

Rec'd 9-28-2022  
John Segal - JST

ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

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MD'S & WE'RE NOT DOCTORS, INC. )  
Petitioner, )

vs. )

ILLINOIS DEPARTMENT )  
OF REVENUE, )

Respondent. )

Case No. 22TT39

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**PETITION**

Petitioner, MD's & We're Not Doctors, Inc., d/b/a Pizano's Pizza & Pasta ("Pizano's" or "Petitioner"), hereby petitions the Illinois Independent Tax Tribunal to dismiss a Notice of Tax Liability issued by the Illinois Department of Revenue, as more fully stated below:

**PARTIES**

1. Petitioner is an Illinois corporation with its corporate office at 67 E. Madison St, Ste. 265, Chicago, IL 60603. Petitioner's telephone number is (312) 236-2888. Petitioner's taxpayer ID number is 2226-4191.

2. Respondent, the Illinois Department of Revenue ("Department"), is an agency of the State of Illinois and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS § 5/5-15.

**JURISDICTION**

3. The Department issued a Notice of Tax Liability ("NTL") dated March 1, 2022. A copy of the NTL is attached as Exhibit 1.

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

5. The Tribunal has jurisdiction over this matter because Petitioner timely filed this Petition within 60 days of the NTL and the amount at issue exceeds \$15,000.00 exclusive of penalties. *See* 35 ILCS §§ 1010/1-45 and 1010/1-50.

### **PROCEDURAL HISTORY AND RELEVANT FACTS**

6. Petitioner owns and operates a local restaurant. Petitioner received a Notice of Audit Initiation dated June 30, 2020 concerning Illinois sales and use taxes for the period from July 1, 2017 through January 31, 2020 (the "Audit Period").

7. Petitioner's accountant reached out to the Auditor via email a few different times to discuss the Notice and the documents the Auditor needed to conduct the audit; however, no response was received.

8. In response to the Auditor's document requests, Petitioner provided the following documents: complete copies of federal income tax returns for 2017, 2018, and 2019; reports from its point-of-sale (POS) system showing net sales, sales taxes, credit card charges, and online payments for each month of the Audit Period; bank statements for each month of the Audit Period; copies of its general ledger; monthly sales summaries; a price list for its food and beverage items; sales by item reports for several of its suppliers; and invoices for certain beverage suppliers.

9. On January 22, 2021, the Auditor requested Petitioner's Forms 1099-K. On February 16, 2021, Petitioner's accountant provided the Forms 1099-K with a cover letter and other supporting documentation, explaining why the Forms 1099-K were wrong and imploring the Auditor not to rely on the Forms 1099-K. (*See* Exhibit 2 to the Petition.) Petitioner's accountant also had explained several months prior, in July 2020, that the Forms 1099-K were unreliable and contained inaccurate information.

10. On May 26, 2021, the Auditor emailed Petitioner's accountant the results of her purported findings: Despite being implored by Petitioner's accountant not to rely on the erroneous Forms 1099-K, and despite having been provided sufficient other documentation on which to conduct a proper audit, the Auditor inexplicably relied *exclusively* on the erroneous Forms 1099-K nonetheless to determine Petitioner's purported sales tax liability.

11. In August 2021, Petitioner availed itself of the Department's Fast Track Resolution (FTR) Program in an attempt to resolve the matter, but the parties were unable to reach agreement during the one-day proceeding *because no audit had actually been conducted*.

12. After FTR, Audit agreed to review Petitioner's books and records. One of the key outstanding issues to be resolved was the proper accounting of certain local taxes to determine tax liability (specifically, the City of Chicago restaurant tax and the Metropolitan Pier and Exposition Authority Food and Beverage Tax).

13. On December 7, 2021, Petitioner's counsel emailed the Auditor and asked what additional documentation was needed to substantiate these local taxes so that they could be properly accounted for. The Auditor did not respond to counsel's email.

14. Instead, a few days later on December 10, 2021, in a separate email, the Auditor sent a Notice of Proposed Tax Liability and associated workpapers.

15. Despite being alerted to this issue by Petitioner's accountant and counsel, the Auditor's workpapers revealed the Auditor had assumed that: (a) 100% of the dollar amounts reflected as "Sales Tax" in Petitioner's POS reports was Illinois Retailers' Occupation Tax,; and (b) the difference between the "Sales Tax" figures in the POS reports and the amount reported to the Department on Form ST-1 (Sales and Use Tax and E911 Surcharge Return) was an underreporting of Illinois Retailers' Occupation Tax due to the Department.

16. The Auditor's assumptions are wrong for at least three reasons:

- a. The “Sales Tax” figure in Petitioner’s POS reports included amounts collected for the Metropolitan Pier and Exposition Authority Food and Beverage Tax, which taxes were separately remitted to the Department and reported on Form ST-4.
- b. The “Sales Tax” figures in Petitioner’s POS reports included amounts collected for the Chicago Restaurant Tax, which taxes were separately remitted to the City of Chicago and reported on Form 7525.
- c. A “Retailer’s discount” applies when a retailer timely files and pays the tax owed before the due date such that the entire amount collected is not required to be remitted to the Department. (*See* Form ST-1 Instructions for Step 4, Line 10.)

17. Petitioner’s counsel requested a conference with the Auditor and her supervisor to explain these issues. In advance of the conference, Petitioner’s counsel provided the Auditor and her supervisor with copies of: (1) Petitioner’s Forms ST-4 showing the Metropolitan Pier tax for each month during the Audit Period; (2) Petitioner’s Forms 7525 showing the Chicago Restaurant tax reported and paid for each month during the Audit Period; and (3) the City of Chicago Restaurant Tax Regulations.

18. On January 11, 2022, Petitioner’s counsel and Petitioner’s accountant participated in a conference with the Auditor and her supervisor and explained why it was inaccurate to simply assume the “Sales Tax” figure in the POS reports was comprised solely and entirely of Retailers’ Occupation Tax. Audit refused to adjust the proposed assessment. Audit simply went silent.

19. On March 1, 2022, the Department issued the NTL which assessed a total of \$163,031.19 comprised of: tax of \$122,056.00; a late payment penalty of \$24,411.00; and interest of \$16,564.19. (*See* Exhibit 1 to the Petition.)



20. Petitioner disputes the NTL in full.

21. The Department used an incorrect and erroneous methodology, which resulted in inaccurate and overstated tax assessments for the Audit Period, and the issuance of an arbitrary and capricious NTL to Petitioner.

22. The Department should not be entitled to a presumption of correctness because it refused to take into account documents and records provided by Petitioner demonstrating that it collected, reported, and paid other taxes, which were included in the "Sales Tax" amounts in its POS reports, and instead assumed, without any reasonable basis, that the "Sales Tax" figure in the POS reports was comprised solely of Illinois Retailers' Occupation Tax and represented the correct amount of Retailers' Occupation Tax.

23. The Department ignored or otherwise failed to consider all relevant books, records, bank statements, tax returns, and other documents in determining tax liability.

### COUNT I

#### THE AUDIT CANNOT BE AFFORDED A PRESUMPTION OF CORRECTNESS

24. Petitioner incorporates and realleges paragraphs 1 – 23 herein.

25. The Audit and the corresponding NTL cannot be afforded a presumption of correctness because the Department incorrectly and erroneously assumed that all "Sales Tax" amounts in the POS reports were Illinois Retailers' Occupation Tax.

26. The Department issued its NTL despite (a) being informed that its methodology was not correct and (b) being provided with documentation substantiating the other sales taxes collected, reported, and remitted by Petitioner.

27. This incorrect methodology resulted in an inaccurate amount of additional sales tax liability and an arbitrary and capricious determination without reasonable cause of additional taxes purportedly due.

**WHEREFORE**, Petitioner prays that the Tax Tribunal enter an order that:

- a. enters judgment in favor of Petitioner and against Respondent with respect to all purported tax liabilities set forth in the NTL;
- b. enjoins Respondent from taking any action to lien, levy, offset or otherwise collect the amounts purportedly due as set forth in the NTL; and
- c. grant such further relief as the Tax Tribunal deems appropriate.

**COUNT II**

**PENALTY ABATEMENT FOR REASONABLE CAUSE**

28. Petitioner incorporates and realleges paragraphs 1 – 23 herein.

29. In the NTL, the Department assessed penalties based on purported tax liabilities determined during the audit.

30. Under Illinois law, no penalties shall apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS § 735/3-8.

31. 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 its proper tax liability in a timely fashion and to file returns and pay the proper liability in a timely fashion. *See* 86 Ill. Admin. Code § 700.400(b).

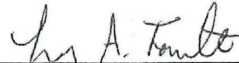
32. A taxpayer will be considered to have made a good faith effort to determine and pays its proper tax liability if it exercised ordinary business care and prudence in doing so. *See* 86 Ill. Admin. Code § 700.400(c).

33. Petitioner made all commercially reasonable efforts and exercised ordinary business care and prudence to determine and remit its sales tax liability, and to file all of its returns consistent therewith.

**WHEREFORE**, Petitioner prays that the Tax Tribunal enter an order that any penalties assessed by the Department be abated in full based on reasonable cause.

Respectfully submitted,

MD'S & WE'RE NOT DOCTORS, INC.



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One of its attorneys

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# Exhibit 1



# Notice of Tax Liability



#BWNKMGV  
#CNXX X116 632X 6486#  
MDS & WERE NOT DOCTORS INC  
PIZANOS PIZZA & PASTA  
ATTN: JAMES J BURESS CPA LTD  
167 N SPRING ST  
ELGIN IL 60120-5541

March 1, 2022



Letter ID: CNXXX116632X6486

Account ID: 2226-4191

Reporting period: January 31, 2020

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods July 01, 2017, through January 31, 2020, 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	122,056.00	0.00	122,056.00
Late Payment Penalty Increase	24,411.00	0.00	24,411.00
Interest	16,564.19	0.00	16,564.19
<b>Assessment Total</b>	<b>\$163,031.19</b>	<b>\$0.00</b>	<b>\$163,031.19</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 2**

JAMES J. BURRESS, CPA LTD.

*Certified Public Accountant*  
167 NORTH SPRING STREET  
ELGIN, ILLINOIS 60120  
(847) 608-8676  
FAX (847) 608-8177

February 16, 2021

Ms. Janet Bonds  
9511 West Harrison St.  
Des Plaines, IL 60016-1563

Sent via email: [Janet.Bonds@Illinois.gov](mailto:Janet.Bonds@Illinois.gov)

Re: MD's & We're Not Doctors Inc.

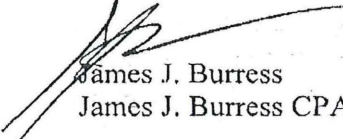
Dear Ms. Bonds:

This is in response to your EDA-70 dated January 22, 2021. The 1099ks that you are requesting accompany this letter, however I must implore you not to make your determination on these documents, because as I have explained numerous time they are in ERROR. Making your determination based on the 1099ks will result in an erroneous determination.

As I have previously explained, when a related entity signed up for merchant services they mistakenly provided the FEIN of MD's & We're Not Doctors Inc (**see the attached Exhibit A**). You will see that the location of this establishment was 800 N. Dearborn, Chicago, Illinois. You will further note that the FEIN provided 36-3720050 is the FEIN number of MD's & We're not Doctors Inc. This location is a part of the related entity 1808 Glenview Inc, and has ALWAYS been reported by 1808 Glenview Inc. I am attaching the ST-2 from 1808 Glenview Inc as evidence that this location reports the sales from the 800 N. Dearborn St. location (**see attached Exhibit B**). The erroneous merchant services application is what is creating the issue at hand.

Again, do not rely on the erroneous 1099k(s). You have sufficient credible information to make a sound determination. You have the bank statements, purchase documentation, monthly recapitulations of the TRUE credit card sales, monthly sales summaries that tie back into the bank statement, along with other documentation provided to date.

Very truly,

  
James J. Burress  
James J. Burress CPA Ltd

**[Exhibits to Letter Removed for  
Purposes of Tax Tribunal Filing.  
Available Upon Request.]**



**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, certifies that s/he served a true and correct copy of the foregoing **Petition** upon the parties listed below, by personal service before 5:00 p.m. on April 28, 2022.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph Street, 7-900  
Chicago, Illinois 60601

  
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Lauren A. Ferrante  
Akerman LLP  
71 South Wacker Drive, 47<sup>th</sup> Floor  
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[lauren.ferrante@akerman.com](mailto:lauren.ferrante@akerman.com)