

4. During the period of 1969 through 1984, taxpayer's contact with Illinois occurred exclusively during the yearly Chicago Auto Show. The contact with this State during the show amounted to 16 to 18 days of assembling displays prior to the show, troubleshooting during the show and disassembling displays after the show concluded.

5. In conducting its business activities in Illinois, taxpayer hired local employees whom it controlled and paid. All proper withholding taxes were deducted from employee paychecks and paid to Illinois.

6. During an audit for later years, it was determined by the Department of Revenue that the taxpayer had never filed an Illinois income tax return for the years in question.

7. The Department concluded that taxpayer's contact with Illinois was not protected by Public Law 86-272 since it was engaged in the sales of general contracting services.

8. Taxpayer paid the amount of tax assessed but contests the imposition of penalties and interest, arguing that reasonable cause exists for the failure to file.

Conclusions of Law:

Prior to January 1, 1994, a penalty for failure to file tax returns when due will not be imposed under the provisions of 35 ILCS 5/1001 if it can be established that such failure was due to reasonable cause.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a cases by case basis. Rorabaugh v. United States, 611 F. 2d 211 (7th Cir., 1979). The term "reasonable cause" has generally been interpreted within Illinois to encompass the exercise of ordinary business care and prudence. DuMont Ventilation Company v. Department of Revenue, 99 Ill App. 3d 263, 425 N.E. 2d 606 (3rd Dist. 1981).

In the present matter, taxpayer voluntarily filed withholding tax returns and paid over withheld Illinois income taxes for a continuous period of at least fifteen years from 1969 through 1984. Notwithstanding the consistent filing of withholding returns, the Department of Revenue did not catch up with the fact that no corporate returns income tax were filed by this company until sometime after 1984. Citing the case of DuMont Ventilation v. Department of Revenue, 99 Ill. App. 3d 263, 425 N.E. 2d 606 (Third Dist. 1981), taxpayer asserts a reliance on the Department's inaction and claims that the failure of the Department to act while it was on notice of the taxpayer's presence in Illinois constitutes "reasonable cause". I cannot agree.

In Dumont, *supra*, the court ruled that reasonable cause existed in a situation where the taxpayer had continued to file withholding on a monthly basis after the law was changed to provide for filing on quarterly. The court went on to say that reasonable cause existed due to the fact that the taxpayer was both unaware of the change in the law and the Department had accepted the continued monthly payments without objection.¹

Here, however, the question is the taxpayer's failure to file any corporate returns at all. Since the underlying tax itself is not challenged here and has in fact been paid, then the argument that the Department did not catch up to it for fifteen years does not alleviate taxpayer of the duty to file in the

¹. The facts in DuMont also determined that both the CPA firm that prepared DuMont's returns as well as a good number of other businesses were unaware of the change in the law and were filing in the same manner as was that taxpayer.

first place. The failure to file based solely on a (mistaken) belief that it was not required to file cannot qualify as reasonable cause even under the most liberal of interpretations. Since the taxpayer presents no evidence that it exercised ordinary business care and prudence in order to establish reasonable cause, I cannot conclude that it exists simply on the Department's own failures. Such an argument would by necessity open the door to every tax protestor, miscreant and malcontent to escape the imposition of penalties for failure to file necessary returns based on their belief that taxes are not due. Acceptance of this theory would reduce the collection of taxes within this State to an administrative nightmare.

It is additionally asserted that the same facts as related above establish reasonable cause by which to abate penalties for failure to pay estimated tax under the provisions of 35 ILCS 5/804(e). This position too has no merit. Prior to tax years ending on or after December 31, 1987, no "reasonable" or other cause provision existed within that section (formerly Ill. Rev. Stat. ch. 120, Section 8-804(f)) to abate the penalty imposed. As a consequence, no right of abatement of penalty is extant, regardless of what circumstances taxpayer may wish to present here.

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Department of Revenue, 118 Ill. App. 3d 210, 454 N.E. 2d 799 (1983). In order to overcome this prima facie correctness, the must present some competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App. 3d 11, 376 N.E. 2d 324 (1978). Taxpayer has failed to meet is burden with respect to the penalties assessed.

It is therefore recommended that the Notice of Deficiency be upheld in its entirety.

Richard L. Ryan
Administrative Law Judge