

ST 13-23

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.

JOHN DOE,

TAXPAYER

No. XXXX
Reasonable Cause Denial
Letter ID: XXXX
Account ID: XXXX

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John Doe, appearing *pro se*; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

On May 16, 2012, the Illinois Department of Revenue (hereinafter "Department") issued a second "Reasonable Cause Denial," captioned above, to John Doe. Mr. John Doe had requested a waiver of a late-payment penalty and collection penalty. The Department denied the request finding that the circumstances described by Mr. John Doe did not constitute reasonable cause. Mr. John Doe protested and requested an evidentiary hearing, which was held on May 22, 2013, with testimony from Mr. John Doe and Mr. James Barborka, Revenue Auditor for the Department. Following a review of the

evidence and the arguments made at the hearing, it is recommended that the Reasonable Cause Denial be finalized as issued.

Finding of Fact:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's second "Reasonable Cause Denial," dated May 16, 2012, denying taxpayer's request for abatement of penalties due to reasonable cause. Tr. pp. 4-5; Dept. Ex. No. 1.
2. On November 4, 2011, the Department sent taxpayer a "Final Notice of Tax Due," based on information from taxpayer's Form ST-44 (Illinois Use Tax) return. The Final Notice included a "Return Correction Notice" showing a use tax on purchases of \$XXX less sales tax paid to other states of \$XX resulting in a total tax due of \$XXX, a late-payment penalty of \$XXX, plus interest, for a total due of \$XXX. The Final Notice states that "to avoid cost of collection fees, additional penalties and interest, payment must be made by December 5, 2011." Tr. pp. 16-18; Dept Ex. No. 4.
3. On March 26, 2012, the Department sent the taxpayer an "Account Notice" showing that the tax liability of \$XXX had been paid and that \$XXX of the \$XXX late-payment penalty had been paid. The "Account Notice" assessed taxpayer for the remaining late-payment penalty of \$XXX, a collection penalty of \$XXX, plus interest, for a total due of \$XXX. The collection penalty was added because taxpayer "did not make full payment by the required due date." Tr. pp. 16-18; Dept. Ex. No. 4.

Conclusions of Law:

Taxpayer sent in an ST-44, Use Tax Return, without payment. On November 4, 2011, the Department sent the taxpayer a Final Notice of Tax Due for \$XXX in use tax, a late-payment penalty of \$XXX, plus interest, for a total of \$XXX. The Final Notice stated that to avoid the cost of collection fees, additional penalties and interest for this assessment, taxpayer must pay by December 5, 2011. Taxpayer responded to this letter with a copy of a cancelled check dated September 9, 2011 for \$XXX. Taxpayer's Ex. No. 1. The \$XXX amount was then applied toward the balance due of \$XXX but it did not cover the entire balance. Because the cancelled check did not cover the entire balance, the Department assessed a "Collection Penalty" of \$XXX, under 35 ILCS 3-4.5(c)(1). On March 26, 2012, the Department sent taxpayer an "Account Notice" which showed that the use tax liability of \$XXX had been paid, \$XXX of the \$XXX late-payment penalty had been paid, leaving a balance due of \$XXX in late-payment penalty plus unpaid interest. A collection fee of \$XXX was assessed and added to the total because the assessment had not been paid in full by December 5, 2011.

Only the "late-payment penalty" is subject to reasonable cause abatement. The collection penalty is assessed under 35 ILCS 735/3-4.5, and is not subject to reasonable cause abatement under 35 ILCS 735/3-8.

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 to file and pay his proper liability in a timely fashion. 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, *inter alia*, upon the clarity of the law. 86 Ill. Adm. Code § 700.400.

I am unable to determine from the record that Mr. John Doe made a “good faith effort” to pay his tax liability. The Final Notice sent to Mr. John Doe on November 4, 2011 shows a total due of \$XXXX. The Final Notice states that “to avoid cost of collection fees, additional penalties and interest, payment must be made by December 5, 2011.” Tr. pp. 16-18; Dept Ex. No. 4. The Final Notice is clear and not subject to interpretation.

A payment that Mr. John Doe had previously made of \$XXX was applied to the balance on the Final Notice. Taxpayer’s Ex. No. 1. The Department eventually gave Mr. John Doe credit for other payments totaling \$XXX but this still left \$XXX in late-payment penalty unpaid. It is unclear from the record exactly where these credits of \$XXX came from. At the evidentiary hearing, Mr. John Doe testified that he would send the Department a \$XX bill each time he responded to a Department letter. Tr. p. 8. He also testified that sending letters to the Department “doesn’t prove anything” so to make sure the Department received the letters, he would send in a check for \$XX. “I did that 15 times.” Tr. p. 14. It is possible that the Department applied some of these cash and check remissions toward his use tax liability. But \$XXX in late-payment penalty remained unpaid. In fact, the record of this case does not show that this \$XXX was ever paid. The

late-payment penalty of \$XXX, unpaid as of December 5, 2011, generated the \$XXX collection penalty.

If Mr. John Doe did not know for sure how much in previously sent cash and checks had been remitted to the Department and where the money had been applied, he could have paid the entire use tax liability and requested a refund. It is not reasonable to conclude from the record of this case that Mr. John Doe exercised ordinary business care and prudence in paying the use tax liability and the late-payment penalty.

WHEREFORE, for the reasons stated above, it is my recommendation that the “Reasonable Cause Denial” issued May 16, 2012 to John Doe be finalized as issued.

Kenneth J. Galvin
Administrative Law Judge

December 23, 2013