

**ST 13-11**  
**Tax Type: Sales Tax**  
**Tax Issue: Gross Receipts**

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

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**THE DEPARTMENT OF REVENUE**  
**OF THE STATE OF ILLINOIS**

v.

**ABC BUSINESS, INC.,**  
**Taxpayer**

**No. XXXX**  
**Account ID XXXX**  
**Letter ID XXXX**  
**XXXX**  
**Period XXXX**

**Ted Sherrod**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General Michael Coveny on behalf of the Illinois Department of Revenue; Joshua Nesser of Lavelle Law, Ltd. on behalf of ABC Business, Inc.

**Synopsis:**

This matter arose from protests filed by ABC Business, Inc. in response to Notices of Tax Liability issued to ABC Business, Inc. ("taxpayer") by the Department of Revenue ("Department") on May 17, 2011 for taxes assessed under the Retailers' Occupation Tax Act, 35 ILCS 120/1, *et seq.*, and related taxes. The issue is whether the taxpayer reported the correct amount of gross receipts from its sales and paid the proper amount of tax incurred on these sales. An evidentiary hearing was held on April 1, 2013 regarding this matter. After reviewing the transcript of the hearing and documents

presented at hearing, I recommend that the Notices of Tax Liability at issue in this case be made final.

**Findings of Fact:**

1. The taxpayer is gas station/ mini mart that does business under the assumed name XYZ Business in Anywhere, Illinois. Department Group Exhibit (“Ex.”) 1. The Department conducted an audit of the taxpayer's records for period January 1, 2007 through December 31, 2009. *Id.*
2. At the conclusion of the audit, the Department determined that the taxpayer had underreported sales tax due and owing by over \$XXXX. *Id.* Based upon this determination, the auditor also imposed late filing and late payment penalties. *Id.*
3. On May 17, 2010, the Department issued Notices of Tax Liability to the taxpayer assessing tax due, including penalties and interest, in the amount of \$XXXX for the period January 2007 through June 2009, and in the amount of \$XXXX for the period July 1, 2009 through December 31, 2009. *Id.*

**Conclusions of Law:**

This is a case in which the taxpayer has produced no books, records or other documentary evidence and has presented no testimony in support of its claim that the Department's assessment of liability for unpaid Retailers' Occupation and related taxes for the period January 1, 2007 through December 31, 2009 is erroneous. Section 4 of the Retailers' Occupation Tax Act provides that the Department's correction of the taxpayer's returns constitutes *prima facie* proof that tax is due as determined by the Department. *Id.* In this case, the Department established its *prima facie* case when it introduced

Department Group Exhibit 1 including its Notices of Tax Liability for the tax period in controversy under the Certificate of the Director of the Department. This exhibit, without more, constitutes *prima facie* proof that the taxpayer owes tax in the amount determined by 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 the taxpayer presents evidence that is consistent, probable and closely identified with books and records, to show that the Department's determination was not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); A.R. Barnes and Company v. Department of Revenue, 173 Ill. App. 3d 826 (1<sup>st</sup> Dist. 1988); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276 (1943). Accordingly, it is well settled that a Notice of Tax Liability as prepared by the Department is a *prima facie* conclusive determination absent documentary evidence to the contrary. Copilevitz, supra; DuPage Liquor Store, supra; Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1<sup>st</sup> Dist. 1978); Howard Worthington, Inc. v. Department of Revenue, 96 Ill. App. 3d 1132 (2<sup>nd</sup> Dist. 1981).

At the hearing, the Department established its *prima facie* case by introducing its Notices of Tax Liability and related documents into evidence. The burden thus shifted to the taxpayer to overcome the presumed correctness of the Department's determination. Masini, supra; Anderson v. Department of Revenue, 370 Ill. 225 (1938). However, the taxpayer, by its own admission, has offered no evidence to overcome the Department's *prima facie* case. Tr. p. 6. Therefore, pursuant to the aforementioned case law authority, I find that the taxpayer has presented insufficient evidence to overcome the *prima facie* correctness of the Department's Notices of Tax Liability at issue in this case.

In addition, the Notices of Tax Liability proposed the assessment of late filing and late payment penalties pursuant to section 735/3-3 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-3. Penalties imposed under this provision, however, do not apply if the failure to file and pay tax when due was due to reasonable cause. 35 ILCS 735/3-8. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. Rohrbaugh v. United States, 611 F. 2d 211 (7<sup>th</sup> Cir. 1979); Du Mont Ventilation Co. v. Department of Revenue, 99 Ill. App. 3d 263 (3d Dist. 1987). In the instant case, the taxpayer failed to tender any evidence showing reasonable cause for its failure to timely file and pay taxes that were due and owing.

Wherefore, for the reasons stated above, it is my recommendation that the Notices of Tax Liability at issue in this case, including the penalties indicated therein, be finalized as issued.

**Ted Sherrod**  
**Administrative Law Judge**

**Date: June 21, 2013**