

ST 95-21

Tax Type: SALES TAX

Issue: Disallowed General Deductions

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

DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
) No.
 v.) IBT
)
XXXXXX) Daniel D. Mangiamele
) Admin. Law Judge
 Taxpayer)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX

SYNOPSIS: This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on June 15, 1994, for Retailers Occupation and related taxes for the period January 1, 1991 to December 31, 1992. At issue is the question of whether the taxpayer is entitled to a reasonable cause exception to penalties when he mistakenly relied on advice from his accountant as to the proper method of filing quarter monthly payments. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$14,499.00. Dept. Ex. No. 1

2. XXXXX of XXXXX performed accounting services for taxpayer during the audit period. Tr. p. 11

3. XXXXX provided service for taxpayer's sales tax obligations, and payroll. Tr. p. 19

4. Taxpayer provided XXXXX with blank endorsed checks to use as necessary for payment of taxes. Tr. pp. 20, 28

5. Taxpayer provided XXXXX with all information concerning his business. Tr. p. 21

6. Taxpayer was aware of the new requirements in reporting. Tr. p. 23

7. Taxpayer was advised by his accountant that quarter monthly payments could be made as previously paid because of a favorable response from the Department of Revenue, Springfield office. Tr. pp. 24-25

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, and under the reasoning given below, a determination is being made by the Department that XXXXX is not subject to the penalties as imposed. In support thereof, the following conclusions are made:

Taxpayer argued that no penalties should apply because of discrepancies between effective dates of various rules or regulation revisions. Regardless of the language of the rules I find the statute clearly imposes penalties to quarter monthly taxpayers effective January 1, 1985 (PA 83-1416). Regulations can neither expand or limit the statute. However, Section 5 of the ROT Act provides for waiver of penalties if reasonable cause exists.

86 Admin. Code ch. 1 Sec. 130 901(i) 1, and 2 provides in part as follows:

- 1) "However, where the failure to file any tax return required under this Act on the date prescribed therefor (including any extensions thereof), is shown to be unintentional and nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed date or is due to ... other reasonable cause the penalties imposed by this Act shall not apply." (Section 5 of the Act)
- 2) In general a "reasonable cause" for the failure to file any return would be what is acceptable to the federal government for

federal income tax purposes as a "reasonable cause" for failure to file a federal income tax return."

The issue in this matter was addressed by the United States Seventh Circuit Court of Appeals in Rohrabugh v. U.S., 611 F.2d 211 (1979). In Rohrabugh, Circuit Court Judge Pell speaking for the court stated as follows:

"If a District Director, . . . determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If a taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause.

If we were considering this case on an a priori basis solely on the basis on the foregoing, we would have slight difficulty in affirming the District Court. Here an inexperienced taxpayer wholly unaware of the time requirements for filing a Federal Estate Tax Return selected a competent tax expert, supplied him with all necessary and relevant information, requested him to prepare all necessary documents including tax returns, relied upon his doing so, but nevertheless maintained contact with him from time-to-time during the administration of the estate. This would seem on any reasonable standard to be exercising ordinary business care and prudence under the circumstances here involved. We address ourselves only to the matter of 'reasonable cause' as we can see no basis for a claim that there was 'willful neglect,' nor does it appear that the government is really claiming there is such basis.

Further, on the matter of reasonable cause, we think the type of tax would have a matter of bearing on the matter of ordinary care and prudence. Section 6651 covers other types of taxes. The situation might be entirely different if filing an income tax return were involved. A taxpayer might have considerable difficulty in demonstrating an unawareness of the due tax on an annual income tax return if, for no other reason, because of the repeated media references to the deadline date. Indeed, reference often appears to the fact that a line will be forming at Post Offices as Midnight of the final day approaches. The tax with which we are concerned, however, has a floating due date keyed to the timing of a death of particular decedent. Everyone, except fiscal taxpayers has the same income tax deadline, 611 F.2d 214."

Circuit Court Judge Pell in Rohrabugh further stated:

"Our ease in reaching a decision would not be diminished by consulting earlier case law. Thus, in Haywood Lumber & Mining Co. v. Commissioner, 178 F.2d 769,771 (2d Cir. 1950), a distinguished panel of the 2d Cir. overruling the Tax Court held that when a taxpayer had selected a competent tax expert, supplied him with all necessary information and requested him to prepare proper tax returns, the taxpayer had done all that ordinary business care and prudence would reasonable demand. The Court also disagreed with the Tax Court's characterization of a taxpayer as merely waiting passively because he had affirmatively

requested the preparation by the consultant of proper returns. To have required him to inquire specifically would have nullified the very purpose of consulting an expert. The Court also repudiated the rationale of one of its own earlier cases, *Berlin v. Commissioner*, 59 F.2d 996 (2d. Cir. 1932), Cert denied, 287 U.S. 642, 53 S. Ct. 90, 77 L.ED .555, to the effect that where all responsibility for the preparation of tax returns is delegated to an agent, the taxpayer should be held to accept its agent's efforts Cum onere and be charged with his negligence. 611 F.2d.215."

Here, taxpayer selected a competent accounting firm, supplied them with all necessary information, and requested the firm to prepare and pay all taxes due the Department of Revenue, and in addition gave them blank endorsed checks for these payments.

Taxpayer relied upon expert advice from their accountant regarding Illinois Retail Occupation Tax law. The evidence further shows taxpayer had endorsed blank checks to pay quarterly payment and had given these checks to his accountant to pay taxes when due. Taxpayer relied on the advice of his accountant that they could continue to pay as they previously paid because of a favorable response from Springfield. It is not the purpose of the law to penalize innocent errors made despite the exercise of reasonable care.

Among other supportive cases are *Burton Swartz Land Corp. v. Commissioner*, 198 F.2d. 558 (1952) (the advice of a competent accountant constitutes reasonable cause for failure to file a tax return and taxpayer who acts upon such advice, after full disclosure to accountant, is not guilty of willful neglect as will warrant imposition of the penalty for willful neglect in failing to make tax returns); *Mayflower Inv. Co. v. Commissioner*, 239 F.2d 624 (1956) (generally, if a taxpayer relies on a practicing lawyer's advice in failing to file a timely or proper return, taxpayer will be deemed to have exercised reasonable care and will not be held guilty of willful neglect for purpose of imposition of penalties even without a showing that the lawyer in fact was a tax expert, but this excuse will only be effective if there was actual reliance on such advice; *Matter of I. J. Knight Realty Corp.*, 431 F.Supp. 946 (1977) (advice of reputable

counsel that taxpayer is not liable for certain tax or required to file return establishes their failure to file within prescribed time is due to reasonable cause and not willful neglect, within the purview of this Section); and, Miller v. U.S., 211 F.Supp. 758 (1962) (Taxpayer's good faith reliance on advice of Counsel complies with "reasonable cause" provisions relating to delinquency penalty and penalty for negligently failing to pay income tax.)

In the case at bar I find that reasonable cause has been demonstrated by the taxpayer in having sought and having relied upon professional advice. I, therefore, recommend that the penalties contained herein be cancelled as to this taxpayer.

Administrative Law Judge