

ST 08-16

Tax Type: Sales Tax

Issue: Unreported/Underreported Receipts (Non-Fraudulent)

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

THE DEPARTMENT OF REVENUE	)	Docket No.:	07-ST-0000
OF THE STATE OF ILLINOIS	)	IBT No.:	0000-0000
	)	NOA Nos.:	00 00000000000000
	)		00 00000000000000
v.	)		00 00000000000000
)		
ABC TRUCK SHOP, INC.,	)	Julie-April Montgomery	
Taxpayer.	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Paula M. Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

The Illinois Department of Revenue (“Department”) issued eight (8) Notices of Assessment (“NOAs”) to ABC Truck Shop, Inc. (“Taxpayer”) for a grand total of \$1,787. Six of the NOAs allege that Taxpayer underpaid its Retailers’ Occupation Tax (“ROT”) obligations when it remitted tax at the rate of 6.5% as opposed to 7.5%. Two of the NOAs assess late payment and late filing penalties. Taxpayer protested all eight NOAs and requested a hearing in the matter. Taxpayer was represented by John Doe, its President, and Jane Doe, its Treasurer. The parties agreed that the issues determinative of Taxpayer’s alleged liability are: 1) whether the sales tax rate that was to have been collected and remitted was correct and 2) whether any error in compliance by Taxpayer was the result of erroneous advice from the Department. January 11, 2008 Order.

Taxpayer presented documentary evidence as well as the testimony of its treasurer at the hearing. Following the submission of all evidence and a review of the record, it is recommended that four (4) of the NOAs be cancelled, two (2) of the NOAs be finalized as issued, and two (2) of the NOAs be modified. In support of these recommendations are made the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department issued the following NOAs to Taxpayer:

<u>NOA</u>	<u>Period</u>	<u>Amount</u>	<u>Issued</u>
00 00000000000000	January 2006	\$253	August 17, 2006
00 00000000000000	February 2006	\$257	August 17, 2006
00 00000000000000	March 2006	\$262	August 17, 2006
00 00000000000000	April 2006	\$239	August 17, 2006
00 00000000000000	May 2006	\$354	August 9, 2006
00 00000000000000	June 2006	\$257	August 16, 2006
00 00000000000000	November 2006	\$74	January 24, 2007
00 00000000000000	March 2007	\$91	May 25, 2007

Dept. Group Ex. No. 1 (NOAs for Forms ST-1X and ST-1); Tr. p. 6.

2. In each NOA, the Department assessed a late payment penalty. *Id.*

3. Three of the NOAs assessed a late filing penalty as follows:

<u>NOA</u>	<u>Late Filing Penalty</u>
00 00000000000000	\$38
00 00000000000000	\$36
00 00000000000000	\$44

Dept. Group Ex. No. 1 (May 2006, November 2006 and March 2007 NOAs).

4. Taxpayer remitted ROT at the rate of 6.5% for the period January 1, 2006 through June 30, 2006. Dept. Group Ex. No. 1 (Financial Pages of Department's NOAs); Taxpayer's Group Ex. No. 1 (copies of Taxpayer's ST-1 Tax Returns, inclusive of worksheets); Tr. pp. 6, 9, 13, 15, 22.
5. The preprinted ROT rate on Taxpayer's January through June 2006 returns was

- .0650 or 6.5%. Taxpayer's Group Ex. No. 1.
6. Taxpayer's business is located in Anywheret. Dept. Group Ex. No. 1; Taxpayer's Group Ex. No. 1; Tr. p. 14.
 7. Taxpayer's Anywhere business is located in an unincorporated area of Anywhere County. Tr. p. 14.
 8. Taxpayer has a Nowhere business license. Tr. pp. 14, 16.

Conclusions of Law:

Section 4 of the Retailers' Occupation Tax Act ("ROTA") provides that the Department's correction of a Taxpayer's returns constitutes *prima facie* proof that tax is due in the amount determined by the Department. 35 ILCS 120/4. In this case, the Department established its *prima facie* case when it introduced Department Group Exhibit No. 1 under the certificate of the Director. Dept. Group Ex. No. 1; Tr. p. 6. This exhibit, without more, constitutes *prima facie* proof that Taxpayer owes tax in the amount determined by the Department. 35 ILCS 120/4. The Department's *prima facie* case is overcome, and the burden shifts to the Department to prove its case, only after Taxpayer presents evidence that is consistent, probable and closely identified with its books and records, to show that the Department's determinations were not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157-58, 242 N.E.2d 205, 207 (1968).

The threshold issue in this case is whether Taxpayer remitted the correct amount of ROT to the Department for the period January 1, 2006 through June 30, 2006. The Department asserts that Taxpayer should have remitted tax at the rate of 7.5% because Taxpayer is registered to do business in Nowhere where the tax rate is 7.5%. Tr. p. 26. The 7.5% ROT rate encompasses the taxes of Illinois, Anywhere County and the Village

of Nowhere. Dept. Ex. No. 3 (Department Informational Bulletin, FY 2004-24-A, “Superseded Sales Tax Rate Change Summary”). Taxpayer counters that it should only remit ROT at the rate specified on the preprinted tax forms that it received from the Department, unless it receives specific and individualized notice of a rate change. Tr. p. 18. The preprinted rate on Taxpayer’s January through June 2006 returns was 6.5%. The 6.5% ROT rate encompasses the taxes of Illinois and Anywhere County. Publication ST-25, “Illinois Sales Tax Rate Reference Manual” (“Publication ST-25”).

The ROTA imposes tax upon businesses engaged in selling tangible personal property, at retail, in the State of Illinois. 35 ILCS 120/2. The ROTA further requires every person engaged in retail sales, like Taxpayer, to file a monthly return with the Department which states where it does business. 35 ILCS 120/3.2. It is generally the location of one’s business that determines the ROT tax rate to be applied to one’s retail sales. Publication 113, “Retailer’s Overview of Sales and Use Tax.”

For the period January through June 2006, the ROT rate for a business located in Anywheret was 6.5%. Publication ST-25. A business located in Nowhere would be subject to an additional 1% Home Rule Municipal Retailer’s Occupation Tax for retail sales that occur “within the corporate limits of the Village of Nowhere (Village of Nowhere’s Code of Ordinances, Title XI, Chapter 122, Section 122.50) for a total ROT of 7.5%.

For the period in question, Taxpayer’s business was located in Anywhere, an unincorporated area of Anywhere County, not Nowhere which is located in another section of Anywhere County that is close to Anywhere. The preprinted returns of the Department and the NOAs give the same Anywhere address for Taxpayer.

Taxpayer admits that in June or July of 2006 it obtained a Nowhere business license because Nowhere “has jurisdiction for fire [and] police” (tr. p. 19) in the area of its business. However, the record reflects no evidence that Taxpayer conducted business in Nowhere. While the Department may believe receipt of a business license warrants inclusion of Nowhere’s 1% tax, it proffered no evidence that Taxpayer conducted business in that jurisdiction. It cannot be assumed that because one holds a license to do business in a particular jurisdiction that one does, in fact, do business in the area where the license is held. A license only means that one has the ability to conduct business in the jurisdiction where one holds the license. Based upon Taxpayer’s Anywhere business address, it is clear that it operates its business in Anywhere and that is where its sales can be deemed to occur. No evidence of business activities in Nowhere was presented at hearing. Absent evidence of actual operations in Nowhere, a Nowhere business license is merely indicia of Taxpayer’s ability to do business in Nowhere. Inasmuch as there exists no evidence of Taxpayer conducting business in Nowhere, Nowhere’s additional 1% tax cannot be said to apply to Taxpayer’s retail sales based upon the evidence produced at hearing. Both the Department and Taxpayer’s documents and records reflect that Taxpayer’s business was located in Anywheret, not Nowhere. Taxpayer’s returns are legally sufficient to overcome the Department’s *prima facie* case. In fact, these documents are in accord with the Department’s documents as to the location and as such the operations of Taxpayer’s business. It is thus found that the proper ROT rate for Taxpayer for the period January through June 2006 is 6.5%.

The remaining issue is whether Taxpayer had reasonable cause to abate the late filing penalties totaling \$118 and late payment penalties that total \$235. These penalties

were imposed for Taxpayer's failure to timely file three of its ST-1 monthly returns as well as make timely payments for all the periods in question. Taxpayer argues that the penalties should be abated because it reasonably relied on the Department to inform it of the proper ROT rate it should collect and remit. Tr. pp. 26, 27. The Department's response is that such an argument does not demonstrate reasonable cause that would warrant abatement of these penalties.

Section 3 of the ROTA requires the filing of monthly returns and the accompanying payment of whatever tax is due not later than the twentieth day of the following calendar month for transactions that occurred in the preceding calendar month. 35 ILCS 120/3. Section 5 of the ROTA permits the Department to assess penalties in accordance with Illinois' Uniform Penalty and Interest Act ("UPIA"). 35 ILCS 120/5. Section 3-3(a-10) of the UPIA authorizes the assessment of a 2% late filing penalty for failure to file a tax return on or before the prescribed due date. 35 ILCS 735/3-3(a-10). Section 3-3(b-20) of the UPIA also authorizes the assessment of a 10% late payment penalty for failure to remit tax on or before the prescribed due date. Section 3-8 of the UPIA provides that a penalty imposed by UPIA, Section 3-3, *inter alia*, "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." 35 ILCS 735/3-8.

The Department has adopted a regulation regarding reasonable cause which provides that, "[t]he 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 to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code Sec. 700.400 (b).

The November 2006 and March 2007 NOAs only assessed penalties. Collection and remittance of the proper tax rate is not at issue for these NOAs. No argument for penalty waiver was proffered by Taxpayer with regard to these NOAs. Inasmuch as Taxpayer’s sole argument of required notice of a tax rate change does not apply to these NOAs and no other argument for penalty relief was presented, there exists no reason for abatement of these penalties. Hence, the November 2006 and March 2007 NOAs are affirmed.

The penalties assessed for January through April 2006 were assessed upon the amounts the Department believed were due as a result of inclusion of Nowhere’s 1% ROT rate. Inasmuch as this local tax is found not to be due, penalties associated with said amount are not warranted. Hence, the penalties assessed for January through April 2006 must be abated.

The May 2006 return was dated June 28, 2006 by Taxpayer. Taxpayer’s Group Ex. No. 1 (May 2006 return). This return was due on June 20, 2006. This return was clearly filed late and as such any payment made was also late. Hence, that portion of the penalties associated with the additional tax of \$253 attributable to Nowhere is to be abated while the penalties, associated with the \$1,646 in tax attributable to the State of Illinois and Anywhere County, are sustained. Dept. Group Ex. No. 1 (May 2006 return and financial page).

The June 2006 return was dated July 18, 2006. This return was due on July 20, 2006. Taxpayer presented no evidence to overcome the Department’s *prima facie* case

that this return was received late. Hence, only that portion of the penalties associated with the additional tax of \$251 attributable to Nowhere is abated while the penalties attributable to the remaining \$1,631 in tax are sustained. *Id.* (June 2006 return and financial page).

Conclusion:

It is recommended that the January through April 2006 NOAs be cancelled; the November 2006 and March 2007 NOAs be finalized with interest to be applied as dictated by statute; and the May and June 2006 NOAs be revised consistent with this recommendation.

May 30, 2008

Julie-April Montgomery
Administrative Law Judge