

IT 14-04

Tax Type: Income Tax

Tax Issue: Amnesty Eligibility

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

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<b>THE DEPARTMENT OF</b>	)	Docket No.	XXXX	
<b>REVENUE OF THE</b>	)	IBT No.	XXXX	
<b>STATE OF ILLINOIS</b>	)	NOD Nos.	XXXX	
	)		XXXX,	XXXX
	)		XXXX,	XXXX,
<b>ABC BUSINESS,</b>	)		XXXX,	XXXX
	)	John E. White,		
Taxpayer	)	Administrative Law Judge		

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** William Seitz, Fisk, Kart, Katz and Reagan, Ltd., appeared for ABC BUSINESS; Sean Cullinan, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

Following an audit of its business, the Illinois Department of Revenue (Department) issued seven Notices of Deficiency (NODs) to ABC BUSINESS (Taxpayer). The NODs proposed to assess tax, penalties, and interest for tax years ending December 31, 2001 through December 31, 2007. Taxpayer protested the NODs, and requested a hearing. The parties agreed to conduct a single hearing involving this matter and another matter, involving Notices of Tax Liability the Department issued to Taxpayer to assess Illinois retailers' occupation tax, penalties and interest against it. That related matter is the subject of a separate recommendation.

At hearing, Taxpayer challenged the penalties and interest proposed in the NODs. I have reviewed the evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the NODs be revised to eliminate the proposed amnesty penalties and interest, as Taxpayer was not eligible to take part in the most recent amnesty program.

**Findings of Fact:**

1. Taxpayer operated a liquor store in Blueville that had some grocery sales. Department Ex. 2, p. 1 (copy of first page of the Department auditor's audit report).
2. Taxpayer registered as a retailer with the Department in 1985, for purposes of sales and income taxes. Department Ex. 2, p. 1.
3. The Department conducted a retailers' occupation tax (ROT) audit of Taxpayer for the period beginning in January 2004 through June 2007. Department Ex. 2, p. 1. Carl Gronski (Gronski) conducted the audit. *Id.*, p. 6.
4. As a result of the ROT audit, a referral was made to audit Taxpayer's business income tax filings. Department Ex. 4 (copy of Department's income tax audit index and workpapers), p. 2 (first page of Audit Comments report, dated April 8, 2010). Cindy Grapes conducted the income tax audit. *Id.*, p. 3.
5. While reviewing Taxpayer's income tax filing history, Grapes determined that Taxpayer had filed forms IL-1120, Corporation Income and Replacement Tax Returns, with the Department for tax years ending on December 31, 1987 through 2000 (TYE 1987-2000), but had not done so for TYE 2001-2007. Department Ex. 4, pp. 2-3.
6. Grapes was not able to confirm that Taxpayer had voluntarily dissolved its corporate status, and conducted the audit on the assumption that Taxpayer was required to file forms IL-1120 during TYE 2001-2007. Department Ex. 4, p. 2.
7. Since Taxpayer did not file forms IL-1120 during TYE 2001-2007, Grapes had to use the best available information to determine the amounts of income and expenses necessary to calculate Taxpayer's Illinois base and net income for those years. Department Ex. 4, pp. 2, 5-6; Department Ex. 5 (copy of Department's Notice of Audit Initiation, dated October 21,

2009); Department Ex. 6 (copy of Department’s Notice of Audit Expansion, dated November 12, 2009); *see also* 35 ILCS 5/202 (net income defined); 35 ILCS 5/203(b)(base income of a corporation defined).

8. To estimate Taxpayer’s Illinois base and net income for TYE 2001-2007, Grapes used the ROT auditor’s schedules of Taxpayer’s estimated total receipts and his schedules of Taxpayer’s cost of goods sold. Department Ex. 4, pp. 2, 5-6.
9. Grapes determined that Taxpayer had the following amounts of total receipts, cost of goods sold, and net receipts, for the years at issue:

Tax Year	Total Receipts	Cost of Goods Sold	Net Receipts
2001	669,435	535,548	133,887
2002	679,176	543,340	135,835
2003	371,620	297,296	74,324
2004	730,770	584,616	146,154
2005	838,882	671,105	167,777
2006	798,132	638,506	159,626
2007	789,262	631,410	157,852

Department Ex. 4, pp. 5-6.

10. On December 8, 2009, the Department issued a Notice of Proposed Deficiency (NPD) to Taxpayer, with an attachment that included the following schedule of tax and penalties proposed to be due:

Tax Year	Taxable Income	Tax Due	Penalties
2001	133,887	9,542	654
2002	135,835	9,681	1,502
2003	74,324	5,426	1,926
2004	146,154	10,669	1,333
2005	167,777	12,247	1,533
2006	159,626	11,653	1,456
2007	157,852	11,523	1,439

Department Ex. 7 (copy of NPD), p. 3.

11. On March 21, 2011, the Department issued an NOD to Taxpayer for each of TYE 2001-2007. Department Ex. 3 (copies of NODs).

12. Each NOD included a statement notifying Taxpayer of the way the Department determined the amounts of Taxpayer's federal taxable income and Illinois net income, as well as how it determined the amounts of Taxpayer's Illinois income and replacement tax liabilities.

Department Ex. 3 (page 2 of each NOD). The statements reflect the following amounts of tax, penalties and interest proposed to be due:

	2001	2002	2003	2004	2005	2006	2007
IL Net Income	132,887.00	134,835.00	74,324.00	146,154.00	167,777.00	159,626.00	157,852.00
Net Replacement Tax Due	3,322.00	3,371.00	1,858.00	3,654.00	4,194.00	3,991.00	3,946.00
Net Income Tax Due	6,220.00	6,310.00	3,568.00	7,015.00	8,053.00	7,662.00	7,577.00
Total Tax Due	9,542.00	9,681.00	5,426.00	10,669.00	12,247.00	11,653.00	11,523.00
Late-Filing Penalty	381.68	387.24	217.04	426.76	489.88	466.12	460.92
Late Payment Penalty			2,170.40				
Audit Late Payment Penalty				4,267.60	4,898.80	4,661.20	4,609.20
Interest through 3/21/2011	9,535.79	8,426.00	3,946.00	6,862.12	6,429.58	4,321.58	2,463.08
Total Deficiency	19,459.47	18,494.24	11,759.44	22,225.48	24,065.26	21,101.90	19,056.20

Department Ex. 3 (page 2 of each NOD).

13. The Department measured the late payment penalties, and the interest, proposed in the NODs, by taking into account 2010 amendments to the Tax Delinquency Amnesty Act (TDAA), and to the Uniform Penalty and Interest Act (UPIA). Department Ex. 3 (page 2 of each NOD); Department Ex. 4, p. 2; Tr. pp. 20, 22.
14. After this matter was docketed within the Department's Office of Administrative Hearings, the parties agreed to place the matter on inactive status, pending resolution of a criminal investigation and prosecution premised on Taxpayer's allegedly fraudulently filed monthly Illinois sales and use tax returns. Department Ex. 2, pp. 10 (copy of completed form EDA-4, titled, Referral to Investigations, from Gronski to Department's Bureau of Criminal Investigations, regarding audit of Taxpayer), 13 (page 2 of Gronski's Audit History Worksheet); *see also* Orders issued during status conferences set and held to monitor results of criminal prosecution; *see also, generally, Department of Revenue v. Olympic Savings & Loan Assoc.*, 78 Ill. App. 3d 668, 396 N.E.2d 1295 (1<sup>st</sup> Dist. 1979).
15. Prior to hearing, Taxpayer's owner, John Doe (John Doe), pled guilty to the offense of Attempt, and was sentenced to a period of conditional discharge. Department Ex. 8 (copy of certified statement of conviction of John Doe for the offense of Attempt); Taxpayer Ex. 1 (copy of John Doe's Sentencing Order for 18 months of conditional discharge, and payment of restitution to the Department). The Sentence Order required John Doe to pay restitution to the Department in the amount of \$60,000. Taxpayer Ex. 1, p. 2.
16. John Doe's Sentencing Order further provided, "Defendant understands that nothing in this order prohibits the Illinois Department of Revenue from proceeding civilly to recover any additional tax, penalty or interest." Taxpayer Ex. 1, p. 2.

### **Conclusions of Law:**

The Department offered the NODs into evidence under the Director's certificate of records. Department Ex. 3. Under § 904 of the IITA, those NODs are "prima facie correct ...." 35 ILCS 5/904(b); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 238-39 (1<sup>st</sup> Dist. 1981). The Department's prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). A taxpayer bears the burden to rebut the presumptive correctness of the Department's determinations. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1<sup>st</sup> Dist. 2002). The presumption of correctness that attaches to the Department's prima facie case extends to all elements of taxability. *See* Branson, 168 Ill. 2d at 258, 659 N.E.2d at 966-67 (Department's introduction of Notice of Penalty Liability establishes prima facie proof that taxpayer acted with the required mental state); Soho Club, Inc. v. Department of Revenue, 269 Ill. App. 3d 220, 232, 645 N.E.2d 1060, 1068 (1<sup>st</sup> Dist. 1995) (Department's introduction of Notice of Tax Liability establishes prima facie proof that taxpayer is engaged in the occupation that is subject to taxation).

### **Issue and Arguments**

Taxpayer does not contest any amounts of tax proposed. *See* Tr. pp. 15-16. Instead, it argues that the statutory presumption of correctness applies only to the tax proposed, and does not apply to any of the penalties proposed in the NODs. Tr. pp. 15-16, 20. It also contends that, since it faced criminal investigation and prosecution for tax offenses related to the years at issue, Taxpayer was not eligible for Illinois' amnesty program, and the Department may not impose amnesty penalties and interest against it. Tr. pp. 20-21. I address each argument in turn.

The Department proposed to assess three types of penalties against Taxpayer: late filing; late payment; and audit late payment. Department Ex. 3. The penalties were proposed after the Department determined that Taxpayer had failed to file required corporate Illinois income tax returns for TYE 2001 through 2007, and, as a result, had failed to pay the tax that it should have reported as being due on such returns. Department Exs. 3-4.

Section 904(b) of the IITA provides:

Sec. 904. Deficiencies and Overpayments.

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(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b). Section 1001 of the IITA provides:

Sec. 1001. Failure to File Tax Returns.

(a) Failure to file tax return. In case of failure to file any tax return required under this Act on the date prescribed therefor, (determined with regard to any extensions of time for filing) there shall be added as a penalty the amount prescribed by Section 3-3 of the Uniform Penalty and Interest Act.

35 ILCS 5/1001(a).

Illinois courts have long treated the issuance of penalties like those described in IITA § 1001(a) and UPIA § 3-3 to be a ministerial act, based simply on a mathematical percentage of the amount of tax the Department determined to be due. Diogenes v. Department of Finance, 377 Ill. 15, 22, 35 N.E.2d 342, 346 (1941) (“The taxpayer's return, as amended by the Department to include the ‘A’ penalty, was prima facie correct, and the duty rested upon the plaintiff to establish that his tax return had been filed on time and that the penalty was, in consequence, improperly exacted.”); Department of Finance v. Gandolfi, 375 Ill. 237, 240, 30 N.E.2d 737, 739 (1940) (“Our decision in Department of Finance v. Cohen, supra, that the power to review and

revise tax returns under the Retailers' Occupation Tax Act is ministerial, and not judicial, as requiring merely a calculation or computation from data upon which all minds must ordinarily reach the same result, applies with equal force to the assessment of penalties under sections 4 and 5.”).

Further, § 3-8 of the UPIA provides:

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 Illinois General Assembly’s placement of the burden on the taxpayer to show that one of the penalties listed in UPIA § 3-8 should *not* apply makes clear that such penalties were intended to be assessed automatically, upon the Department’s presumptively correct determination that a return was not timely filed, or that the correct amount of tax was not paid when due. *Id.*; 35 ILCS 735/3-3; Diogenes, 377 Ill. at 22, 35 N.E.2d at 346.

On this point, the court in Hollinger International, Inc. v. Bower, 363 Ill. App. 3d 313, 841 N.E.2d 447 (1<sup>st</sup> Dist. 2005), wrote:

... an agency’s determination as to whether reasonable cause existed in justifying the abatement of a tax penalty will be reversed only if the agency’s decision was against the manifest weight of the evidence and only if the opposite conclusion was clearly evident. *PPG Industries, Inc. v. Department of Revenue*, 328 Ill. App. 3d 16, 21, 262 Ill.Dec. 208, 765 N.E.2d 34 (2002). The existence of reasonable cause justifying abatement of a tax penalty is a factual determination that is to be decided only on a case-by-case basis. *PPG Industries, Inc.*, 328 Ill. App. 3d at 21, 262 Ill.Dec. 208, 765 N.E.2d 34. The taxpayer has the burden of proving by competent evidence that the proposed assessment is not correct. *Fillichio v. Department of Revenue*, 15 Ill.2d 327, 333, 155 N.E.2d 3 (1958). ....

Hollinger International, Inc., 363 Ill. App. 3d at 315-16, 841 N.E.2d at 450.

Based on the plain language of §§ 904 and 1001 of the IITA, § 3-3 of the UPIA, and consistent Illinois court decisions on the subject, I reject Taxpayer's argument that the statutory presumption of correctness does not attach to the Department's proposed assessments of the late filing and the late payment penalties. Department Ex. 3; 35 ILCS 5/904(a); 35 ILCS 5/1001(a); 35 ILCS 735/3-3. The Department's determination that penalties were due is presumed correct, and Taxpayer bears the burden to show that the UPIA § 3-3 penalties proposed — or some amount of them — were not due. 35 ILCS 735/3-8; Hollinger International, Inc., 363 Ill. App. 3d at 315-16, 841 N.E.2d at 450. The recommendation next discusses whether the evidence admitted at hearing supports Taxpayer's claim that the proposed penalties were improper.

Section 3-3 of the UPIA authorizes the imposition of a penalty for failing to file, timely, a return that is required to be filed by a taxpayer. 35 ILCS 735/3-3(a-10). Regarding the years at issue, the late filing penalty was assessed in two tiers, both of which may be imposed. *Id.* The first tier is measured as 2% of the tax required to be shown due on a return that was required to be filed, up to a maximum of \$250. *Id.* The second tier is the greater of 2% of the tax required to be shown due on a return, or \$250. *Id.* The second tier penalty may not exceed \$5,000. *Id.* The second tier applies if a taxpayer fails to file a return within 30 days after the Department serves a taxpayer with notice that the return has not been filed. *Id.*

Here, the evidence shows that the Department served Taxpayer with two separate audit notices, and with a notice of proposed deficiency, for the years at issue. Department Exs. 5-7. Each of those documents notified Taxpayer that the Department had not received an Illinois corporate income tax return from Taxpayer for the years covered by the notice. *See id.* Taxpayer has not claimed that it did not receive any of those notices. Nor has Taxpayer offered any evidence that it filed any of the delinquent corporate returns within 30 days after such notices

were issued. Thus, the evidence shows that both the first and second tier late filing penalties would be due. 35 ILCS 735/3-3(a-10). To convert this conclusion into dollars and cents, the correct amount of late filing penalties that were due for the tax years at issue are as follows:

Period	Tax	Applicable UPIA § 3-3(a-10) Late Filing Penalty					Late Filing Penalty Proposed in NOD
		First Tier (2% of tax due, up to \$250)	+	Second Tier (greater of \$250 or 2% of tax due, up to \$5,000)	=	Total	
2001	9,542.00	190.84	+	250	=	440.84	381.68
2002	9,681.00	193.62	+	250	=	443.62	387.24
2003	5,426.00	108.52	+	250	=	358.52	217.04
2004	10,669.00	213.38	+	250	=	463.38	426.76
2005	12,247.00	244.94	+	250	=	494.94	489.88
2006	11,653.00	233.06	+	250	=	483.06	466.12
2007	11,523.00	230.46	+	250	=	480.46	460.92

Department Ex. 3; 35 ILCS 735/3-3(a-10).

The evidence shows the Department did not correctly measure the amount of the late filing penalties due. Department Ex. 3. However, the Department's error is in Taxpayer's favor, since the amount actually proposed is less than the amount properly due. Given Taxpayer's failure to show that it was not subject to both tiers of the late filing penalties, and the absence of harm to Taxpayer caused by the Department's incorrect calculation of the penalties proposed, I recommend the Director finalize the proposed late filing penalties, as issued.

Section 3-3(b) of the UPIA also imposes a penalty for a taxpayer's failure timely to pay an amount of tax when due. 35 ILCS 735/3-3(b-5), (b-10). For returns due on and after January 1, 2001 and on or before December 31, 2003, UPIA § 3-3(b-10)(1) imposed a penalty on a sliding scale that went up to 15%, depending on the length of time between the date tax was due and the date tax was paid. 35 ILCS 735/3-3(b-10)(1). The 15% rate was imposed if the period between the date tax was due and the date tax was paid is greater than 180 days. *Id.* For returns due on and after January 1, 2004 and on or before December 31, 2004, UPIA § 3-3(b-15)(1)

imposed a penalty, again on a sliding scale, that went up to 20%. 35 ILCS 735/3-3(b-15)(1). The 20% rate was imposed if the period between the date tax was due and the date tax was paid is greater than 180 days. *Id.*

Finally, UPIA § 3-3(b-20) is applicable to returns due on and after January 1, 2005. 35 ILCS 735/3-3(b-20). Section 3-3(b-20)(2) imposes a penalty for failure to pay the tax shown due or required to be shown due on a return on or before the due date prescribed for payment of that tax. *Id.* The amount of the penalty imposed under § 3-3(b-20)(2) “shall be 2% of any amount that is paid no later than 30 days after the due date, 10% of any amount that is paid later than 30 days after the due date and prior to the date the Department has initiated an audit or investigation of the taxpayer, and 20% of any amount that is paid after the date the Department has initiated an audit or investigation of the taxpayer ....” *Id.* A taxpayer may reduce the § (b-20)(2) penalty to 15% if the entire amount due is paid not later than 30 days after the Department has provided the taxpayer with an amended return (following completion of an occupation, use, or excise tax audit) or a form for waiver of restrictions on assessment (following completion of an income tax audit) ....” *Id.*

Here, Taxpayer’s Illinois corporate income and replacement taxes were due on the dates the respective corporate returns were due to be filed, that is, on either March 15<sup>th</sup> of 2002 through 2008 (35 ILCS 5/505(a)(1)), or on the next regular business day, in the event one of those dates fell on a weekend or holiday. *See* 5 ILCS 70/1.11. Alternatively, Taxpayer was entitled to an automatic extension for filing its Illinois returns, till September 15<sup>th</sup> of 2002 through 2008, or on the next regular business day, in the event it sought an extension of the date for filing its federal income tax returns for those years. 35 ILCS 5/505(b); 5 ILCS 70/1.11.

Taxpayer offered no evidence to show that it has ever paid any amounts of income or replacement taxes within 180 days of the dates they were due, or within 180 days of the Department's issuance of audit notices and notice of proposed deficiency. Thus, for each year for which Taxpayer failed timely to pay its Illinois corporate income and replacement taxes, the late payment penalty would be properly measured by the highest percentage set forth in each of the applicable paragraphs of UPIA § 3-3. 35 ILCS 735/3-3(b-10) – (b-20).

The late payment penalties properly due under UPIA § 3-3(b-10) – (b-20) are as follows:

Period	Tax	Applicable UPIA § & Penalty Rate	Late Payment Penalty Properly Due	Late Payment Penalty Proposed in NOD
2001	9,542.00	3-3(b-10)(1) / 15%		0
2002	9,681.00	3-3(b-10)(1) / 15%		0
2003	5,426.00	3-3(b-15)(1) / 20%	1,085.20	2,170.40
2004	10,669.00	3-3(b-20)(2) / 20%	2,133.80	4,267.60
2005	12,247.00	3-3(b-20)(2) / 20%	2,449.40	4,898.80
2006	11,653.00	3-3(b-20)(2) / 20%	2,330.60	4,661.20
2007	11,523.00	3-3(b-20)(2) / 20%	2,304.60	4,609.20

Department Ex. 3; 35 ILCS 735/3-3(b-10) – (b-20).

While the law and evidence are clear that the penalties actually proposed<sup>1</sup> in the NODs are due, the evidence also shows that the Department has incorrectly measured the amounts of the late payment penalties proposed, and why it did so. Department Ex. 3; 35 ILCS 735/3-3(b-10) – (b-20). Department counsel advised that some of the penalties proposed on the NODs were doubled, as were the amounts of interest proposed, based on 2010 amendments made to the UPIA and to the Tax Delinquency Amnesty Act (TDAA), as a result of Public Act 96-1435. Tr. pp. 20, 22; Department Ex. 3; P.A. 96-1435, §§ 15-20 (eff. August 16, 2010); 35 ILCS 735/3-2(g); 35 ILCS 735/3-3(j); 35 ILCS 745/1 *et seq.*

<sup>1</sup> Since the Department did not propose to assess late payment penalties for TYE 2001-2002, the table above does not include the amounts that properly could have been proposed for those years.

The 2010 amendment to the TDAA created a tax amnesty program for periods after June 30, 2002 and prior to July 1, 2009, which allowed eligible taxpayers to pay many eligible taxes without penalty or interest. 35 ILCS 745/10 (2010). For purposes of this case, the key word is “eligible,” since the law, the evidence admitted at hearing, and the parties’ actions during the course of this administrative matter, make clear that Taxpayer was not eligible for amnesty.

Section 10 of the 2010 TDAA provided, in part:

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Amnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of this State for nonpayment, delinquency, or fraud in relation to any State tax imposed by any law of the State of Illinois.

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35 ILCS 745/10 (2010).

The Orders entered in this matter show that the parties asked and agreed that this administrative matter should be kept on inactive status due to a criminal investigation of Taxpayer, regarding alleged fraud pertaining to the monthly ROT returns Taxpayer filed during some of the years at issue. *See* Orders dated on and after November 4, 2011; *see also* Taxpayer Ex. 1; Department Exs. 2-3. Further, the evidence admitted by both parties show that John Doe, Taxpayer’s owner, pled guilty to the offense of attempt, following the Department’s criminal investigation of Taxpayer’s business, and its monthly ROT returns. Department Exs. 2-3; Taxpayer Ex. 1.

That it was John Doe who ultimately pled guilty to a criminal offense does not mean that he was the only person who was not eligible for amnesty. *See* 35 ILCS 745/10 (2010). The Department’s audit work papers show that the person engaged in retailing was Taxpayer, a corporation. Department Ex. 2, *passim*. The Department conducted an ROT audit of Taxpayer,

following which it referred the matter to its Bureau of Criminal Investigation (BCI). Department Ex. 2, p. 2; *see also* Department Ex. 3; Taxpayer Ex. 1. In turn, BCI referred the matter for prosecution regarding the ROT returns Taxpayer filed during the amnesty period. Department Ex. 2, p. 2. The Department's income tax auditor determined that Taxpayer had a reporting obligation, for purposes of the IITA, during the years at issue. Department Ex. 3, p. 2. He measured the income and replacement taxes proposed to be due from Taxpayer by the receipts the Department's ROT auditor determined Taxpayer realized from selling goods at retail during the amnesty period. *Id.* Thus, both the evidence and the parties' own actions prove that Taxpayer was "a party to a[ ] criminal investigation ... for nonpayment, delinquency, or fraud in relation to any State tax imposed by any law of the State of Illinois." 35 ILCS 745/10 (2010); Department Exs. 2-4; Taxpayer Ex. 1; Orders dated on and after November 4, 2011. Since Taxpayer was a party to a criminal investigation for fraud in relation to a State tax, it was not eligible for amnesty. 35 ILCS 745/10 (2010). Since Taxpayer was not eligible for amnesty, it is not subject to the doubling of interest and penalties imposed by the TDAA. *Id.*; *see also* 86 Ill. Admin. Code § 520.105(g) (2010).

**Conclusion:**

I respectfully recommend that the Director revise the NODs to correctly measure and assess the late payment penalties due (*see supra*, page 13) for the years at issue, and to eliminate any amounts of amnesty interest proposed, and that he finalize the NODs as so revised.

February 25, 2014

John E. White  
Administrative Law Judge