

UT 11-13

Tax Type: Use Tax

Issue: Reasonable Cause On Application of Penalties

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

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE

Taxpayer

Docket # XXXX
Acct ID: XXXX
Letter ID: XXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

John Doe (“taxpayer”) purchased a vehicle for which he owed the vehicle use tax. On the date of the purchase, the use tax return and a check in the amount of \$90 for the tax were filed with the Secretary of State’s office. Subsequently, the Department of Revenue (“Department”) sent the taxpayer two notices, one imposing a bad check penalty, and the other stating that additional information was required to process the return. Both notices stated that the taxpayer must respond by January 5, 2011. The taxpayer did not timely respond to the notices. Another notice was issued that included a late filing penalty and a late payment penalty. After that notice was received, taxpayer’s mother paid the tax and the bad check penalty and believed that the matter was resolved. The Department then sent the taxpayer a final notice that included the late filing and late

payment penalties, and the taxpayer asked the Department to abate the two penalties due to reasonable cause. The Department sent the taxpayer a Reasonable Cause Denial, the taxpayer timely protested the Denial, and an evidentiary hearing was held. After reviewing the record presented at the hearing, it is recommended that this matter be resolved partially in favor of the taxpayer.

FINDINGS OF FACT:

1. On October 26, 2010, the taxpayer was 18 years old and purchased his first vehicle, a 2004 Chevy Silverado, from a private party for \$13,000. The taxpayer wrote a check for \$90 for the vehicle use tax, and both the check and the tax return were given to the Secretary of State's office. (Dept. Ex. #1, pp. 2, 4, 8, 11; Tr. pp. 9, 11, 18-19)
2. On December 6, 2010, the Department sent the taxpayer a "Notice for Bad Check Penalty" ("Notice"), which stated that the Department assessed a bad check penalty of \$25 because the taxpayer's check for \$90 was not honored by his financial institution. The Notice stated that the taxpayer must send a cashier's check, certified check, or money order for the full amount payable to the Department by January 5, 2011. (Dept. Ex. #1, p. 4)
3. On December 6, 2010, the Department also sent the taxpayer a "Taxpayer Notification for Form RUT-50, Private Party Vehicle Use Tax Transaction" ("Notification"). The Notification stated that the taxpayer's return could not be processed because the taxpayer did not provide all of the required information. The Notification stated that the taxpayer must complete the enclosed Return Correction Notice and send it to the Department by January 5, 2011. The

- Notification also stated that if the taxpayer did not respond by January 5, 2011, he may receive a late filing penalty. (Dept. Ex. #1, p. 3)
4. The taxpayer did not send the payment or the Return Correction Notice by January 5, 2011. (Dept. Ex. #1, p. 8)
 5. On January 21, 2011, the Department sent the taxpayer a “Notice of Tax Liability” (“NTL”) stating that the Department processed the taxpayer’s Form RUT-50. The NTL also states that because the taxpayer did not provide the proper information within 30 days, the Department made a correction to the return and calculated additional tax due. The NTL states that if the taxpayer does not agree, he must send a copy of his bill of sale to support the value of the vehicle. Because the taxpayer did not provide the missing information or payment within 30 days, the NTL also imposed additional penalties, which were a late filing penalty and a late payment penalty. The total amount shown due on the NTL was \$1,927.76. (Dept. Ex. #1, p. 5)
 6. On January 28, 2011, the taxpayer’s mother filed the Return Correction Notice, which was signed by the taxpayer, at the Department’s office in Springfield. She also gave the Department a copy of the bill of sale, which was the only information that the Department claimed was missing from the original return. The Department agreed that \$90 was owed for the tax. The taxpayer’s mother paid the \$90 tax and \$25 for the bad check penalty. (Dept. Ex. #1, pp. 6-7, 9; Tr. pp. 13-14)
 7. On February 14, 2011, the Department sent the taxpayer a “Final Notice of Tax Due” (“Final Notice”), which showed that the taxpayer owed \$9 for a late

payment penalty, \$250 for a late filing penalty, and interest in the amount of \$.17.

The total amount due on the Final Notice was \$259.17. (Dept. Ex. #1, p. 7)

8. On April 6, 2011, the taxpayer's mother returned to the Department's office in Springfield and told the Department's employee that she thought the matter had been resolved on January 28, 2011. The Department's employee stated that she did not notice the additional penalties when she assisted the taxpayer's mother on January 28, 2011. The taxpayer's mother also gave the Department a letter requesting that the penalties be abated due to reasonable cause. (Dept. Ex. #1, pp. 8-9)
9. On April 29, 2011, the Department sent the taxpayer a notice titled "Reasonable Cause Denial" ("Denial"), which stated that the request for abatement of the late filing and late payment penalties was denied. The taxpayer timely protested the Denial and requested a hearing. (Dept. Ex. #1, pp. 10-11)

CONCLUSIONS OF LAW:

The Department imposed penalties for the late filing of the return and the late payment of the 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 penalties and states, in part, as follows:

The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 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 regulation concerning reasonable cause provides, in part, 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 taxpayer asks that the penalties be abated because at the time of the purchase, he wrote a check for \$90 to pay the tax. He contends that the check was not cashed for a month and a half, and he had deposited \$600 before writing the check. The checking account was his first account, it had just been opened before he purchased the vehicle, and the taxpayer did not have experience using the account. The taxpayer did not understand the first notices and brought the matter to his mother's attention as soon as he received the second notice. He was living with his parents at the time. He contends that the problem was addressed as soon as his mother found out about it. She believed that everything was resolved on January 28, 2011, and she made several attempts to resolve it after that.

The Department argues that reasonable cause does not exist to abate the penalties. The Department contends that the penalties were imposed on January 5, 2011 when the payment wasn't made, and it does not matter that there may have been a mistaken belief that the penalties were taken care of earlier. The Department believes that the taxpayer did not make a good faith effort to determine the proper tax liability and pay it in a timely fashion, and the taxpayer did not exercise ordinary business care in doing so.

As stated in the Department's regulation, the most important factor to consider in determining whether the taxpayer acted with reasonable cause is 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. The regulation also states 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. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return. 86 Ill.Admin.Code §700.400(c).

In the present case, the late payment penalty of \$9 should be upheld. Although the taxpayer did not have experience using a checkbook, ordinary business care requires making sure that enough money is in the account to cover the check. The fact that the Department did not immediately cash the check is not relevant to whether the taxpayer exercised ordinary business care to ensure that enough money remained in the account until the check cleared. Even if it is assumed that the taxpayer had enough money in the account at the time he wrote the check, it is not reasonable to continue to write checks without verifying that the balance in the account will be enough to pay the check.¹ Any subsequent efforts by the taxpayer's mother to correct the problem do not change the fact that when the payment was made, the taxpayer did not take steps to ensure that enough money was in the account to pay the check.

The late filing penalty of \$250, however, should be abated. The taxpayer timely filed the RUT-50 with the Secretary of State's office on the day that the car was purchased. The instructions for the RUT-50 include the following: "Attaching a copy of the bill of sale or proof of purchase may prevent future notices." (Form RUT-50 Instructions, par. 6) Nothing requires the taxpayer to include the bill of sale with the tax

¹ The taxpayer did not present any documents to verify the amounts in the account.

return at the time it is filed. The bill of sale was the only information that the Department claimed was missing from the original return. The Department subsequently agreed that the amount of tax shown on the original return was the correct amount of tax due. The taxpayer not only made a good faith effort, he actually did file the return and determine his proper tax liability in a timely fashion. Clearly, the late filing penalty should be abated.

Recommendation:

For the foregoing reasons, it is recommended that the late filing penalty of \$250 be abated and the late payment penalty of \$9 be upheld.

Linda Olivero
Administrative Law Judge

Enter: September 15, 2011