

ST 04-14

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

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

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

v.

ABC SOLUTIONS, INC.,
Taxpayer

No. 03 ST 0000
IBT: 0000-0000
NOA: 00 00000000000000
00 00000000000000

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Marc L. Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to ABC Solutions, Inc.'s ("ABC" or the "Taxpayer") protest of the referenced Notices of Assessment, 00 00000000000000 (September 2002) and 00 00000000000000 (October 2002) proposing to assess late filing penalties for the months designated for taxpayer's failure to file its Form ST-1, Sales and Use Tax returns timely and correctly. In its protest of the late filing penalties, taxpayer requests their abatement due to reasonable cause. At the hearing, taxpayer was represented by its president, Mr. John Doe. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the

Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department issued to taxpayer Notices of Assessment concerning its Form ST-1 Sales and Use Tax returns, assessing late filing penalties of \$250.00 for each of the periods of September 2002 and October 2002. Department Ex. No. 1, 2
2. Taxpayer did not file its September 2002 return until January 21, 2003 (Department Ex. No. 1) and it was filed on that date without a valid signature. Department Ex. No. 3 (Notice of Missing Information)
3. Taxpayer did not file its October 2002 until January 23, 2003 (Department Ex. No. 2) and it was filed on that date without a valid signature. Department Ex. No. 4 (Notice of Missing Information)

Conclusions of Law:

The penalties at issue were assessed pursuant to section 3-3 of the Uniform Penalty and Interest Act, 35 **ILCS** 735/3-1 *et seq.* (hereinafter the “UPIA”). The UPIA provides that penalties can be abated upon a showing of reasonable cause (35 **ILCS** 735/3-8) and taxpayer makes its request based upon this provision, and also avers that the amount of each penalty assessment is too severe.

Department regulation states that reasonable cause is to be determined on a case by case basis taking into account all of the facts and circumstances. 86 Ill Adm. Code, ch. I, sec. 700.400 (b). This provision indicates that it must be determined to what extent

the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if it uses ordinary business care and prudence. “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.” 700.400(c)

Taxpayer’s president, John Doe, admits that he was a self-employed, new business owner with a limited cash flow, who could not afford a regular bookkeeper. He further testified that he “was not educated enough to do paperwork and filings and processing tax documents.” Tr. pp. 19, 20 He also stated that during the 2002 tax year, his total sales tax liability was \$233, therefore, this penalty assessment of \$500 was excessive. Tr. p. 20

The Department’s evidence also substantiated that a review of its records showed that taxpayer’s returns for April, May and June 2002 were also filed late, resulting in late filing penalties. Tr. p. 17 Taxpayer acknowledged these late filing penalties. Tr. p. 25

As much as one may appreciate that Mr. Doe did not intend to evade the filing and payment of the taxes at issue, as small as those amounts were, grounds for the abatement of the penalties have not been provided. Being a new, small, self-employed business owner without additional bookkeeping assistance does not present itself as providing substantial grounds for the failure to timely file and pay necessary taxes that taxpayer was aware it was required to remit. In this case, taxpayer’s failures to timely and correctly file its monthly returns were not isolated occurrences, and, specifically, these penalties at issue resulted from late and incomplete filings after repeated late filings for preceding months.

Mr. Doe averred that taxpayer's address changed several times during periods within which the Department was sending its notifications to him regarding his late and unsigned returns. This resulted in taxpayer not being able to respond to the notices in a more timely fashion. Mr. Doe further testified that he did timely provide the Department with the changed addresses. Tr. pp. 6, 7, 20, 21 However, taxpayer did not support this testimony in any manner, and there is nothing of record for me to conclude that the Department did not properly send them.

It is recognized that the penalties assessed are not inconsiderable. However, these penalties have been mandated and assessed pursuant to Illinois statute. These particular penalties could have been avoided if taxpayer had filed correct and timely returns in the first instance, actions totally within its control. This is especially true as these returns were filed late and incomplete after similar returns for three previous months had been filed late and resulted in late filing penalties, of which taxpayer was aware.

WHEREFORE, for the reasons stated above, it is recommended that the Notices of Assessment be finalized as issued.

Date: 5/24/2004

Mimi Brin
Administrative Law Judge