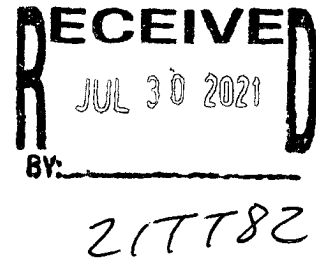


Schaefer's Greenhouses, Inc. Petitioner

v.

Illinois Department of Revenue, Defendant



PETITION

Petitioner, Schaefer's Greenhouses, Inc. ("Petitioner") through its pro bono representative, Brett Harvey (Illinois Bar Number 6295073) complains of the Defendant, the Illinois Department of Revenue (the "Defendant" or the "Department") and alleges as follows:

PETITIONER

1. Petitioner is a Delaware corporation with a principal place of business in Illinois. The business is located at 120 S. Lake Street in Montgomery Illinois 60538 and can be reached at 630-896-1936.
2. Petitioner is represented pro bono by Brett Harvey, an Illinois licensed attorney (Bar Number 6295073) who can be reached at bharvey27@aol.com or 310-210-1752
3. Petitioner's Account ID (per 6/9 notice from the Illinois Department of Revenue) is 40387755
4. Petitioner's Federal Tax-payer ID is 36-6192696
5. Petitioner's business is a 200,000 square foot Greenhouse/Florist that has been in business since 1926.
6. The Illinois Department of Revenue (the "Department") is charged with administering Illinois tax laws and collecting tax revenues in a fair, consistent and efficient manner for tax payers and to provide accurate, timely and reliable funding and information to state and local constituents.

NOTICES

7. Petitioner filed 36 separate requests for refunds of duplicate payments of the Illinois State Gas Use Tax ("Tax") in March of 2021.
8. Defendant confirmed receipt of these requests in 36 notices dated April 14, 2021.
9. Petitioner was notified in a letter dated 6/9/2021 (see Attachment 1 for a copy of the letter, Letter ID CNXXXX425X282327) that Petitioner's claims were Tentatively denied.

JURISDICTION

10. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act, 35 ILCS 1010/1-1 to ILCS 1010/1-100.

11. The Independent Tax Tribunal has original jurisdiction over all determinations of the Department reflected on a Notice of Claim Denial issued under the Gas Use Tax Law where the amount at issue in the notice exceeds \$15,000, 35 ILCS 1010/1-45.
12. The Department has the full power to determine all rights to credit memoranda or refunds arising on account of an erroneous payment of the Gas Use Tax, 135 ILCS 173/ 5-40.

BACKGROUND

13. Petitioner uses natural gas that is piped in from out of the state of Illinois.
14. Consequently, in accordance with the requirements of the Illinois State Gas Use Tax statute, the Petitioner must pay the legislatively-determined Tax as a self-assessed remittance or through its Delivering Supplier, which in this case is Nicor.
15. Petitioner discovered in March of 2021 that it had been paying the full amount of the Tax twice per month: once through its Delivering Supplier and again to the Department as a self-assessor. For the period of March 2018 through February of 2021, Petitioner was obligated to pay an aggregate Tax amount of \$21,234.66 (the "Aggregate Tax"). However, since Petitioner paid the \$21,234.66 Aggregate Tax to its Delivering Supplier, who in turn returned the Tax to the Department, and made another self-assessed return of the \$21,234.66 Aggregate Tax to the Department, the Department collected twice the Tax amount that Petitioner was statutorily required to pay.
16. Upon discovering the error, Petitioner immediately and timely contacted Defendant and filed 36 claims for refunds for each month of its double remittance during the period of March 2018 through February 2021, requesting that the Department return the \$21,234.66 that Petitioner erroneously overpaid.
17. Defendant confirmed requests for refunds in April 14 notices.
18. In a letter dated June 9, 2021, Defendant notified Petitioner that its claims had been tentatively denied because the Department has "not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to [Petitioner]." See attachment 1 for a copy of the letter, Letter ID CNXXXX425X282327.
19. The attached copy of a Nicor bill to Petitioner from January of verifies that Nicor has been collecting the Tax from Petitioner. See Attachment 2.
20. A copy of a screen print from MyTax Illinois verifies the self-assessed Tax amount Petitioner submitted to the Department for the month of January 2021. See Attachment 3.¹
21. Upon realizing its error, Petitioner asked Defendant why it couldn't simply issue a refund since it was clearly receiving payment of the Tax from Petitioner twice.
22. Defendant informed Petitioner that the refund had to come from Nicor since it collected the Tax as a Delivering Supplier.
23. Thereafter, Petitioner contacted Nicor to request a refund of the Tax it collected from Petitioner from March of 2018 through February of 2021 and was advised that Nicor already remitted the

¹ Please note that the amounts collected for the month of January 2021 from the two sources are different by \$0.01 due to rounding differences.

Tax to the Department. Consequently, Nicor could not refund the Tax dollars it collected from Petitioner.

24. When Petitioner contacted the Department to once again request the return of the overpaid tax, Defendant advised Petitioner that its only recourse was to file a petition with the State of Illinois Independent Tax Tribunal since the amount requested is over \$15,000.
25. Petitioner eliminated the Self-Assessor payments through the State of Illinois effective March of 2021. This was done over the phone with the Defendant's customer service support staff.
26. Since March of 2021, Petitioner has been paying the Tax exclusively through its Delivering Supplier, Nicor.
27. Petitioner has filed a timely petition with the Tax Tribunal.

ERRORS

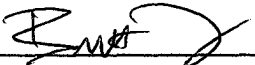
28. The documentary evidence makes clear that Petitioner erroneously paid its Aggregate Tax for the period of March 2018 through February of 2021 to the Department twice: once as a self-assessor and another time through its Delivering Supplier.
29. The Gas Use Tax Law does not permit the Department to tax Petitioner twice for a single purchase of gas from out of state.
30. The Gas Use Tax Law does not permit the Department to retain tax remittances it received in excess of the Aggregate Tax Petitioner owed from March of 2018 through February of 2021 due to Petitioner's error.

CONCLUSION AND RELIEF REQUESTED

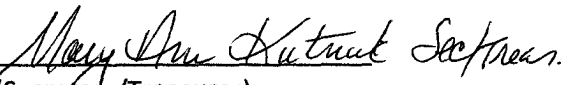
31. The Department's mission statement is to collect tax revenues in a fair, consistent and efficient manner for tax payers. The Department's retention of Petitioner's erroneously remitted tax revenues would amount to double taxation and is undeniably unfair.
32. The Department would be unjustly enriched if permitted to retain twice the amount of Aggregate Tax that Petitioner was obligated to pay but mistakenly remitted twice.
33. The law, equity and common sense require the Department's return of Petitioner's overpayment of the Tax.
34. As a matter of public policy, the Department should not be permitted to reap a windfall due to Petitioner's erroneous double payment of the Aggregate Tax. Instead, as a small but tax-paying business, Petitioner should be taxed fairly so that it can continue to operate and generate future tax revenue and to employ hardworking Illinoisans.
35. Petitioner respectfully requests that the Tribunal enter an order for the Defendant to either issue Petitioner a refund of its overpayment or to deposit an amount of \$21,234.66 (for the period of 3/2018 through 2/2021) into the Petitioner's State Sales Tax account that will be used as a credit against upcoming sales tax payments.
36. Petitioner further requests that the Tribunal grants further relief as it deems appropriate under the circumstances.
37. Additionally, if one or more statutes allow Petitioner to seek refunds of erroneously paid Taxes that Petitioner remitted more than 36 months ago, Petitioner will seek to amend its request for relief to cover the entirety of the period during which it overpaid Taxes.

Respectfully submitted,

Schaefer's Greenhouses, Inc.
Petitioner

By: 
(Appearing Pro Bono on behalf
of Petitioner)

Brett Harvey
398 Lake Run Lane
North Aurora, Illinois 60542
(310)210-1752
bharvey27@aol.com
Illinois Bar Number 6295073

By: 
(Secretary/Treasurer)

Mary Ann Kutnick
Schaefer Greenhouses co-owner Secretary/Treasurer
120 S Lake St
Montgomery, Illinois 60538
(630)896-1936
mak@schaefergreenhouses.com

Notice of Tentative Denial of Claim



#BWNKMGV
#CNXX XX42 5X28 2327#
SCHAEFER'S GREENHOUSES, INC.
120 S LAKE ST
MONTGOMERY IL 60538-1442

June 9, 2021



Letter ID: CNXXXX425X282327

License No: G-00342

Account ID: 40387755

We have reviewed the claim for credit on your Gas Revenue/Gas Use Tax account described on the last page of this letter and have tentatively denied it because we have not established that this tax was paid in error or that issuing a credit memorandum would not result in unjust enrichment to you.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied but the total penalties and interest being denied is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue,** and request an administrative hearing within 60 days of the date of this notice. 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 waive your right to a hearing, and this tentative denial of claim will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

If you have questions regarding this matter, write or call us weekdays between 8:00 a.m. and 4:30 p.m. Our address and telephone number are below.

Cam Metzger
Revenue Tax Specialist III
SALES TAX PROCESSING DIVISION

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19013
SPRINGFIELD IL 62794-9013

(217) 782-7517 ext. 33219
(217) 524-9001 fax

Claim Detail

<u>Batch Document Number</u>	<u>Reporting Period</u>	<u>Amount Claimed</u>
21-104-051-76 017	03/2018	\$1,037.04
21-104-051-76 022	04/2018	\$911.86
21-104-051-76 020	05/2018	\$155.71
21-104-051-76 019	06/2018	\$33.26
21-104-051-76 025	07/2018	\$22.37
21-104-051-76 028	08/2018	\$23.88
21-104-051-76 015	09/2018	\$147.43
21-104-051-76 008	10/2018	\$539.06
21-104-051-76 011	11/2018	\$1,092.29
21-104-051-76 001	12/2018	\$1,032.50
21-104-051-76 005	01/2019	\$1,233.98
21-104-051-76 029	02/2019	\$1,087.27
21-104-051-76 024	03/2019	\$1,090.56
21-104-051-76 007	04/2019	\$703.73
21-104-051-76 012	05/2019	\$337.68
21-104-051-76 027	06/2019	\$34.92
21-104-051-76 002	07/2019	\$3.55
21-104-051-76 013	08/2019	\$30.17
21-104-051-76 000	09/2019	\$93.96
21-104-051-76 031	10/2019	\$570.43
21-104-051-76 006	11/2019	\$967.80
21-104-051-76 018	12/2019	\$959.93
21-104-051-76 004	01/2020	\$1,002.86
21-104-051-76 014	02/2020	\$1,128.89
21-104-051-76 009	03/2020	\$1,005.48
21-104-051-76 010	04/2020	\$684.67
21-104-051-76 030	05/2020	\$313.03
21-104-051-76 032	06/2020	\$18.91
21-103-051-76 000	07/2020	\$3.79
21-102-051-76 001	08/2020	\$28.99
21-103-051-76 001	09/2020	\$200.50
21-104-051-76 016	10/2020	\$559.66
21-104-051-76 023	11/2020	\$761.09
21-104-051-76 026	12/2020	\$1,018.13
21-104-051-76 003	01/2021	\$1,109.50
21-104-051-76 021	02/2021	\$1,289.78

21,234⁶⁶



Account Summary for Schaefer Greenhse Attn: Accts Payable

Account Number: 55-04-72-1000 4
 Meter Number: 1158540
 Service Address: 120 S Lake St Montgomery IL
 Bill Period: 01/01/21 - 02/01/21 (31 days)
 Bill Issue Date: 02/02/21

Total Previous Balance	\$3,861.65
Payment Received 01/20/2021 - Thank you!	-\$3,861.65
Remaining Balance	\$0.00
New Charges	\$3,889.68
Total Amount Due by 02/17/2021	\$3,889.68

A Message for You

Facing financial hardship? Rest assured we can connect you to available energy assistance funding and/or offer you a flexible payment arrangement to help you pay your bill. Visit nicorgas.com/COVID-19.

Your safety is important to us. Ask to see an employee ID when our field team is working in or around your premises. Also, verify your account information with customer service before making a transaction over the phone.

Gas Trans Utility Commercial Heat
 Rate 74: General Transportation Service
 Group: 3493 Transport ID: 0335980080

Balance Summary 01/01/2021 - 01/31/2021

Total THERMS Delivered	46,229.43
NI-GAS Supplied	0.00
Maximum Daily Contract Quantity	2,600.00
Storage Banking Service Capacity	83,200.00

Pretax Charges 01/01/21 - 01/31/21 \$2,641.49

Transportation Administration	\$7.00
Monthly Customer Charge	\$205.59
Franchise Cost Adjustment	\$0.27
Efficiency Programs: 46,229.43 TH @ \$0.0098	\$453.05
Distribution Charge(Step 0 to 150): 150.00 @ \$0.1025	\$15.38
Distribution Charge(Step 150 to 5,000): 4,850.00 @ \$0.0314	\$152.29
Distribution Charge(Step 5,000 to 46,229.43): 41,229.43 @ \$0.024	\$989.51
Storage Banking Service Charge: 83,200.00 TH @ \$0.0064	\$532.48
Environment Cost Recovery: 46,229.43 TH @ \$0.0043	\$198.79
Transportation Serv Adjustment: 46,229.43 TH @ \$-0.0001	-\$4.62
Tax Cost Adjustment	\$9.24
Qualifying Infrastructure Charge \$1905.64 @ 4.33%	\$82.51

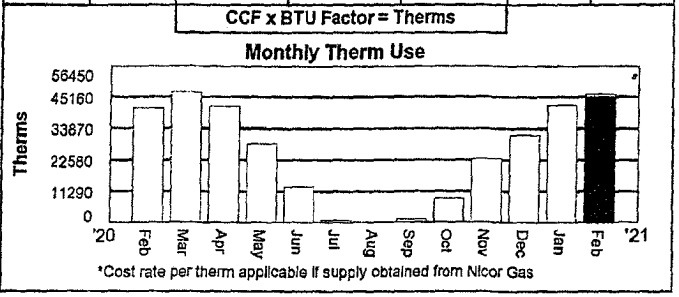
Taxes \$1,248.19

Municipal Utility Tax for IL - Montgomery \$2,641.49 @ 5.15%	\$136.04
State Gas Use Tax 46229.43 TH @ \$0.024	\$1,109.51
Utility Fund Tax \$2,641.49 @ 0.1%	\$2.64

Total \$3,889.68

Monthly Energy Profile

Current Reading 02/01/21 (Actual)	1603720	Previous Reading 01/01/21 (Actual)	1559650	Usage CCF 44070	BTU Factor 1.049	THERMS 46229.43	Avg. Daily Cost 2021 125.47	Avg. Daily THERMS 2021 1491.27
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40578
2-9-21

Home Gas: G-00342 1/31/2021

Need help using this site?

Period

SCHAEFFER'S GREENHOUSES, INC.
36-6192696

Gas
G-00342
Closed: 3/31/2021
1/31/2021

Balance: \$0.00

Period Alerts

There is 1 unread letter

I Want To

[File or Amend a Return](#)
[Make a Payment](#)

Summary

Tax	\$1,109.50
Credit	(\$1,109.50)
Balance	\$0.00

[Where are my credits?](#)

Period Activity

4/14/2021	Letter	Notice of Claim/Overpayment
4/14/2021	In Process	RG-1 Gas Return
2/16/2021	Completed	Payment Request
2/12/2021	Payment posted	Payment for \$1,109.50
2/10/2021	Processed	RG-1 Gas Return