

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CROSS CARPET SERVICE, INC., an
Illinois corporation,

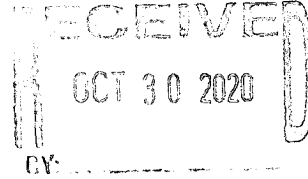
Petitioner,

v.

DAVID HARRIS, in his official capacity as
DIRECTOR OF THE ILLINOIS DEPARTMENT
OF REVENUE, and the ILLINOIS DEPARTMENT
OF REVENUE,

Defendants.

No.



20π122

VERIFIED PETITION

Petitioner, Cross Carpet Service, Inc., an Illinois corporation (“Petitioner”), by and through its attorneys, Kelleher & Holland, LLC, complains of the Defendants, the Illinois Department of Revenue (“Department”) and David Harris, Director of the Department (“Director Harris”) (collectively, the Department and Director Harris are referred to as “Defendants”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 907 Diamond Lake Road, Mundelein, IL 60060.
2. Petitioner is represented by Vasili D. Russis of Kelleher & Holland, LLC located at 102 S. Wynstone Park Drive, North Barrington, Illinois 60010, who can be reached at 847-382-9195 or vrussis@kelleherholland.com.
3. Petitioner's Illinois Business Tax number is 1122-9731.
4. Petitioner was incorporated to operate a carpet and flooring sales and installation business.

5. 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.

6. Director Harris is the current Director of the Department.

7. Director Harris is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the Director of the Department. 20 ILCS 5/5-20.

NOTICE

8. On September 2, 2020, the Defendants issued a Notice of Tax Liability (“Notice”) totaling tax, penalties, and interest of \$60,327.35 for the period of January 1, 2016 through June 30, 2018 (“Period at Issue”). A true and accurate copy of the Notice is attached hereto as Exhibit A.

JURISDICTION

9. 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.

10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45, and 1-50 of the Tribunal Act because Petitioner timely filed a protest with the Tribunal within 60 days of the Notice.

BACKGROUND

11. Petitioner was incorporated to sell carpet and flooring products and provide installation services for same.

12. The Department audited the Petitioner's books and records for the Period at Issue.

13. In addition to performing a detailed audit of Petitioner's sales, the Department's auditor also utilized a sample period and extrapolated those figures to either the full audit period of January 1, 2016 through June 30, 2018 or to a 30-month audit period.

14. The Department made several adjustments to Petitioner's sales and use tax returns that resulted in the assessed liability at issue.

15. The Department included receipts for installation services otherwise not subject to tax under 86 Ill. Admin. Code § 130.450(b) to be included in amounts subject to tax from Petitioner.

16. The Department disallowed deductions claimed by Petitioner for sales to exempt customers.

17. The Department miscalculated tax on alleged sales of products and services made by Petitioner.

COUNT I
Defendants Included Receipts Not Subject to Tax Under 86 Ill.
Admin. Code §130.450(b)

18. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 17, inclusive, hereinabove.

19. Petitioner's invoices provided in the audit reflect charges for installation of carpeting and/or flooring which are separate from charges for the tangible personal property also sold (i.e., carpeting and/or flooring).

20. 86 Ill. Admin. Code §130.450(b) provides that:

“... where the seller and the buyer agree upon the installation, alteration or other special service charges separately from the selling price of the tangible personal property which is sold, then the receipts from the installation, alteration or other special service charge are not part of the “selling price” of the tangible personal property which is sold, but instead such charge is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.”

21. As such charges for installation of carpeting and/or flooring are separately stated, pursuant to 86 Ill. Admin. Code §130.450(b), the amounts for charges relating to

installation are not to be included in the figure upon which the seller computes its Retailers' Occupation Tax liability.

22. The liabilities assessed for the period beginning January 1, 2016 and ending June 30, 2018 are improper because they do not reflect 86 Ill. Admin. Code §130.450(b).

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

- (a) Finds and declares that Defendants may not assess a liability against Petitioner for the period beginning January 1, 2016 and ending June 30, 2018 for receipts and amounts related to installation of carpeting and/or flooring products;
- (b) Enters judgment in favor of Petitioner and against the Defendants and cancels the Notice;
- (c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notice; and
- (d) Grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

Defendants' Audit Sample Grossly Overstates Petitioner's Liability

23. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 17, inclusive, hereinabove.

24. On audit, the Department used a sample month and a sample year in calculating whether additional sales and use tax was owed during the Period at Issue.

25. The auditor calculated tax on items which were already taxed and incorrectly calculated tax on tangible personal property sold.

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

- (a) Finds and declares that Defendants may not assess a liability against Petitioner for the period beginning January 1, 2016 and ending June 30, 2018 for incorrectly taxing tangible personal property sold;
- (b) Enters judgment in favor of Petitioner and against the Defendants and cancels the Notice;
- (c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notices; and
- (d) Grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

The Notice Is Invalid Because Many Sales Were Made to Exempt Organizations

26. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 17, inclusive, hereinabove.

27. During the periods at issue, Petitioner made sales to exempt organizations.

28. Defendants, on audit, failed to exclude sales made by Petitioner to exempt organizations.

29. These customers were, in fact, exempt and Petitioner has exemption certificates for almost all customers to establish that the customers were exempt entities for Illinois sales and use tax purposes.

30. The deductions for sales to these exempt entities should be allowed.

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

- (a) Finds and declares that Defendants may not assess a liability against Petitioner for the period beginning January 1, 2016 and ending June 30, 2018 for sales made to exempt organizations;
- (b) Enters judgment in favor of Petitioner and against the Defendants and cancels the Notice;
- (c) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notice; and
- (d) Grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT IV

All Penalties Should be Abated Based on Reasonable Cause

31. Petitioner realleges and reincorporates the allegations in Paragraphs 1 through 17, inclusive, hereinabove.

32. In its Notice, Defendants assessed penalties in an amount totaling \$8,898.00.

33. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS §734-8.

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

35. 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).

36. Petitioner reasonably paid tax on all purchase it made within and without Illinois.

37. Petitioner reasonably collected tax on all sales that it made within Illinois.

38. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability.

39. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

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;
- (b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of penalties on the Notice; and
- (c) Grants such further relief as the Tribunal deems appropriate under the circumstances.

WHEREAS, Petitioner requests that the Notice be modified or cancelled for the reasons contained herein.

CROSS CARPET SERVICE, INC., an
Illinois corporation

By: 

Vasili D. Russis, one of the
Attorneys representing Petitioner

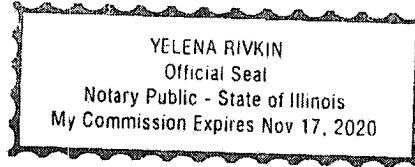
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North Barrington, IL 60010
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F: (847) 382-9125
vrussis@kelleherholland.com
ARDC# 6230171

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Petition are true, accurate and correct.

By: *Douglas Tenyan*
Douglas Tenyan, President of Cross
Carpet Service, Inc., an Illinois
Corporation

Subscribed and Sworn to before me this
29 day of October, 2020.



Yelena Rivkin
Notary Public

Notice of Tax Liability



#BWNKMGV
#CNXX XXX9 23X1 X4X0#
CROSS CARPET SERVICE INC
907 DIAMOND LAKE RD
MUNDELEIN IL 60060-3507

September 2, 2020



Letter ID: CNXXXXX923X1X4X0
Account ID: 1122-9731
Reporting period: June 30, 2018

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 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	44,488.00	0.00	44,488.00
Late Payment Penalty Increase	8,898.00	0.00	8,898.00
Interest	6,941.35	0.00	6,941.35
Assessment Total	\$60,327.35	\$0.00	\$60,327.35

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

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by a filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1, *et seq.*

Bankruptcy Information

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 that you are required to file tax returns. For those under 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.

Explanation of Penalties and Fees

For more detailed information, see Publication 103, Penalties and Interest for Illinois taxes.

Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owe by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. A bad check or negligence penalty may also be waived due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations. A fraud penalty or cost of collection fee cannot be waived.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax. Interest cannot be waived.

Late-filing or Nonfiling penalty - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

Late-payment penalty for underpayment of estimated or accelerated tax due - You owe this penalty if you were required to make estimated or accelerated tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

Late-payment penalty for regular tax payments - You owe this penalty if you did not pay the tax you owed by the due date of the payment or the original due date of the return.

Cost of collection fee - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

Bad check penalty - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

Negligence penalty - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

Fraud penalty - You owe this penalty if any part of a deficiency is due to fraud.

Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

Protest Rights

If you do not agree, you may protest 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 **November 02, 2020**. 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). 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, 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), and file a complaint with the circuit court for a review of our determination.