

HT 97-1

Tax Type: HOTEL OPERATORS OCCUPATION 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.)

TAXPAYER)

C. O'Donoghue
Admin. Law Judge

Taxpayer)

RECOMMENDATION FOR DISPOSITION

This matter comes on for hearing pursuant to TAXPAYER's timely protest of the Illinois Department of Revenue's (hereinafter referred to as the "Department") Notice of Tax Liability No. XXXXX. Taxpayer has paid the tax due and requests an abatement of penalty due to reasonable cause. 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.

Findings of Fact:

1. The Department's *prima facie* case was established with the introduction into evidence of the Department's Notice of Tax Liability and Correction of Return No. XXXXX, showing a total liability due and owing in the amount of \$2305.86.00. Dept. Ex. No. 1.

2. Taxpayer had filed the October 1993 return timely, however, it did not pay the entire tax shown due. In addition, the Department upon review of this return, determined additional liability. This assessment reflects both the

unpaid tax and the additional liability determined for the period of October 1993. Dept. Ex. No. 2; Tr. pp. 3, 4, 6.

3. Taxpayer claims he paid the tax liability but requests an abatement of the penalty due to reasonable cause.¹ Tr. p. 11.

Conclusions of Law:

Under the Hotel Operators' Occupation Tax Act, persons who incur tax liability are required to timely file returns and pay amounts shown due.² 35 **ILCS** 145/6. Penalties are imposed by the Department for failure to comply with this section. Prior to January 1, 1994,³ penalties under the Hotel Operators' Occupation Tax Act are provided for under 35 **ILCS** 120/5⁴ of the Retailers' Occupation Tax Act (hereinafter referred to as "ROTA").

The ROTA does not provide for abatement of penalties due to reasonable cause with respect to tax deficiencies, prior to January 1, 1994. Accordingly, taxpayer is not entitled to an abatement of the penalty assessed for the month of October 1993.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Tax Liability No. XXXXX be finalized as issued.

Date:

Christine O'Donoghue
Administrative Law Judge

¹. Taxpayer presented check No. 2408 at hearing which he claimed paid the tax portion of the NTL at issue. Per Department records, this payment was applied to the following five assessments/returns: 7/94 return, 5/94 return, NTL XXXXX, NTL XXXXX and NTL XXXXX.

². The Hotel Operators' Occupation Tax Act incorporates specific sections of the Retailers' Occupation Tax Act. See, 35 **ILCS** 145/7.

³. As of January 1, 1994, Section 5 penalties are provided for under the Uniform Penalty and Interest Act. See, 35 **ILCS** 735/3-1 *et seq.*

⁴. Formerly Ill. Rev. Stat. 1991, ch. 120, ¶444.