

**ST 00-5**

**Tax Type: Sales Tax**

**Issue: Reasonable Case on Application of Penalties**

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

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<b>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS</b>	)	
	)	
v.	)	<b>Docket No. 99-ST-0000</b>
	)	<b>IBT # 0000-0000</b>
<b>“REO TAVERN, INC.”,</b>	)	<b>Assmt # SB 0000000000000</b>
	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Heidi S. Scott, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; “Joe Doakes”, pro se, for “Reo Tavern, Inc.”

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Assessment to “Reo Tavern, Inc.” (“taxpayer”) for additional tax owed due to the late payment of retailers’ occupation taxes. The taxpayer timely protested the Notice. The taxpayer does not contest the tax but requests that the penalty be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On June 14, 1999, the president of the taxpayer, Mr. “Joe Doakes”, sent to the Department the taxpayer’s completed Form ST-1, which shows retailers’ occupation

taxes (ROT) due in the amount of \$4,213.00 for the month of May 1999. (Taxpayer Ex. #1)

2. Along with Form ST-1, Mr. "Doakes" sent a check in the amount of \$42.13. The amount of the check was recorded in the taxpayer's check register as \$4,213.00. (Taxpayer Ex. #2, 3)

3. When Mr. "Doakes" received the taxpayer's June 1999 bank statement, he noticed the error. He immediately sent a check to the Department on July 8, 1999 for the difference of \$4,170.87. (Taxpayer Ex. #4, 5, 6)

4. On June 14, 1999, the taxpayer had sufficient funds in its account to cover a check in the amount of \$4,213.00. (Taxpayer Ex. #11)

5. The taxpayer's ROT payment to the Department for April 1999 was late. The Department abated the penalty that was assessed for this late payment. (Tr. Pp. 18-19)

6. On July 7, 1999, the Department issued a Notice to the taxpayer for the remaining tax due plus a late-payment penalty. The Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #3)

#### CONCLUSIONS OF LAW:

The Department imposed the penalty for the late payment of the retailers' occupation tax pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

"The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act 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. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department." (35 ILCS 735/3-8)

The Department's regulations concerning reasonable cause provide as follows:

“The 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 §700.400(b)

The Department's regulations further provide as follows:

“A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education.” 86 Ill.Admin.Code §700.400(c)

The Department argues that the taxpayer did not exercise ordinary business care and prudence when it sent a check in the amount of \$42.13. The taxpayer has been in business for over thirteen years, and the Department notes that nearly all of the taxpayer's ROT payments have been in excess of a thousand dollars. The Department contends that the check amount is grossly inadequate for an experienced businessman. In addition, the Department argues that Mr. “Doakes” stated that he did not want to make the same mistake that he made the previous month, and therefore he should have been extra careful when he wrote the check for his May 1999 tax liability. The Department believes that the error was a blatant mistake and the taxpayer is not entitled to an abatement of the penalty.

Under the circumstances of this case, an abatement of the penalty is warranted due to reasonable cause. The Department's regulations concerning reasonable cause include the following paragraph:

“The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and

paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of a taxpayer's return." 86 Ill.Admin.Code §700.400(d)

The taxpayer has made two late payments during a period of over thirteen years. Mr. "Doakes" testified that he forgot to timely pay his April 1999 ROT liability and did not want to make the same mistake twice. In his haste to timely pay the May 1999 liability, he wrote a check for \$42.13 instead of \$4213. The tax was calculated correctly on the tax return, which was timely filed. It appears as though the taxpayer made a good faith effort to determine the proper tax liability and pay it in a timely fashion. The taxpayer has a long history of making timely payments and had sufficient funds in its bank account to cover a check in the amount of \$4213. The transcriptional error in this case is obvious and does not indicate a lack of good faith.

Recommendation:

For the foregoing reasons it is recommended that the late-payment penalty be abated.

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Linda Olivero  
Administrative Law Judge

Enter: 2/2/2000