



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. See 20 ILCS 5/5-15.

5. Director Hamer is the current Director of the Department.

6. Director Hamer 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. See 20 ILCS 5/5-20.

### **NOTICES**

#### **Retailers Occupation/Use Tax**

7. On May 6, 2014, the Department issued a Notice of Tax Liability (the “NTL”) to Petitioner assessing a total Retailers Occupation Tax/Use Tax (“ROT”) liability of \$237,702.42, covering the period January 2010 through December 2012 (the “period at issue”). The total liability consists of \$187,714 in tax due, \$37,543 in late payment penalties and \$12,445.42 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

### **JURISDICTION**

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

9. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the issuance of the NTL.

### **BACKGROUND**

10. Petitioner is a gas station and retailer of gas and other general merchandise. The Department audited Petitioner’s books and records for the period at issue.

11. The ROT audit liability stated in the NTL is based on projections whereby the Department: (1) multiplied Petitioner's gas purchases by average pump prices as published by the U.S. Energy Information Administration to project Petitioner's total gas sales; (2) multiplied Petitioner's other high tax merchandise purchases by a 26 percent markup (26%) to determine Petitioner's total other high tax merchandise sales; (3) disallowed Petitioner's claimed low tax (food) sales and applied the high tax rate to those sales; and (4) disallowed Petitioner's claimed deductions for newspaper sales and a portion of Petitioner's food stamp ("link") sales and applied the high tax rate to those sales.

### **COUNT I**

#### **Defendants' Audit Methodology Overstates Petitioner's ROT Liability**

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11 above as this paragraph 12.

13. On information and belief, the U.S. Energy Information Administration pump prices utilized by the Department to project Petitioner's gas sales were overstated for the following reasons:

a. The U.S. Energy Information Administration pump prices utilized by the Department were higher than the average actual pump prices where Petitioner was located;

b. Petitioner actually sold gas at a price between 5 to 10 cents per gallon lower than other gas stations in the area where Petitioner was located; and

c. Petitioner also provided an additional 10 cent discount on cash gas sales and cash gas sales comprised nearly 50 percent of Petitioner's total gas sales.

14. The 26 percent markup utilized by the Department to project Petitioner's other high tax merchandise sales was arbitrary and too high and overstated those sales. Petitioner's actual markup was less than 26 percent.

15. The Department further erred in failing to adjust Petitioner's purchases of general merchandise for spoilage and theft losses in estimating the other high tax merchandise sales. The Department further erred by failing to take into account Petitioner's sales promotions, where products were periodically sold at cost or below cost.

16. The Department also erred in disallowing Petitioner's reported low tax sales and applying the high tax rate to those sales.

17. The Department erred in disallowing Petitioner's deductions for newspaper sales and applying the high tax rate to those sales.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against Defendants and cancels the NTL;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTL; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

## **COUNT II**

### **All Failure to File and Pay Penalties should be Abated for Reasonable Cause**

18. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 17 as this paragraph 18.

19. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

20. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

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

22. Petitioner's failure to timely pay its ROT liabilities during the period at issue was due to reasonable cause warranting abatement of the late filing and late payment penalties.

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

(a) Finds and declares that all late filing and late payment penalties should be abated for 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 the failure to file and failure to pay penalties stated in the NTL; and

[SPACE LEFT INTENTIONALLY BLANK]

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

SAHOURI-WAY-LO, INC.,  
Petitioner

By:

  
\_\_\_\_\_  
One of Petitioner's Attorneys

Lane M. Gensburg  
Anne J. Kim  
Dale & Gensburg, P.C.  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606  
T – 312-263-2200  
F – 312-263-2242  
[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
[akim@dandgpc.com](mailto:akim@dandgpc.com)

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**Exhibit A**

# Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



RECEIVED

MAY 12 2014

DALE & GENSBURG, P.C.

May 6, 2014



Letter ID: CNXXX569X616XX3

Account ID: 3750-7141

#BWNKMGV  
#CNXX XX56 9X61 6XX3#  
SAHOURI WAY LO INC  
ATTN: CPA-LANE M. GENSBURG  
200 WADAMS ST STE 2425  
CHICAGO IL 60606-5251

We have audited your account for the reporting periods January 01, 2010, 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	197,994.00	(10,280.00)	187,714.00
Late Payment Penalty Increase	37,543.00	0.00	37,543.00
Interest	12,445.42	0.00	12,445.42
<b>Assessment Total</b>	<b>\$247,982.42</b>	<b>(\$10,280.00)</b>	<b>\$237,702.42</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 07, 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

217 785-6578

## Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 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.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 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.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 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.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

### Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed 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. 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.

### 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 (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## 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 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 to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

# Taxpayer Statement



May 6, 2014

TDD 1 800 544-5304



Letter ID: CNXXX14982269126

#BWNKMGV  
#CNXX X149 8226 9126#  
SAHOURI WAY LO INC  
ATTN: CPA-LANE M. GENSBURG  
200 W ADAMS ST STE 2425  
CHICAGO IL 60606-5251

Account ID: 3750-7141

Total amount due: \$237,702.42

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

## Sales/Use Tax & E911 Surcharge

Account ID: 3750-7141

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2011	18,466.00	22.00	-	-	(18,786.07)	Not Included*
* This period is currently under review.						
31-Dec-2012	179,113.00	37,543.00	12,445.42	-	8,601.00	237,702.42
• \$227,422.42 of this amount is subject to protest.						

SOA

Retain this portion for your records.

P-000238

Fold and detach on perforation. Return bottom portion with your payment.

## Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXX14982269126  
SAHOURI WAY LO INC

Total amount due: \$237,702.42

Write the amount you are paying below.

\$ \_\_\_\_\_

Write your Account ID on your check.

Mail this voucher and your payment to:  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19006  
SPRINGFIELD IL 62794-9006

\$227,422.42 is subject to protest.  
Do not pay any Income Tax liability that you intend to protest.

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

SAHOURI-WAY-LO, INC.,	)	
	)	
Petitioner,	)	
	)	
	)	No.
v.	)	
	)	
BRIAN HAMER, in his official capacity as	)	
DIRECTOR OF THE ILLINOIS DEPARTMENT	)	
OF REVENUE, and the ILLINOIS	)	
DEPARTMENT OF REVENUE,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

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

I, Anne J. Kim, an attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Monday, June 30, 2014.

  
Anne J. Kim

Lane M. Gensburg  
Anne J. Kim  
Dale & Gensburg, P.C.  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606  
T – 312-263-2200  
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[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
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