

3. The Notice is unsupported by the facts and contrary to the Illinois Retailers Occupation Tax (“ROT”) Act and its Regulations. The Notice ignores valid trade-ins that are fully documented by the parties, and the formal opinion of the Department allowing similar trade-ins. This Notice also ignores a simultaneous completed audit of Shepard main customer, Lease Plan U.S.A., Inc. (“Lease Plan”) where (1) tax was projected and already paid on any erroneous trade-ins for the Audit Period and (2) the Department reached an opposite conclusion on the taxability of certain trade-ins for the Audit Period covered by this assessment. Moreover, the Notice taxes non-Lease Plan Trade-In transaction in violation of the ROT and its Regulations. Therefore, the proposed assessment is fundamentally flawed and in error.

4. The penalties imposed, including the increases in the penalties as a result of the amnesty penalties, were improper based on the facts and law cited herein and furthermore based on the fact that there was reasonable cause for any errors that resulted in the underpayment of any ROT owed.

BACKGROUND

5. Shepard is a car dealership in Illinois with its main office in Lake Bluff. Shepard sells new vehicles to customers, including fleet leasing companies, in Illinois. It was located at 930 Carriage Park Lane, Lake Bluff, Illinois 60044, and its telephone number is (224) 544-5580.

6. In making its sales, Shepard accepts trade-in of vehicles from its customers. Many of the vehicles traded in to Shepard are then resold by Shepard at auction.

7. Shepard was closed and thus went out of business in October of 2011.

TRADE-IN FACTS

Lease Plan Sales and Trade-Ins

8. Lease Plan is a vehicle fleet leasing company. As a result, it purchases large volumes of vehicles that it leases to businesses.

9. Shepard has an agreement with Lease Plan to sell vehicles needed in Lease Plan's leasing operations.

10. Through a special program with General Motors, Shepard sells such vehicles to Lease Plan and invoices Lease Plan for the vehicles based on a small mark-up above cost. This is a common sales practice in the car industry that has been also recognized as a valid sales practice by the Department for decades. *See*, ST 11-0012-PLR (9/9/2011); ST 95-0293 (7/10/95).

11. In addition, Shepard allows Lease Plan to trade-in vehicles on its purchase of new cars. After Shepard purchases the vehicles as trade-ins, it sells the vehicles at auction. The trade-in value given for the vehicles, like in ST 11-0012-PLR, is set by this auction price and is reflected on both the billing invoice and the ST-556 filed with the Department.

12. When Lease Plan transfers title to the traded-in vehicle to Shepard, it signs an advance trade-in agreement for the purchase of a new vehicle. To save on administrative costs, for the convenience of the parties, and to get the best auction deal, Shepard then provides Lease Plan with a power of attorney ("POA") to take the traded-in vehicle to a reliable auction to sell on Shepard's behalf. The vehicle is then sold by Shepard to the auction house for resale to the auction customer.

13. When sold at auction, title to the vehicle transfers directly from Shepard to the auction purchaser. Shepard either issues its billing invoices under its own name or under "Umbrella Fleet Partners," a wholly owned billing agent for Shepard.

14. There are 56 Lease Plan trade-ins being disputed in this Petition. A detailed summary of the trade-in documentation and trade-in activity was provided along with the trade-in documentation to the auditors during the audit.

Recent Audit of Lease Plan

15. For the period of July 1, 2005 through December 31, 2009, Lease Plan was simultaneously audited by the Department and “paid” all taxes found due. This Lease Plan Audit encompassed the entire taxable base of sales and trade-ins transactions reviewed and sampled in the audit of Shepard.

16. The Department’s in the above-mentioned Lease Plan audit either (1) found no problem in the trade-ins now at issue in this audit or (2) taxed (and Lease Plan paid the tax) on the trade-ins that the Department found were deficient. For example, Shepard’s File D6621 was reviewed by the Department in its audit of Lease Plan and it found some of the trade-ins as proper and others as expired.

17. In the above-mentioned Lease Plan audit, an error factor based on a statistical sample was applied to the entire purchase base of Lease Plan (including all purchases from Shepard covered by the Shepard Audit in this case) and was projected for the entire Audit Period. The tax determined due by the Department was paid by Lease Plan for this period.

18. Because Lease Plan paid the tax determined due on all of its taxable Shepard purchases in its own audit, it was improper for the Department to double tax these Lease Plan transactions again in the Shepard’s audit, and they must be removed from the assessment.

Controlling Facts Were Simply Ignored in Current Audit of Shepard

19. The current audit of Shepard disallows advanced trade-ins by Lease Plan (previously covered in the Lease Plan audit) by also ignoring the underlying and controlling facts as follows:

- (a) Shepard new car billing invoice reflected the traded-in vehicles from Lease Plan.
- (b) The formal “title” to the vehicles traded in by Lease Plan reflected Shepard as the purchaser of the traded-in vehicles from Lease Plan.
- (c) Lease Plan issued a “bill of sale” to Shepard for the traded-in vehicles.
- (d) Lease Plan provided an “advance trade-in agreement” to Shepard (previously accepted in the Lease Plan’s audit) that reflected its agreement to buy another vehicle from Shepard in nine months.
- (e) The ST-556, filed by Shepard, reflected the value of the trade-ins by Lease Plan. (Notably, because Shepard uses the Illinois Secretary of State and Department’s authorized “CVR” system on some sales, under this system only the first trade-in can be listed on the ST-556, but the values of all trade-ins are included in Section 6, line 2 of the ST-556.)
- (f) Shepard provided to Lease Plan a POA to arrange for the sale of Shepard’s vehicles “on Shepard’s behalf” at auction. The original POAs were signed and given to Lease Plan and Lease Plan supplied them to the auction house.
- (g) Lease Plan provided a letter to Shepard for the auditors to explain its traded-in cars process with Shepard and to verify its agency arrangement with Shepard (through the power of attorney) to transport the cars to the auction house on behalf of Shepard for sale.
- (h) The “title” to the traded-in vehicles was in Shepard’s name when the vehicles sold at auction.
- (i) Shepard issued a “bill of sale” to the auction house on the auction sales and transferred titles to the cars directly from it to the auction purchaser.
- (j) Shepard’s auditors ignored that the Lease Plan transactions were already

audited and that complimentary use tax was already assessed and paid by Lease Plan in the completed and simultaneous Department audit of Lease Plan which encompassed the Shepard Audit Period at issue herein.

20. Rather than recognize that the Lease Plan transactions were already reviewed and assessed use tax in the simultaneous audit of Lease Plan or use the plethora of controlling documentation that clearly reflects that a proper trade-ins occurred with the Lease Plan, the auditors in the Shepard audit nevertheless also assessed Shepard's for the tax due for the Audit Period.

21. Moreover, the auditors ignored that ALL of the relevant documentation demonstrates that Shepard owned the vehicle it was selling through the auction, even though this was the controlling and fundamental fact that the Department accepted and used as its basis to audit and assess Lease Plan a use tax on such transactions.

Improper Double Taxing of Lease Plan Transactions

22. Because Lease Plan was audited by the Department for the period of July 1, 2005 through December 31, 2009, this period encompasses the entire audit period of Shepard at issue herein. Lease Plan paid the Department for all Illinois ROT or Use Tax due as a result of this audit.

23. This Lease Plan audit used a statistical sample analysis so it projected statistically the tax due over the entire base of purchased cars in the entire Audit Period. Therefore, the trade-ins at issue in the Shepard audit were already audited and taxed by the auditors in the Lease Plan audit. For example, one of the statistical samples used was the trade-ins in Shepard's File D6621 in the current audit workpapers. The Lease Plan audit approved \$51,451 of the advanced trade-ins and taxed a \$5,773 trade-in as expired. This was included in the sample that was used to project a tax due for the entire Audit Period which was ultimately paid by Lease Plan. Again,

it is improper for the Department to now double tax the Lease Plan transactions for the Audit Period, and they must be removed from the assessment.

Non-Lease Plan Customers Trade-Ins

24. The Audit also disallowed certain trade-ins by non-Lease Plan customers. Again, all of the documentation clearly demonstrates that a new car sale and proper trade-ins occurred.

In particular:

(a) Donlen Trust Trade-in (D7876):

(1) The (1) New Vehicle (Sales) Report, (2) advanced trade-in agreements, and (3) title transfer documents reflect the trade-in of the vehicles by the Dolan Trust. The bills of sale from Donlen also reflects the trade-in credit amounts of \$12,600 and \$12,800. These amounts are also reflected in Shepard's customer "Invoice Processing" documentation. Lastly, the ST-566 reflects the trade-in amount from both trade-ins (the G6 - \$12,600, and the Vibe - \$12,800 = \$25,400). While there was a clerical error in the dates on the Bill of Sale and Advanced Trade-in Agreement for the 2008 vehicle (\$12,800), the invoice processing date lists the correct trade-in purchase date as November 7, 2007.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(b) Arnie Yusim Leasing (43500530-1):

(1) The (1) Shepard invoice, (2) ST-556, (3) advanced trade-in agreements, and (4) vehicle titles reflect a sale of a new vehicle and proper trade-ins of two used vehicles valued at \$14,475 and \$13,300.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(c) **Arnie Yusim Leasing (390508182-3):**

(1) The (1) Shepard invoice, (2) ST-556, (3) advanced trade-in agreements, and (4) vehicle titles reflect a sale of a new vehicle and proper trade-ins of three used vehicles for \$8,400, \$8,800, and \$11,000.

(2) As a result, the disallowance of these trade-ins is contrary to the facts and law, and must be reversed.

(d) **Arnie Yusim Leasing (43500856-0):**

(1) The (1) Shepard invoice, (2) ST-556, and (3) vehicle titles reflect a sale of a new vehicle and proper trade-ins of two used vehicles valued at \$25,000 and \$7,200.

This trade-in was denied by the Department as not meeting the advanced trade-in rules, but since this was a simultaneous trade-in it did not have to meet the advanced trade-in rules.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(e) **Bearcat Leasing (39050170-8):**

(1) The (1) Shepard invoice, (2) ST-556, and (3) vehicle title reflect a sale of a new vehicle and proper trade-in of a used vehicle for \$18,900. This was also denied as not meeting the advanced trade-in rules, but again this was a simultaneous trade-in.

(2) As a result, the disallowance of the trade-in is contrary to the facts and law, and must be reversed.

(f) **GMAC – Vault – BU (46046968-7) (N1255):**

(1) The (1) ST-556 and (2) advanced trade-in agreements reflect a sale of a new vehicle and proper trade-ins of two used vehicles for \$21,800 and \$20,981. Vault was the expressed nominee of GMAC in the sale.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(g) Mister Leasing Corp. (43500531-9) (N351):

(1) The (1) Shepard invoice, (2) ST-556, (3) advanced trade-in agreements, and (4) titles reflect a sale of a new vehicle and proper trade-ins of two used vehicles for \$16,900 and \$16,900.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(h) Arnie Yusim Leasing (43500550-9):

(1) The (1) Shepard invoice, (2) ST-556, (3) advanced trade-in agreements, and (4) titles reflect a sale of a new vehicle and proper trade-ins of three used vehicles for \$18,400, \$14,000, and \$14,000.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(i) Capital Leasing Services (43500493-2):

(1) The (1) Shepard invoice, (2) ST-556, (3) advanced trade-in agreements, and (4) titles reflect a sale of a new vehicle and proper trade-ins of three used vehicles for \$14,277, \$14,480, and \$23,203.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

(j) Mister Leasing Corporation (43501163-0):

(1) The (1) Shepard invoice, (2) ST-556, and (3) titles reflect a sale of a new vehicle and proper trade-ins of two used vehicles for \$10,500 and \$11,100. This was again a valid simultaneous trade-in.

(2) As a result, the disallowance of the trade-ins is contrary to the facts and law, and must be reversed.

RELEVANT LAW AND REASONS FOR RELIEF

25. Trade-ins are allowed under the ROT and Department regulations. 35 ILCS 120/1; 86 Ill. Adm. Code §130.425 and §130.455. Advanced trade-ins are allowed under Regulation §130.455 if the documentation indicates that:

- (a) The vehicle traded in was owned by the entity/person trading it in.
- (b) An advanced trade-in agreement is provided by the purchaser that agrees to purchase a new car within nine months of the trade-in.
- (c) A new car is purchased within this nine-month period.

26. To determine if a sale/trade-in occurs, the general indicator is that title of the vehicle is transferred. *See e.g. Weber-Stephen Products, Inc. v. Dept. of Revenue*, 324 Ill. App. 3d 893, 898 (1st Dist. 2001). After a trade-in occurs, how the dealer afterwards seeks to dispose of the vehicle is meaningless to the trade-in transaction. ST-95-0293-PLR (7/10/95); ST-11-0012-PLR (9/9/2011). Moreover, the value assigned a trade-in is determined by the dealer and can be a set price or even a contingent price set forth by the occurrence of a certain event, such as an auction. ST-11-0012-PLR (9/9/2011); ST-04-0164-GIL (9/14/2004).

ERROR I

Lease Plan's Purchases Must Be Removed From Notice

27. Lease Plan was recently audited by the Department and a statistical sample was done. The period of that audit covered the entire audit period covered by this audit of Shepard. Under that Lease Plan audit, the same types of transactions were reviewed as in the Shepard

audit, including some of the same transactions at issue in this audit. The Department in reviewing the Lease Plan audit accepted the same types of trade-ins now being disputed in the Shepard audit. It also assessed tax (that was paid by Lease Plan) based on a projection of tax owed for the same types of transactions again being assessed in this audit.

28. When the Department does a statistical sample that it uses to project tax due, this is done to determine the proper amount of tax owed for the entire audit period. *See e.g. Vitale v. Ill. Dept. of Revenue*, 118 Ill. App. 3d 210, 212 (1st Dist. 1983). Therefore, when the Department audited Lease Plan and assessed tax due (that was paid by Lease Plan), this covered all taxes owed for this period by Lease Plan.

29. The disregarding of the Lease Plan audit violates the basic premise of statistical sampling and makes a mockery of the Department's audit techniques. It is also improper since it seeks to tax Lease Plan's sales transactions twice, once under the audit of Lease Plan and again under the audit of Shepard. Therefore, the Lease Plan transactions audited and taxed under the audit period of Lease Plan must be removed from Shepard's Audit Period.

ERROR II

Lease Plan Advanced Trade-In Documentation Demonstrate No ROT is Due

30. In addition to the above, a review of the documentation provided for the Lease Plan trade-ins plainly demonstrates that valid advanced trade-ins occurred. First, a vehicle was traded in by Lease Plan, as reflected in the "bill of sale" and "title" transfer showing a trade-in from Lease Plan to Shepard. Second, an "advanced trade-in agreement" was signed by Shepard. Notably, these advanced trade-in agreements were also reviewed and approved by the Department in Lease Plan's recent audit. Lastly, a new car was "sold" to Lease Plan within nine months of the advanced trade-in, and the trade-ins were reported on the "billing invoices" to

Lease Plan and on the ST-556 that were filed with the Department. These facts are more than sufficient to qualify the transaction as a proper advanced trade-in under the Department's regulations.

31. The inconsequential fact that Shepard afterward sold the traded-in vehicles at auction is meaningless to whether an advanced trade-in took place. Nor is it relevant that Shepard gave a POA to Lease Plan to save administrative costs and fees by allowing Lease Plan to arrange for the sale of the vehicles through an auction house. *See* ST-11-0012-PLR; ST-95-0293. Since the auction price was determinative of the trade-in value to be provided, it was in the best interest of both parties therefore to make sure a reputable and reliable auction house was used. The documentation also makes clear that Shepard gave a "bill of sale" to the auction house and that "title" transferred from Shepard to the ultimate buyer.

32. Equally significant is that these types of transactions were already reviewed by the Department in its audit of Lease Plan and found to be proper advanced trade-ins. Unless we assume that the Department audit of lease Plan and subsequent review of such audit was incompetent, that audit plainly demonstrates that the Department understood that a valid trade-in occurred. Thus, the indifferent disregard for the Lease Plan audit by the current audit, based on an imaginative (and already discredited) position that no trade-ins occurred, notwithstanding all of the documentation and evidence reviewed, has no basis in fact, logic or law.

ERROR III

Double Taxing Lease Plans Transactions is Illegal

33. The ROT and the Use Tax are complimentary taxes. Therefore, only one has to be paid to the Department on a sale. Here, Lease Plan paid all of the ROT/Use Tax determined due for vehicles covered under the Lease Plan audit period. Therefore, to impose an additional

corresponding ROT on transactions already covered by the Lease Plan audit period of July 1, 2005 through December 31, 2009 is improper under Illinois law. Moreover, to not remove the Lease Plan transactions would undermine the integrity and reliability of the Department's audits, leaving them with no credibility whatsoever.

ERROR IV

Taxing the Non-Lease Plan Trade-Ins is Improper Under Illinois Law

34. As noted earlier, the non-Lease Plan trade-in transactions were properly documented and were allowable under the ROT and its regulations. Since these trade-ins contained the required components as instructed by the trade-in regulations (§130.455), it was improper for the Department to refuse to recognize these trade-ins under Illinois law.

ERROR V

Late Penalties Must Be Removed

35. Under 86 Ill. Admin. Code Sec. 210.120, penalty and amnesty interest should not be imposed when reasonable cause is present. "Reasonable cause" means nothing more than the exercise of ordinary business care and prudence. *Id.* at §700.400(c); *DuMont Ventilation Company v. Department of Revenue*, 99 Ill.App.3d 263, 266 (1981). As the Department of Revenue has stated, in determining if "reasonable cause" is present, the most important factor to be considered is whether the taxpayer made a "good faith effort to determine its proper tax liability." *Id.* at 700.400(b).

36. Reasonable cause often applies when unintentional errors occur, such as clerical, mathematical or bookkeeping errors. *See Valley Ice & Fuel Company v. United States*, 30 F.3d 635 (5th Cir. 1994) citing Internal Revenue Manual § 4786(2). Indeed, when good faith

compliance is present, the existence of clerical, bookkeeping or ministerial errors are typically insufficient to justify the imposition of a penalty. *See, e.g., Canfield v. Commissioner*, 7 T.C. 944, 950-51 (1946), *rev'd on other grounds* 168 F.2d 907 (6th Cir. 1948); *Vandervacht v. Commissioner*, 67 T.C.M. 2606 (1994); *See also Mertens, The Law of Federal Income Taxation* § 55.59 (“[t]he negligence penalty will not ordinarily be asserted nor will imposition of the penalty be sustained, on account of minor divergences from perfect accounting or because of clerical errors”).

37. Even the Department’s own regulation Section 700.400 recognizes that “isolated computational or transcriptional errors will not generally indicate a lack of good faith” [emphasis added]. 86 Ill. Admin. Code §700.400(d). *See also* 20 N.Y.C.R.R. § 46.1 (circumstances that indicate “reasonable cause” include “a computational or transcriptional error”); Florida Rule 12-13.007(2) (“reasonable cause may exist even though the circumstances indicate that slight negligence, inadvertence, mistake, or error resulted in noncompliance”). Therefore, the existence of clerical, bookkeeping or other ministerial errors will generally not demonstrate a lack of “reasonable cause,” when a taxpayer exercises a “good faith” effort to pay the amount of taxes due.

38. More importantly, it should be emphasized that penalties are NOT designed to be applied to all underpayments of tax, rather they are designed to punish persons for improper conduct and not to penalize persons for simple errors. This basic premise was explained by the United States Supreme Court, which stated:

It is not the purpose of the law to penalize frank differences of opinion or innocent errors made despite the exercise of reasonable care. Such errors are corrected by the assessment of the deficiency of tax and its collections with interest for the delay.

Spies v. United States, 317 U.S. 492 (1943) (emphasis added).

39. Moreover, before a penalty is applied generally there must be “a pattern of deception, willful neglect, or careless disregard” that exists to justify the imposition of the tax penalties. *Standard Life and Accident Insurance Co. v. United States*, 1975 U.S. Dist. LEXIS 13605, 75-1 U.S. Tax Case (CCH) P9352, 35 A.F.T.R. 2d (P-H) 1150 (W.D. Okla. 1975).

40. As previously noted, “reasonable cause” means nothing more than the exercise of ordinary business care and prudence. *Du Mont Ventilation Company v. Department of Revenue*, 99 Ill. App. 3d 263, 266 (3 Dist., 1981; *Columbia Quarry Co. v. Department of Revenue*, No. 81-602 (Ill. App. Ct., 5th Dist. 1982); *Sanderling, Inc. v. Commissioner*, 41 A.F.T.R. 2d 78-816 (3 Cir. 1978). Consequently, in determining if ordinary business care and prudence is present, one must take into consideration any ambiguity in the law, its clarity as it relates to the taxpayer at issue, and its susceptibility to differing reasonable interpretations. *See Indiana Department of Revenue v. Cave Stone, Inc.*, 409 N.E. 2d 690, 697 (Ind. App. 1980) (Court held that “reasonable cause” was shown because there was a “bona fide dispute over the interpretation of applicable tax statutes.”); *Wrigley, Jr. Co. v. Wisconsin Dept. of Revenue*, 500 N.W.2d 667 (Wisc. 1993) (Wrigley’s “good faith belief” that the tax did not apply along with the fact that a number of judges shared that belief demonstrated that reasonable grounds existed); *Gillette Company v. Dept. of Treasury*, Mich. Tax Tribunal, Doc. No. 73916, 90676-7 (2/13/89) (reasonable cause existed because of a good faith difference of opinion and the Department did not have a formal policy on the issue set forth in its regulations); *In the matter of Tesoro Petroleum Corp.*, Alaska Dept. of Rev., Doc. No. 89-036 (6/12/89) (when taxpayer has a good faith belief it is correct and the “applicable law was unsettled at the time the return was filed,” reasonable cause is present). *See also, Sellitti v. Caryl*, 408 S.E.2d 336 (W. Va. 1991).

41. As the Illinois Department of Revenue reiterated in *Dept. of Revenue v. Barbara Oil Co.*, 94-IT-0127 (1996), “if there is an honest difference in opinion,” this is sufficient to stop the imposition of the penalty. Likewise, in *Department of Revenue v. XYZ Corporation*, ST 98-12, the Department again held that “widespread confusion” on the issue also demonstrated reasonable cause to abate a penalty. The Illinois Appellate Court further noted that reasonable cause includes taking a position (even if in error) that is “substantially justified by having a reasonable basis in both law and fact.” *Hercules, Inc. v. Department of Revenue*, 324 Ill. App. 3d 329 (1st Dist. 2001).

42. Similarly, in *Colony-Lobster Pot Corporation v. Director of Revenue*, 770 S.W.2d 705 (Mo. App. 1989), the Missouri Appellate Court held that the Commissioner’s position was based on reasonable cause because the Commissioner’s interpretation of the law as it existed at the time of this controversy was not without reason, and therefore was justified. Likewise, the California Appellate Court held that a position is “substantially justified” and consequently reasonable when the position is “justified to a degree that would satisfy a reasonable person or has a reasonable basis both in law and fact.” *Lennane v. Franchise Tax Board*, 51 Cal. App. 4th 1180 (1996). The court went on to say that, “All that can be said in these circumstances is, reasonable minds could differ and did differ. By definition then, FTB’s position was substantially justified.” *Id.* See also Florida Administrative Rule 12-13.007 (reasonable cause may exist “even though the circumstances indicate that slight negligence, inadvertence, mistake, or error resulted in noncompliance.” Moreover, reasonable cause exists when there is “reasonable doubt as to whether compliance is required in view of conflicting rulings, decisions, or ambiguities in the law”).

43. Here, Shepard was audited with no problems in the past. In its past audits, its trade-in agreements were not considered improper. It always reported its trade-ins in a manner consistently approved by the Department for decades. Its handling of advance trade-ins is also consistent with those approved by the Department for other taxpayers including its major customer, Lease Plan. Any underpayment of tax is based on the Department's apparent belief that it can double tax the Lease Plan trade-ins, or because of clerical or ministerial errors that occurred in the record keeping at Shepard for a few other trade-in transactions. Notably, much of this occurred because Shepard has been closed for over a year before the audit concluded, resulting in some misplaced or lost records. An secondly, these errors only amounted to a couple handfuls of transactions out of hundreds under review. Plainly, there was no bad faith tax reporting or willfulness on Shepard's part. As a result, there is more than sufficient reasonable cause to abate the penalties in this case.

44. The increased penalty as a result of the amnesty is also improper since no assessment of tax was outstanding against Shepard during the amnesty period, nor was Shepard otherwise advised by the Department (or knew) that it had tax due for the period at issue. As a result, Shepard had no reason to believe its tax filings would not be accepted as proper as in prior audits, again demonstrating reasonable cause.

45. Equally important is that Lease Plan was audited and paid all of the tax owed, so no tax is outstanding on the Lease Plan portion of the audit. Finally, like the late penalty, here the errors were innocent or clerical errors and not bad faith or willful errors justifying a penalty. Reasonable cause is therefore present so the amnesty penalty must be removed in this case.

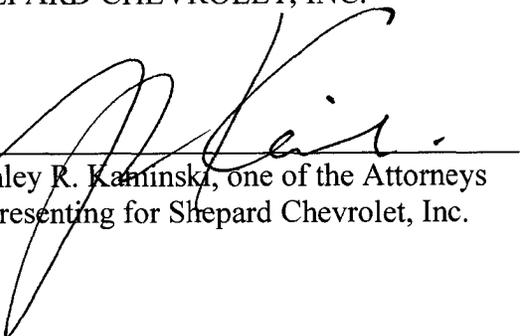
CONCLUSION AND RELIEF REQUESTED

46. A review of the sales documentation, underlying facts, and Illinois law demonstrates that there is no factual or legal foundation for the Department to have ignored the completed audit of Lease Plan, or to have disallowed the other trade-in transactions listed herein, and therefore such audit exceptions must be reversed. Moreover, the penalties assessed, as well as the amnesty penalties, must likewise be abated for the reasons stated herein.

WHEREAS, Petitioner requests that the Notice of Tax Liability be modified as requested herein, and to the extent it is shown that any part of this assessment was made without reasonable cause, the Petitioner requests a finding that its attorney and accountant fees are recoverable against the Department pursuant to 20 ILCS 2520/7.

Dated: March 20, 2014

SHEPARD CHEVROLET, INC.

By: 
Stanley R. Kaminski, one of the Attorneys
Representing for Shepard Chevrolet, Inc.

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

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**SHEPARD CHEVROLET, INC.,
TAXPAPER**

)
) **No. 13-ST-0271**
) **NTL: CNXXXX899839X723**
) **Account: 0255-0482**
)
)
) **Kenneth J. Galvin,**
) **Administrative Law Judge**

ORDER

This matter, coming on to be heard on the Taxpayer's "Motion to Transfer Case to Tax Tribunal" (hereinafter "Tribunal"), filed January 30, 2014, the Administrative Law Judge being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. Taxpayer's Motion, making a statutory election to transfer jurisdiction over this case from the Department of Revenue to the Tribunal, is granted.
2. The Taxpayer's election to transfer jurisdiction to the Tribunal is irrevocable.
3. The administrative hearing record for this case will be transferred to the Tribunal.
4. Taxpayer will be required to perfect its protest before the Tribunal in accordance with 35 ILCS 1010/1-1 *et seq.*

WHEREFORE, for the reasons stated above, it is hereby ordered that all further proceedings in this matter are cancelled and the proceedings before the Administrative Hearings Division of the Illinois Department of Revenue are closed.

Date: January 30, 2014

Kenneth J. Galvin
Administrative Law Judge

Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



_____ #BWNKMGV
#CNXX XX89 9839 X723#
SHEPARD CHEVROLET INC
855 JENNIFER CT
_____ LAKE FOREST IL 60045-4313

May 21, 2013



Letter ID: CNXXXX899839X723

Account ID: 0255-0482



We have audited your account for the reporting period of 01-Jul-2006 through 31-Dec-2008. Below is a summary of the balance.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	1,229,714.00	0.00	1,229,714.00
Late Payment Penalty Increase	491,885.00	0.00	491,885.00
Late Filing Penalty Increase	13,410.00	0.00	13,410.00
Interest	525,522.46	0.00	525,522.46
Assessment Total	\$2,260,531.46	\$0.00	\$2,260,531.46

You may file a protest and request an administrative hearing within 60 days of the date of this notice, which is July 20, 2013. Your request must be in writing. Clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will give up your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding conducted under the rules of evidence and presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you have questions, please write us or call our Springfield office weekdays between 8:30 a.m. and 4:30 p.m. Our address and telephone number are below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
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