

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

<b>Chicago Gadgets Inc.</b>	)	
	)	
Petitioner,	)	
v.	)	Docket No. 22 TT 21
	)	
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Illinois Independent Tax Tribunal	Illinois Department of Revenue
160 N. LaSalle Street Room N506	Office of Legal Services
Chicago, Illinois 60601	100 W. Randolph St., 7-900
ITT.TaxTribunal@illinois.gov	Chicago, Illinois 60601

**PLEASE TAKE NOTICE THAT** on March 10, 2022, the undersigned caused to be filed with the Illinois Independent Tax Tribunal, a true and correct copy of **PETITIONER'S PETITION**, a copy of which is attached hereto and served upon you.

*/s/ Timothy M. Hughes*\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Timothy M. Hughes, an attorney, hereby certify that on March 10, 2022 I served those persons named above with a copy of this Notice of Filing and the attached pleading by depositing the same in the U.S. Mail at 1933 North Meacham, Schaumburg, Illinois 60173 with postage prepaid before the hour of 5:00 p.m, and, with respect to the Illinois Independent Tax Tribunal, a copy via email.

*/s/ Timothy M. Hughes*\_\_\_\_\_

Timothy M. Hughes

Timothy M. Hughes  
Lavelle Law, Ltd.,  
1933 N. Meacham Rd., #600  
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ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
	)	
Respondent.	)	

**PETITION**

NOW COMES the Petitioner, **Chicago Gadgets Inc.** by and through its attorneys, LAVELLE LAW, LTD., and petitions the Illinois Independent Tax Tribunal to review and revoke the Assessment and Notice of Tax Liability (the “**Notice**”) issued to Petitioner with respect to the assessment of Sales/Use Tax & E911 of **Chicago Gadgets Inc.**, Account IDs 26-2020167 and 3910-2661 (the “**Corporation**”), by the Respondent, the ILLINOIS DEPARTMENT OF REVENUE, for the reasons stated below:

**INTRODUCTION**

1. The Notice was issued by Respondent on September 14, 2021 (Letter ID CNXXX2X488716323), assessing Petitioner for Sales/Use Tax & E911 for the tax periods of July 1, 2016 through June 30, 2018. *See Exhibit A.*

2. Taxpayer submitted a timely protest to the Office of Administrative Hearings, which on February 22, 2022 dismissed the protest due to lack of Jurisdiction *See Exhibit B.* Thus prompting this submittal. Justice and equity require that the Tax Tribunal exercise its equitable discretion and take jurisdiction so the assessments attached hereto be cancelled and declared null and void and of no effect whatsoever.

3. The amount of the proposed assessment is tax of \$37,951.00, late payment

penalty of \$7,590.00, interest of \$7,980.46 for a total assessment of \$53,521.46.

4. Petitioner was organized with the Illinois Secretary of State as a corporation on February 19, 2008.

5. Petitioner's principal office is located at 4613 N. Kedzie Ave. Chicago, Illinois 60621 and its telephone number is 773-463-9999.

6. Petitioner's EIN is 26-2020167.

### **BACKGROUND AND RELEVANT FACTS**

7. Chicago Gadgets, Inc. ("**Taxpayer**") operates an electronics store. At that store, Taxpayer (1) sells electronics at retail, and (2) repairs customers' electronics. Many of these repairs require Taxpayer to purchase parts to be incorporated into the repairs, such that the sales are taxable.

8. The only remaining issue in the audit was the proper method for taxing Taxpayer's repair sales, and specifically whether Taxpayer is a "de minimis" serviceman under 86 IL. Admin Code. 140.109.

9. Taxpayer is a de minimis serviceman and thus is permitted to pay service occupation taxes on the cost price of the goods it purchases to make repairs, rather than paying sales taxes on 50% of its gross sale price for the repairs.

10. A taxpayer is a de minimis serviceman if its "cost ratio" is below 35%. Under 86 IL. Admin Code. 140.105(a), a taxpayer's cost ratio is equal to its annual aggregate cost of tangible personal property transferred incident to sales of service, divided by its annual gross receipts from all sales of service. Part (c) of that regulation states that the cost of materials that are not transferred to customers incident to service, such as those sold at retail or removed from

inventory for use, must be excluded from Taxpayer's cost of tangible personal property for purposes of calculating its cost ratio.

11. In determining Taxpayer's cost ratio, the auditor divided Taxpayer's costs of goods sold by its gross sales, with those figures being pulled from Taxpayer's federal income tax returns (see the auditor's "Cost Ratio Calculation" spreadsheet, a copy of which is attached as Exhibit C). This method is flawed in that it does not take into account the fact that Taxpayer's cost of goods sold includes purchases of inventory to be sold at retail and purchases of repair parts that are kept in stock and not used until a subsequent year, neither of which should impact Taxpayer's cost ratio. Using this improper calculation method, the auditor determined Taxpayer's cost ratio to be 71% for 2016 and 56% for 2017 and taxed Taxpayer's repair sales as if Taxpayer was not a de minimis serviceman.

12. Taxpayer purchases used phones, some of which are resold as-is, some of which are repaired using Taxpayer's repair stock and resold, and some of which are disassembled for parts to be used in future repairs as needed. Taxpayer only determines how a phone will be used once it receives and examines the phone. That being the case, when Taxpayer makes purchases, it does not know whether it is purchasing inventory to be sold at retail or repair parts.

13. Taxpayer proposed to provide a full year of its repair sales invoices. For each invoice, Taxpayer can provide an estimate of the cost of the parts that were required to make that repair. As an example, see the spreadsheet summarizing Taxpayer's repair sales for May 2017 attached as Exhibit D, which Taxpayer provided to the auditor for purposes of documenting its May 2017 ST-1 deduction for sales of service. In that month, Taxpayer made total repair sales of \$32,058.51 (this number is supported by sales invoices, and has been accepted by the auditor).

14. Taxpayer estimates that its cost of parts to make these repairs was \$7,147.50 (on an invoice-by-invoice basis, Taxpayer can provide support for its estimate, such as a list of the repair parts needed and the current cost to acquire those parts). Based on these figures, Taxpayer's cost ratio for May 2017 was 22.3%, below the 35% de minimis serviceman threshold and significantly lower than the auditor's calculations.

15. Taxpayer also provided the auditor with the spreadsheet attached as Exhibit E listing the 10 most common repairs it performs for its customers and, for each repair, the amount it charges its customers and the cost of repair parts. The cost ratio for each type of repair is well below 35%, further supporting Taxpayer's assertion that its cost ratio is below that threshold.

**COUNT I**  
**IMPROPER CALCULATION OF ASSESSMENT**

16. Petitioner realleges and incorporates by reference Paragraphs 1-15 as Paragraph 16 of Count I as though fully set forth herein.

17. As stated above, a taxpayer can only be held responsible for a transferor's tax liabilities under Section 902(d) of the Act if either (a) the taxpayer acquired assets from another taxpayer at a time when the transferor had outstanding taxes due to Respondent and failed to follow Bulk Sales Procedures, or (b) the taxpayer acquired assets from another taxpayer that were encumbered by lien in favor of Respondent.

18. Taxpayer requests that the Tribunal order the auditor to permit Taxpayer to provide the same information for all of 2017 that it already provided for May 2017 (a summary of invoices, supported by actual invoices, with an estimate of the cost of repair parts for each invoice) and recalculate Taxpayer's cost ratio for the entire audit period accordingly. Based on

the information provided for May 2017, Taxpayer estimates that recalculating its cost ratio in this manner and taxing it as a de minimis serviceman would result in a reduction to the proposed tax assessment of approximately \$21,600 (\$900 per month).

**CONCLUSION AND RELIEF REQUEST**

19. Based on the information provided for May 2017, Taxpayer estimates that recalculating its cost ratio in this manner and taxing it as a de minimis serviceman would result in a reduction to the proposed tax assessment of approximately \$21,600 (\$900 per month).

WHEREAS, for the reasons set forth herein, the Petitioner requests that the Notice be revoked.

Respectfully Submitted,  
**Chicago Gadgets Inc.**

By: /s/ Timothy M. Hughes  
One of its attorneys

Dated: March 10, 2022

Timothy M. Hughes  
Lavelle Law, Ltd.,  
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[thughes@lavellelaw.com](mailto:thughes@lavellelaw.com)

# **EXHIBIT A**

**Chicago Gadgets Inc.  
FEIN: 26-2020167**

# Notice of Tax Liability



#BWNKMGV  
#CNXX X2X4 8871 6323#  
CHICAGO GADGETS INC  
4613 N KEDZIE AVE  
CHICAGO IL 60625-4404

September 14, 2021



Letter ID: CNXXX2X488716323  
Account ID: 3910-2661  
Reporting period: June 30, 2018

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods July 01, 2016, through June 30, 2018, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	37,951.00	0.00	37,951.00
Late Payment Penalty Increase	7,590.00	0.00	7,590.00
Interest	7,980.46	0.00	7,980.46
<b>Assessment Total</b>	<b>\$53,521.46</b>	<b>\$0.00</b>	<b>\$53,521.46</b>

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

AUDIT BUREAU  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

EXHIBIT

A



# **EXHIBIT B**

**Chicago Gadgets Inc.  
FEIN: 26-2020167**



**Illinois Department of Revenue  
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Lee Building  
101 West Jefferson Street – MC 5-550  
Springfield, IL 62702  
(217)782-6995

February 22, 2022

Timothy M. Hughes  
Lavelle Law, Ltd.  
1933 N. Meacham Road, Suite 600  
Schaumburg, IL 60173

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**  
Chicago Gadgets Inc.  
Notice of Tax Liability, dated September 14, 2021  
Account ID: 3910-2661  
Letter ID: CNXXX2X488716323

Dear Mr. Hughes:

The Office of Administrative Hearings of the Illinois Department of Revenue received your **timely** protest and request for an administrative hearing behalf of Chicago Gadgets Inc. regarding the above Notice. However, the assessment at issue for the protest exceeds the statutory amount for which the Department has jurisdiction for protests filed on or after January 1, 2014. **The Department does not have jurisdiction over this protest and is respectfully dismissing your protest and request for administrative hearing.**

Jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **The Tax Tribunal's rules provide that a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) of Section 5000.310 of the Tax Tribunal's rules.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

Terry D. Charlton  
Chief Administrative Law Judge

TDC

**EXHIBIT B**



























