

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

**LOVES TRAVEL STOP &
COUNTRY STORES, INC.,**)
)
 Petitioner,)

v.)

Case No. 14-TT-253

)
)
 ILLINOIS DEPARTMENT OF)
 REVENUE,)
 Respondent.)

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

1. A Notice of Tax Due and Taxpayer Statement was issued by the Illinois Department of Revenue ("Department") dated September 2, 2014 to the Taxpayer related to Sales Tax & E911 Surcharge for the period July 1, 2014 through July 31, 2014, assessing tax, penalty and interest (hereinafter the "Notice"). The Notice assessed certain penalties upon Taxpayer, specifically Late Quarter-Monthly Payment Penalty of \$38,726.68 and a Late-Payment Penalty of \$1,623.38 on unpaid sales tax for the period ended July 31, 2014 in the tax amount of \$394,878.83. The Notice dated September 2, 2014 was received by the Taxpayer on September 10, 2014. A copy of the Notice is attached to this Petition as Group Exhibit 1.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department states that the Notices of Tax Liability speaks for

themselves and deny the characterization thereof and any and all other allegations in Paragraph 1 of the petition. With respect to when the Taxpayer received the Notice of Tax Liability, the Department lacks sufficient information to either admit or deny the allegations in Paragraph 1 and demands strict proof thereof.

2. Petitioner is a corporation and its FEIN is 73-1220756.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the allegations in Paragraph 2.

3. The principle place of business of the Taxpayer is Oklahoma City, Oklahoma and its mailing address is PO Box 26210 Attn: Jana Sanders, Oklahoma City, Oklahoma 73126-0210, and its telephone number is (405)302-6500. The Taxpayer's Account No. with the State is on the Notice from the Department and is Acct. No. 3383-8836.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Sections 310(a)(1)(A) and (C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the allegations in Paragraph 3.

4. Petitioner/Taxpayer failed to submit the returns and subject tax for July 2014 due to unclear and misleading directions in the State's computer program for on line pre-arranged submission of retailer sales tax payments. In sum, this Taxpayer did not pay to the Department the sales tax due for July 2014 in the Quarter-Monthly payment amounts Taxpayer had intended, because its employee was misdirected by the State's program and screen form directions, into believing he had completed and scheduled the July 2014

payments. From a review of its records Taxpayer learned of the computer processing failure on September 5, 2014 and immediately started and processed and paid the sales tax due for July 2014, prior to receiving the Notice. Taxpayer thereafter timely submitted on October 9, 2014 a letter request to the Department, and explained and sought therein an abatement of the late payment penalties of \$40,350.60 assessed in the Notice on the basis of reasonable cause for not getting the tax funds submitted and paid timely. A copy of the Taxpayer's letter Request to Abate the late payment penalties dated October 9, 2014 is attached as Exhibit 2.

ANSWER: The allegations in Paragraph 4 regarding the Taxpayer's employee's state of confusion and/or interpretation of the Department's online reporting and payment system are vague and conclusory and are denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 4 and demands strict proof thereof.

5. The Department responded on October 27, 2014 and denied the Taxpayers request for a reasonable cause abatement of the late payment penalties in the Notice and therein stated that Taxpayer could file a petition with the Illinois Independent Tax Tribunal within 60 days on or before December 26, 2014. A copy of the Department's October 27, 2014 letter denying the taxpayer's request to abate the penalty is attached as Exhibit 3. Taxpayer has consistent with its claim of reasonable cause to abate the penalties, filed this Petition timely, seeking an abatement of the late payment penalties assessment of \$40,350.60 in the Notice.

ANSWER: The Department states that the Reasonable Cause Denial speaks for itself and denies the characterization thereof and any and all other allegations in Paragraph 5 of the petition.

BACKGROUND AND RELEVANT FACTS

6. Taxpayer on September 10, 2014 received the Notice dated September 2, 2104 regarding the Department's assessment of \$40,350.60 of penalty for Taxpayer's failure to pay its July 2014 Retailers Sales tax timely. The Notice assesses a late Quarter-Monthly Payment Penalty of \$38,726.68 and a Late-Payment Penalty of \$1,623.38 on unpaid sales tax for the period ended July 31, 2014 with unpaid tax at \$394,878.83. See: Exhibit 1 attached.

ANSWER: The Department states that the Notice speaks for itself and denies the characterization thereof. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 6 with respect to when the Taxpayer received the Notice and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 6.

7. At all times relevant the Taxpayer was a retailer operating in several locations in Illinois, and it collects significant retailer sales tax for remission to the Illinois Department of Revenue each month. Given Taxpayer's sales volume, regularly and during the relevant period, the Department required/requires retailers like the Taxpayer to remit its sales tax payments to the State electronically and by Quarter-Monthly pre-scheduled payments. To effect pre-scheduled payments the Department provided/provides a computer on line program for retailers, such as Taxpayer, and they are required to pre-schedule and submit a pay the Quarter-Monthly sales tax remittance expected each month using the on line system.

ANSWER: The information contained in Paragraph 7 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is denied. Further, the Department lacks sufficient information to either admit or deny the

allegations in Paragraph 7 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 7.

8. The Department's sales tax quarter-monthly on line payment process, provided/provides a means by which each retailer by entries upon and in the Department's on screen program form can schedule in the Department's program four quarterly-monthly payments generally near the 7th, 15th, 22nd and end of the month. The entries in the program screen include the four payment dates, the amount for each payment, programming indications, bank routing numbers and account information for Taxpayer's bank account. By making these on screen set of entries in the Department program; Taxpayer as required by the Department pre-scheduled payments to the Department from the Taxpayer's bank account so the funds are paid in an amount designated on each of the four quarter-month payment dates of the 7th, 15th, 22nd and 31st and here for Taxpayer in July 2014.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 8 and demands strict proof thereof. Further, some of the information contained in Paragraph 8 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is denied. The Department denies any remaining factual allegations in Paragraph 8.

9. Specifically on July 3, 2014 a staff member of Taxpayer entered on to the Department's on line Quarter-Monthly payment scheduling tax remittance screen, and in performance of his job put in Taxpayer's user name and account number, and entered on the screen to pay what was deemed to be a sum sufficient to pay the July 2014 sales tax due, and specifically \$102,176.00 on each of the 7th, 15th, 22nd, and 31st of July 2014, from Taxpayers bank accounts. Taxpayer's staffer finished the screen as to the scheduling the

payments, and believing the payments were then scheduled he then printed a copy of the screen on July 3, 2014. A copy of the July 3, 2014 screen showing the scheduled quarter monthly payments put into defendant's pre-payment scheduling program is attached as Exhibit 4.

ANSWER: The allegations in Paragraph 9 regarding the Taxpayer's employee's state of confusion and/or interpretation of the Department's online reporting and payment system are vague and conclusory and are denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 9.

10. Taxpayer in fact had pre-scheduled quarter monthly payments using this on line screen entry system for many months before July 2014 and did so successfully. In fact it pre-scheduled and submitted and paid payments of sales tax for August 2014, successfully for August 2014 using the on line program. The person doing the July 2014 was new to that task, and he diligently acted but as explained the instructions were not clear and he failed to make a final entry step.

ANSWER: The allegations in Paragraph 10 regarding the Taxpayer's employee's state of confusion and/or interpretation of the Department's online reporting and payment system are vague and conclusory and are denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 10.

11. As the Taxpayer's September 2014 quarter monthly payments were being scheduled for Taxpayer, the Taxpayer's analyst noticed that it appeared that payments for quarter monthly sales tax payments to the Department for July 2014 had not been made. Internally a check occurred within Taxpayer's administration and the lack of payments

was confirmed, and on September 9, 2014 the tax due for July 2014 were processed and paid to the Department in full.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 11.

12. The Taxpayer analyst who processed the July 2014 screen entries into the Department's quarter monthly sales tax on line pre-payment form for July 2014, believed he had followed the instructions and completed the scheduling of the payments on July 3, 2014, but in September it became apparent a mistake had occurred.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 12.

13. The form on screen itself instructs: "Click the "Add Payment" hyperlink below for each payment you would like to schedule..." "When you have finished adding payments, click the "Submit Payments" button at the top of the screen..." "In the table below, payments that have been added will have a checkmark in the "payment added" column with the banking information displayed. Clicking the "Submit Payment" button at the top of the screen will submit only those that have been successfully added." (See: Exhibit 4 for the screen of and instruction of the Program).

ANSWER: The information contained in Paragraph 13 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is denied. Further, the Department lacks sufficient information to either admit or deny the allegations in Paragraph 13 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 13.

14. The form printed July 3, 2014 shows the Taxpayer's staffer on July 3, 2014 had entered all of the dates, amounts, bank routing and account information for July 2014 pre-payments, onto the screen, and by his entries he had caused each of the four payments to have the detail for payments present and a "check mark" indicated in the column "Payment Added" next to each of the four pre-payment scheduled entries for July 2014. The analyst noted "payment added" for all four payments, and he believed based on the instructions and the "check marks" this completed and pre-scheduled the four quarter monthly payments indicated on the screen for July 2014. There was a further screen step he missed, but one not clearly described or understood by the Taxpayer's staffer as he completed the on screen entries on July 3, 2014 and he printed the page and exited the program having believed the payments were scheduled.

ANSWER: The information contained in Paragraph 14 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 14 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 14.

15. By the on screen process the payments are pre-scheduled and the funds automatically deducted from Taxpayer's account. Once entered Taxpayer had to take no further steps. Once Taxpayer became aware on September 5, 2014 of the failure in the on line payments Taxpayer immediately made payments to the Department of the July 2014 sales tax in full.

ANSWER: The Department admits the July 2014 sales tax portion, excluding penalties, has been paid on account 3383-8836. The information contained in Paragraph 15 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax

Tribunal Regulations and is denied. Further, the Department lacks sufficient information to either admit or deny the allegations in Paragraph 15 and demands strict proof thereof.

16. Taxpayer received the Notice on September 10, 2014 after it had self-corrected the tax submission. Taxpayer paid the interest and penalties assessed and then submitted its October 9, 2014 letter request to abate penalties for reasonable cause. Taxpayer submitted the screen shot of July 3, 2014 with the request to abate the penalties. (See: Letter Request of October 9, 2014 Exhibit 2)

ANSWER: The Department admits the Taxpayer has paid the tax, penalties and interest for July 2014 on account 3383-8836. The Department lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 16 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 16.

17. The July 3, 2014 screen shot shows “check marks” in a column “Payment Added” for each of the four scheduled quarter monthly scheduled payments. The instructions explain just above “Click the “Add Payment” hyperlink below for each payment you would like to schedule.” ... “When you have finished adding payments, click the “Submit Payments” button at the top of the screen.” ... “In the table below, payments that have been added will have a checkmark in the “payment added” column with the banking information displayed.” (screen shot; See: Exhibit 4) This screen instruction is confused and inter-mixes the “check mark” for “Added Payment” as indicative of having completed scheduling the payments. In fact, it suggests the means to schedule a payment is to get the screen to have “payment added” next to the payments being scheduled, which is what Taxpayer’s staffer did, thinking that completed scheduling. The instructions to hit the “submit payments’ button is confusing and stated among the other

instructions, and because payments are being scheduled for later scheduled submission not a present payment the term “added payment” is misleading in the form and indicates the scheduling is done. The Taxpayer analyst thought the payments were scheduled and apparently he needed to also further process by hitting the submit payment button, but the screen indicated payment were added, so he believed the payments were scheduled.

ANSWER: The allegations in Paragraph 17 regarding the Taxpayer’s employee’s state of confusion and/or interpretation of the Department’s online reporting and payment system are vague and conclusory and are denied. The information contained in Paragraph 17 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is denied. Further, the Department also lacks sufficient information to either admit or deny the allegations in Paragraph 17 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 17.

18. Taxpayer intended and scheduled to pay the scheduled quarter monthly payments listed. Taxpayer had the banking information and the payments marked “payment added.” The confusions over the instruction caused the new staffer not to complete the scheduling of the payments but Taxpayer and its analyst believed and thought the payments were scheduled and assumed they were then timely paid; Taxpayer did not discover the lack of payment until September 5, 2014. Taxpayer then quickly acted to pay all the tax within days of finding out they had not been paid. Taxpayer had paid the interim August taxes.

ANSWER: The Department admits August 2014 taxes have been paid for account 3383- 8836. The allegations in Paragraph 18 regarding the Taxpayer’s employee’s state of confusion and/or interpretation of the Department’s online reporting and payment system are vague and conclusory and are denied. Some of the information contained in Paragraph 18 is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax

Tribunal Regulations and is denied. Further, the Department lacks sufficient information to either admit or deny the allegations in Paragraph 18 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 18.

19. Not making these quarter month tax payments made was not intentional, and was due to a legitimate misunderstanding by the confusing and unclear line screen instructions and the fact the program screen indicated the several “payment added” entries with a check mark for all four payments. (See July 3, 2014 screen attached as Exhibit 4.)

ANSWER: The allegations in Paragraph 19 regarding the Taxpayer’s employee’s state of confusion and/or interpretation of the Department’s online reporting and payment system are vague and conclusory and are denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 19 and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 19.

20. The Taxpayer has an excellent history of compliance with filing and paying its Illinois sales tax obligations. Taxpayer here desired to pay its July 2014 sales taxes timely. It utilized the program timely and scheduled payments. A confusing screen and instructions caused an incomplete submittal for a staffer unfamiliar with the program. Taxpayer upon finding the error, immediately paid the tax and interest. Taxpayer acted with reasoned business prudence and it should not be subject to a \$40,000 penalty. The State has received its tax and interest thereon. If it collects this penalty it is receiving an unfair windfall as the action of Taxpayer demonstrates reasonable cause to abate the penalty.

ANSWER: The allegations in Paragraph 20 regarding the Taxpayer’s employee’s state of confusion and/or interpretation of the Department’s online reporting and payment

system are vague and conclusory and are denied. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 20 and demands strict proof thereof. Further, Paragraph 20 contains a legal conclusion not material allegations of fact and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies any remaining factual allegations in Paragraph 20.

APPLICABLE LAW

21. The penalty sought to be abated by this petition are penalties for Taxpayer's failure to file or pay the July 2014 quarterly monthly sales tax timely. Penalties for nonpayment of retailers sales tax and for the failure to file sales tax returns are prescribed under the Retailers' Occupation Tax Act at 35 ILCS 120/3, 120/4 and 120/5. The Retailers' Occupation Tax Act at 35 ILCS 120/5 adopts and imposes the penalties provided in the Uniform Penalty and Interest Act at 35 ILCS 735/3-3. The Retailers' Occupation Tax Act also states relevant here:

"However, where the failure to file any tax return required under this Act on the date prescribed therefore (including any extensions thereof), is shown to be unintentional and non-fraudulent 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." 35 ILCS 120/5

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 21.

22. In addition the Uniform Penalty and Interest Act provides for the abatement of penalties

at 35 ILCS 735/3-8 stating: “The penalties imposed under the provisions of Section 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.”

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 22.

23. Both the Retailers’ Occupation Tax Act and the Uniform Penalty and Interest Act utilizes the same reasonable cause basis for abating penalties. The Illinois Administrative Code at 86 Ill. Adm. Code 700.400 sets forth the Department’s Rule on what constitutes “Reasonable cause” to abate penalties, a copy of said Rule is attached as Exhibit 4, stating:

- a) The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of the 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 this Section. (Section 3-8 of the Act)
- b) 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.

- c) 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.
- d) 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 the taxpayer's return.

ANSWER: Paragraph 23 contains a legal conclusion, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 23.

24. The case law is consistent with allowing abatement for reasonable cause. The existence of reasonable cause justifying abatement of a [tax] penalty is a factual determination that will be decided only on a case-by-case basis. See: Kroger Co. v. Department of Revenue, 284 Ill.App.3d 473, 484, 673 N.E.2d 710 (1st Dist., 1996). (Rohrbaugh v. United States, 611 F. 2d 211 (7th Cir. 1979) In PPG Industries v. Department of Revenue, 765 N.E.2d

34,39, 328 Ill. App.3d 16, (1st Dist., 2002) the court notes “that case law has interpreted reasonable cause to mean the exercise of ordinary care and business prudence.” Citing: Du Mont Ventilation Co. v. Department of Revenue, 99 Ill. App. 3d 263, 266, 425 N.E.2d 606 (3rd Dist., 1981), and it has been interpreted to mean the exercise of ordinary business care. Citing Kroger Co., v. Department of Revenue, 284 Ill. App. 3d 473, 484, 673 N.E.2d 710 (1996). In *PPG Industries* the Court citing *Kroger* also cited to 700.400(c) of the Illinois Administrative Code as follows: “A taxpayer will be considered to have made 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 depends upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge and education.” 86 Ill. Adm. Code §700.400(c).

ANSWER: Paragraph 24 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 24.

25. Taxpayer has shown the failure to have the tax return submitted and the payment of the sales tax in July 2014 was in part due to improper instructions on an online instruction screen, and the facts show, Taxpayer exercised business prudence and engaged in ordinary business care, and acted to pay the tax and did so with proper prudence and engaged in ordinary business care. Taxpayer here has an excellent history of filing returns and paying sales tax due, and has for two years prior filed its returns and paid its tax timely and thus under 35 ILCS 120/5 it has shown its failure to file and pay late here was unintentional and non-fraudulent 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 and the penalties imposed by the Notice should be abated.

ANSWER: The allegations in Paragraph 25 regarding the Taxpayer's employee's state of confusion and/or interpretation of the Department's online reporting and payment system are vague and conclusory and are denied. Paragraph 25 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies any remaining factual allegations in Paragraph 25.

26. As the facts set forth above show Taxpayer was acting in good faith and scheduling payments. Its employee believed the screen indicated the payments were scheduled. Taxpayer has otherwise met its obligations to timely pay its Illinois taxes. The taxpayer is paying interest on the tax, so it is not benefiting from delay or payment. The penalty which is to impose obligation on those who intend not to comply is not necessary here because the reason it was not timely paid was a simple business error, which was corrected immediately.

ANSWER: The allegations in Paragraph 26 regarding the Taxpayer's employee's state of confusion and/or interpretation of the Department's online reporting and payment system are vague and conclusory and are denied. Paragraph 26 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 26. Further, Paragraph 26 contains allegations which the Department lacks sufficient information to either admit or deny and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 26.

ERRORS

27. The Department in error erroneously continues to assess the Notice penalties against Taxpayer for the tax period ended July 31, 2014. “It is not the purpose of the law to penalize...innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collection (as in this case) with interest for the delay.” *Rohrbaugh v. U.S.*, 611 F.2d 211, 219 (7th Circuit, 1979) citing *Spies v. United States*, 317 U.S. 492, 496, 63 S.Ct. 364, 367, 87 L.Ed. 418 (1943).

ANSWER: Paragraph 27 contains legal conclusions, not a material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions contained in Paragraph 27.

28. Taxpayer acted to pay the tax timely and properly once it learned the error. Taxpayer believed the process for making quarterly monthly payments had been complete. Taxpayer relied upon the wording on the Department’s screen in the pre-payment on line program, which indicated that the four payments were added and to be paid. Taxpayer believed the four payments would be taken from its bank accounts. Once taxpayer discovered the error it acted to pay the tax immediately. These acts demonstrate and show prudence and business care in Taxpayer’s efforts; all showing reasonable cause for the sales tax payments not being submitted in July 2014.

ANSWER: The allegations in Paragraph 28 regarding the Taxpayer’s employee’s state of confusion and/or interpretation of the Department’s online reporting and payment system are vague and conclusory and are denied. Paragraph 28 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 28. Further, Paragraph 28 contains allegations which the

Department lacks sufficient information to either admit or deny and demands strict proof thereof. The Department denies any remaining factual allegations in Paragraph 28.

29. A showing of reasonable cause justifies abatement of the Notice penalties here. The Department's decision to assess the penalties and not abate the penalties here was error and this court should hold that penalties are abated and the funds should be repaid to Taxpayer.

ANSWER: Paragraph 29 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 29.

CONCLUSION AND RELIEF REQUESTED

30. Taxpayer has demonstrated that reasonable cause exists for it having not made the July 2014 sales tax payments timely and has further demonstrated the basis and reason for the penalties of \$40,350.06 to be abated, vacated and the monies paid and refunded to Taxpayer.

ANSWER: Paragraph 30 contains legal conclusions, not material allegations of fact, and does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 30.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Reasonable Cause Denial is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Date: February 5, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

Ashley Hayes Forte
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-3514 phone
(312) 814-4344 facsimile
ashley.forte@illinois.gov

