

UT 12-05

Tax Type: Use Tax

Tax Issue: Use Tax On Purchases From A Foreign Country

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

---

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

) No.: XXXXX  
) Taxpayer ID: XXX-XX  
) Letter ID: XXXXX  
)

JANE DOE,  
v.  
Taxpayer.

) Use Tax  
) Julie-April Montgomery  
) Administrative Law Judge

---

---

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Jane Doe *pro se*; Paula Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

The Illinois Department of Revenue (“Department”) issued two Notices of Tax Liability (“Notices”) for use tax owed by Jane Doe (“Taxpayer”) for purchases made in 2007 and 2008. The Notices were timely protested and an evidentiary hearing requested. The amounts on the Notices were subsequently revised. Taxpayer does not contest the revised tax but requests the revised penalties be abated for reasonable cause. At the May 17, 2012 administrative hearing, Taxpayer presented documentary and testimonial evidence and the Department presented documentary evidence.<sup>1</sup> Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, are made the following findings of fact and conclusions of law.

**Findings of Fact:**

1. In a letter dated September 18, 2010, Taxpayer's husband, in response to notices of proposed tax liability, contacted the Department to dispute the use tax liabilities that the Department had assessed Taxpayer. Tr. p. 11; Taxpayer Gr. Ex. No. 1.
2. The Department subsequently issued Taxpayer a February 4, 2011 Notice of Tax Liability and March 23, 2011 Notice of Tax Liability. Tr. pp. 11-12; Taxpayer Gr. Ex. No. 1 (July 13, 2011 letters); Taxpayer Gr. Ex. No. 2 (Notices).
3. The amounts stated on the Notices were revised and such revisions were issued to Taxpayer in a "Taxpayer Statement" ("Statement") dated November 16, 2011. Tr. p. 8; Department Ex. No. 1.
4. The Parties agree that, pursuant to the Statement, use tax of \$302 is due for the May 15, 2007 purchase; \$102 for the September 10, 2007 purchase; and \$308 for the December 11, 2008 purchase. Tr. pp. 4 and 8; Department Ex. No. 1; March 27, 2012 Pre-Trial Order ("Order").
5. A penalty of \$312.10 is due for the May 15, 2007 purchase; \$176.20 for the September 10, 2007 purchase; and \$67.40 for the December 11, 2008 purchase. Tr. p. 8; Department Ex. No. 1.
6. Interest in the amount of \$236.09 is due for the May 15, 2007 purchase; \$86.86 for the September 10, 2007 purchase; and \$21.40 for the December 11, 2008 purchase. Id.

---

<sup>1</sup> Administrative Law Judge John White heard this matter. Due to his unavailability, Administrative Law Judge Julie-April Montgomery authored this recommendation following a thorough review of the record. There were no issues of credibility to be determined.

7. Taxpayer's purchases consisted of books from Anywhere Publishing in British Columbia in 2007 and 2008. Tr. p. 15.
8. The purchased books were shipped and delivered to Taxpayer in Illinois by UPS. Id.
9. The books shipped and delivered to Taxpayer included Taxpayer's purchases as well as books bought by other purchasers. Id.
10. The purchased books were used in Taxpayer's husband's business. Tr. p. 11; Taxpayer Gr. Ex. No. 1.
11. Taxpayer's husband's business is located in Illinois. Taxpayer's Gr. Ex. Nos. 1 and 2 (company letterheads).

**Conclusions of Law:**

The Department issued Notices to Taxpayer for use tax owed on purchases made in 2007 and 2008. Taxpayer Gr. Ex. No. 1. Subsequently, the Department revised its assessments of the amounts of use tax, penalties and interest owed by Taxpayer for the 2007 and 2008 purchases. Statement. The Department conveyed these revisions to Taxpayer in a November 16, 2011 Statement. Id. At hearing, the Department entered the Statement into evidence under the certificate of the Director of Revenue and without objection by Taxpayer. Tr. p. 8. The Parties agree that the tax amounts stated on the Statement are the use tax amounts owed by Taxpayer. Tr. p. 4; Statement; Order. The Taxpayer; however, seeks penalty relief, and as such, it is Taxpayer's request for penalty abatement that is the sole issue to be determined. Tr. p. 7; Order.

Section 3-8 of the Uniform Penalty and Interest Act ("UPIA"), 35 ILCS 735/3-8, provides for the abatement of penalties for failure to comply with the State's reporting and payment requirements where "reasonable cause" is shown. This UPIA section states:

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.

Department regulations state:

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 pay his proper liability in a timely fashion. 86 Ill. Admin. Code sec. 700.400(b).

Taxpayer argues that she “tried in good faith since this started in July 2010....to create an understanding of what the tax should be.” Tr. p. 7. Taxpayer also argues that because tax was initially assessed upon book purchases that entailed a UPS shipment for which only a portion of such shipment was attributable to Taxpayer, and inasmuch as it took more than two years (since 2010) to establish the portion of the UPS shipment attributable to Taxpayer and therefore subject to use tax, penalties should be abated. Tr. p. 7. Taxpayer further argues that the documentation from the Department was confusing. Tr. p. 19.

Taxpayer’s initial purchase was made May 15, 2007 and the last purchase was made December 11, 2008. Taxpayer presented no evidence, documentary or testimonial, to reflect any steps taken to investigate whether the purchases were subject to tax. Moreover, Taxpayer did not detail any efforts, like investigations, research or requests for advice that were made to determine the tax consequences, or lack thereof, with regard to the purchases. Taxpayer’s first documented action with respect to the tax consequences of the purchases occurred in a letter dated September 18, 2010, more than 3 years after the initial purchase and 18 months after the final purchase, and

only after receipt of notices of proposed tax liability from the Department. This letter disputed the purchases as “not taxable in Illinois.” Taxpayer Gr. Ex. No. 1. The letter; however, did not state when Taxpayer determined the purchases were not subject to tax, but there was the admission that the books purchased were used as part of Taxpayer’s husband’s Illinois business.

Id.

Taxpayer did not show that she exerted any effort, good faith or otherwise, to determine her tax liability, at or near the time of the book purchases, but rather first considered the taxation of the purchases years after the fact in 2010. Such actions do not establish the existence of reasonable cause for abatement of the penalties assessed as prescribed by UPIA and Department regulations.

**Recommendation:**

Taxpayer failed to establish the existence of reasonable cause so as to warrant the waiver of penalties. It is, therefore, recommended that Taxpayer pay the tax, penalties and interest listed on the Department’s Statement.

September 21, 2012

Julie-April Montgomery  
Administrative Law Judge