

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

**RECEIVED**  
AUG 21 2014

I Q GAS & FOOD CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

*14 TT 166*

**PETITION**

I Q Gas & Food Corporation (“Petitioner”), by and through its attorneys, Romanoff & Dickett, Ltd., complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 9955 South Western Avenue, Chicago, Illinois, 60643, and can be reached at 773-671-0427.
2. Petitioner is represented by Romanoff & Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).
3. Petitioner’s Taxpayer (Account) ID is 3573-3128.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

### **NOTICE**

5. On May 27, 2014, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods April 1, 2011 to December 31, 2012. The Notice reflects \$73,878 in tax due, \$14,776 in late payment penalties, and \$2,911 in interest, for a total assessment balance of \$91,564. The Notice is attached hereto as Exhibit 1.

### **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because: (a) Petitioner timely filed an Illinois Department of Revenue Administrative Hearings Division protest within 60 days of the Notice; (b) the Department dismissed the protest for lack of jurisdiction (copy attached) but provided 60 days to file this Petition with the Tax Tribunal; and (c) Petitioner timely filed this Petition within 60 days from the Department’s letter.

### **BACKGROUND**

8. Petitioner is located at 99<sup>th</sup> Street and Western Avenue (south side).

9. Defendant audited Petitioner’s books and records for the tax periods April 1, 2011 to December 31, 2012.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s purchases by estimated industry standard selling prices of Petitioner’s products (i.e., gas and mini-mart items).

## **COUNT I**

### **Defendant's audit methodology overstates Petitioner's liability.**

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices.

13. By applying such estimated prices to Petitioner's purchases during the audit period, the Department drastically and unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department especially with respect to cigarette sales and also with respect to gas sales due to severe local competition and proximity to the suburbs and Indiana.

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

- (a) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice.

## **COUNT II**

### **All penalties should be abated based on reasonable cause.**

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed late payment/filing penalties.

16. Illinois law provides that late payment penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

17. 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 and pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).

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

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated prices.

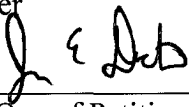
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that all penalties should be fully abated based on reasonable cause; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice.

Thank you for considering this Petition.

Respectfully submitted,

I Q Gas & Food Corporation,  
Petitioner

By:   
One of Petitioner's Attorneys

Date: 8/20/14

James E. Dickett  
Romanoff & Dickett, Ltd.  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report

Exhibit 1



#BWNKMGV  
#CNXX X189 18XX 8XX3#  
I Q GAS & FOOD CORP  
ATTN: CPA-S.C.MALHOTRA  
2545 W PETERSON AVE  
CHICAGO IL 60659

May 27, 2014



Letter ID: CNXXX18918XX8XX3

Account ID: 3573-3128

We have audited your account for the reporting periods April 01, 2011, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	73,878.00	0.00	73,878.00
Late Payment Penalty Increase	14,776.00	0.00	14,776.00
Interest	2,910.58	0.00	2,910.58
<b>Assessment Total</b>	<b>\$91,564.58</b>	<b>\$0.00</b>	<b>\$91,564.58</b>

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 contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest 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, which is July 28, 2014. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability 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.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

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.

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.

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

217 785-6579



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

July 18, 2014

I Q Gas & Food Corporation  
c/o Mr. Ramos  
9955 S. Western Avenue  
Chicago, IL 60643

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**  
I Q Gas & Food Corporation  
Account ID: 3573-3128  
Notice of Tax Liability (NTL) dated May 27, 2014  
Letter ID: CNXXX18918XX8XX3

Dear Mr. Ramos:

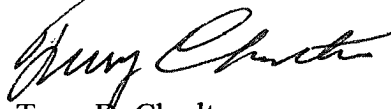
The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing for the above NTL. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Notice. However, the amount of liability at issue for the protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **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. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton", written in a cursive style.

Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC:vs



Illinois Department of Revenue

# IL-2848 Power of Attorney

## Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney.  
**Do not send this form separately.**

## Step 1: Complete the following taxpayer information

1 I Q Gas & Food Corporation 9955 S. Western Ave.  
Taxpayer's name Taxpayer's street address  
2 3573-3128 Chicago IL 60643  
Taxpayer's identification number(s) City State ZIP

## Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

### GUST DICKETT/JAMES DICKETT

Name  
ROMANOFF & DICKETT, LTD.  
Name of firm  
600 HILLGROVE AVE., SUITE 1  
Street address  
WESTERNSPRING IL 60558  
City State ZIP  
(708) 784-3200  
Daytime phone number  
JDICKETT@AOL.COM  
E-mail address

ALL ALL  
Specific tax type Year or period

Name  
Name of firm  
Street address  
City State ZIP  
Daytime phone number  
E-mail address

Specific tax type Year or period

Name  
Name of firm  
Street address  
City State ZIP  
Daytime phone number  
E-mail address

Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above **do not** have the power to – Check only the items below you **do not** wish to grant.

- ☒ endorse or collect checks in payment of refunds.
- ☒ receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- ☐ execute waivers (including offers of waivers) or restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- ☐ execute consents extending the statutory period for assessments or collection of taxes.
- ☐ delegate authority or substitute another representative.
- ☐ file a protest to a proposed assessment.
- ☐ execute offers in compromise or settlement of tax liability.
- ☐ represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- ☐ obtain a private letter ruling on behalf of the taxpayer.
- ☐ perform other acts (explain) \_\_\_\_\_

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

Amjed Kadwani, CPA  
Name  
2622 W. Peterson  
Street address  
Chicago IL 60659  
City State ZIP  
(773) 262-1600  
Daytime phone number  
Date granted

Name  
Street address  
City State ZIP  
Daytime phone number  
Date granted

Name  
Street address  
City State ZIP  
Daytime phone number  
Date granted





7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

**JAMES DICKETT**

Name  
**600 HILLGROVE AVE., SUITE 1**  
Street address  
**WESTERN SPRING IL 60558**  
City State ZIP  
**(708) 784-3200**  
Daytime phone number

Name  
Street address  
City State ZIP  
Daytime phone number

Name  
Street address  
City State ZIP  
Daytime phone number

**Step 3: Taxpayer's signature**

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Taxpayer's signature	Title, if applicable	Date
Spouse's signature	Title, if applicable	Date
<input checked="" type="checkbox"/> Corporation or partnership, signature of officer or partner	Title, if applicable	Date

**Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent**

I declare that I am not currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
<b>ATTORNEY</b>	<b>IL</b>	<i>Gust Dickett</i>	<b>7-31-14</b>
<b>ATTORNEY</b>	<b>IL</b>	<i>J. E. Dickett</i>	<b>7-31-14</b>
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date

**Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent**

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

Is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness	Date
Signature of witness	Date

appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary	Date
Signature of notary	Date

**Notary seal**

