

ST 15-17
Tax Type: Sales Tax
Tax Issue: Abatement of Penalties/Interest Only

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

Kelly Yi
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Mr. John Doe appeared *pro se*.

SYNOPSIS: This matter arose when John Doe (“Taxpayer”) timely protested two Notices of Tax Liability the Illinois Department of Revenue (“Department”) issued under the Illinois Motor Fuel Tax Law. 35 ILCS 505 *et seq.* The issue is whether the Department correctly assessed taxes and penalties following an audit of Taxpayer’s motor fuel use tax returns. On June 4, 2015, a formal administrative hearing was held before Administrative Law Judge Ken Galvin¹ with Taxpayer testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

¹ The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witness is at issue only to the extent that the testimony is unsupported by the documentary evidence in the record.

FINDINGS OF FACT:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence, under the certificate of the Director, of the Department's two Notices of Tax Liability ("NTLs") assessing tax due, including penalties and interest, in the amount of \$XXXX for September 1999 reporting period and in the amount of \$XXXX for December 1999 reporting period, both resulting from an audit of Taxpayer's motor fuel tax returns. Dept. Exs. 1-2.
2. On March 9, 1999, the Department sent a letter to Taxpayer notifying him of an audit initiation of the motor fuel use tax returns for reporting period July 1, 1996 to the letter issue date. Dept. Ex. 3.
3. The audit findings show that the auditor spoke to Taxpayer on June 16, 1999, at which time Taxpayer promised to be at the Department's Park City office on June 21, 1999 with his records; Taxpayer failed to appear on the designated date and failed to respond to the Department's subsequent requests for contact; and as no records were made available by Taxpayer for examination, the audit was completed using best available information resulting in the drop of mileage per gallon to 4.0 for the entire audit period and no credits given to reported fuel purchases. Dept. Ex. 3.
4. Taxpayer testified that he participated in the audit that resulted in a small amount of tax due, which he has paid. Tr. p. 8.
5. Taxpayer testified that he had no documentary evidence due to the length of time involved and a fire that destroyed his records. Tr. p. 12.

CONCLUSIONS OF LAW:

This is a case in which Taxpayer has produced no books, records or other documentary evidence in support of his claim that the Department's assessment of liability for unpaid taxes under the Illinois Motor Fuel Tax Law, 35 ILCS 305/1 *et seq.*, for reporting periods September and December 1999 is erroneous. Section 21 of the Illinois Motor Fuel Tax Law, 35 ILCS 305/1 *et seq.*, which incorporates by reference section 4 of the Retailers' Occupation Tax Act, 35 ILCS 120/4, provides that the Department's correction of the taxpayer's returns constitutes *prima facie* proof that tax is due as determined by the Department. 35 ILCS 505/21; 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 (1st 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 (1st Dist. 1978); Howard Worthington, Inc. v. Department of Revenue, 96 Ill. App. 3d 1132 (2nd 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 Taxpayer to overcome the presumed correctness of the Department's determination. Masini, supra; Anderson v. Department of Revenue, 370 Ill. 225 (1938). However, Taxpayer, by his own admission, has offered no documentary evidence to overcome the Department's *prima facie* case. Tr. p. 12.

Department's documentary evidence.² Therefore, pursuant to the aforementioned case law authority, I find that 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 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 (7th Cir. 1979); Du Mont Ventilation Co. v. Department of Revenue, 99 Ill. App. 3d 263 (3rd Dist. 1987). The burden rests on the taxpayer to show that it acted with ordinary business care and prudence when filing its returns and paying the correct amount of tax when due. 35 ILCS 735/3-8; Hollinger International, Inc. v. Bower, 363 Ill. App. 3d 313, 328 (1st Dist. 2005). In the instant case, Taxpayer failed to tender any documentary evidence showing reasonable cause for his failure to timely pay taxes that were due and owing. Taxpayer's stated reason for lacking documentary evidence, due to a fire which destroyed his records, is an example of reasonable cause under the Department regulations, 86 Ill.Admin.Code 700.400(e)(5). However, Taxpayer failed to present documentary evidence such as a Fire Department report or an insurance claim to document the fire in support of his claim for reasonable cause abatement. The lack of documentary evidence is unfortunate for the Taxpayer but the law simply does not allow a finding to the contrary.

² After Taxpayer failed to appear with his records on the agreed date, the Department sent another letter to Taxpayer on July 7, 1999 via certified mail requesting contact and notifying that a failure to respond will result in audit findings based on best available information. The return receipt was signed on July 8, 1999. Dept. Ex. 3.

Recommendation:

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

Kelly K. Yi
Administrative Law Judge

October 19, 2015