted above. The taxpayer contends that his prompt payment of the tax shown to be due on the NTL constitutes reasonable cause for the abatement of the penalties indicated in the NTL. Tr. p. 4.

The taxpayer argues that the penalties should be abated in spite of his failure to timely comply with the Illinois tax law’s reporting and payment requirements. He contends that he did not pay the tax assessed immediately upon delivery of the NTL in December 2010 because he was out of the country for an extended period of time and did not learn of this notice until he returned in January 2011. Tr. pp. 4, 6. In effect, the taxpayer avers that his good faith effort to resolve the late filing and late payment of tax shown on the NTL by paying the tax once he became aware of the NTL constituted reasonable cause for the abatement of the penalties assessed.

The liability at issue arose from the taxpayer’s retail purchase on January 4, 2008. Department Ex. 1. Consistent with the Department’s *prima facie* case, it is presumed that the

taxpayer did not pay any tax to the retailer from whom he made this purchase. Branson, *supra*. Consequently, the taxpayer was required to “self assess” the use tax due on this purchase pursuant to 35 **ILCS** 105/10 noted above. Thus, he was required to file a return reporting the tax due on his purchase and pay the tax due thereon no later than February 29, 2008. *Id.*

The taxpayer does not deny that he did not timely file the required return or pay the tax that was due as required by 35 **ILCS** 105/10. Nor has he given any explanation for his failure to timely file and pay as required by this section. This failure of proof is fatal to the taxpayer’s reasonable cause claim because the reasonable cause provision enumerated at section 3-8 of the UPIA is based upon a showing that the taxpayer had a reasonable cause for not filing and paying the taxes when they were originally due. It only provides for the waiver of penalties “if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause” (emphasis added). This penalty waiver provision does not excuse penalty liability based upon the timing of a taxpayer’s payment of tax pursuant to an NTL. Consequently it provides no basis for the abatement of taxes when the taxpayer pays the tax pursuant to an NTL regardless of whether or not the taxpayer pays the taxes shown on the NTL promptly upon delivery of the NTL.

In sum, while the taxpayer has provided an excuse for not paying the tax shown due on the NTL any sooner than he did, the taxpayer has given no explanation for his failure to file a return and pay the tax at issue when the tax was due pursuant to 35 **ILCS** 105/10 (i.e. on or before February 29, 2008). Without such an explanation, an abatement of the penalties at issue is not warranted by section 3-8 of the UPIA or any other provision of Illinois law. Consequently, I find that the taxpayer has failed to rebut the Department’s *prima facie* showing of liability as enumerated in its NTL.

**Recommendation:**

For the foregoing reasons, it is recommended that the penalties at issue be upheld.

**Ted Sherrod  
Administrative Law Judge**

**Date: January 18, 2012**