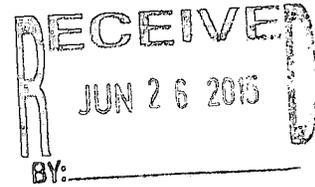


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

A E B PETROMART INC.,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



15 TT 129

PETITION

Petitioner, A E B Petromart Inc. (“Petitioner”), by and through its attorneys, The Law Office of James E. 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 15836 Wood Street, Harvey, Illinois, 60426, and can be reached at 708-203-5699.
2. Petitioner is represented by The Law Office of James E. 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.
3. Petitioner’s License number is TP-00251.
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 7, 2015, Petitioner received a Notice of Tax Liability letter (“Notice”) for Form TP-1A, Tobacco Products Tax Audit Return, for the tax periods November 1, 2010 to June 30, 2014. The Notice reflects \$69,473 in aggregate tax due, plus late penalties and interest. 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 Petitioner timely filed this Petition within 60 days of the Notice.

BACKGROUND

8. Petitioner is a petroleum retailer located in the south suburbs of Chicago.

9. Defendant audited Petitioner’s books and records for Tobacco Products Tax for the tax periods November 1, 2010 to June 30, 2014.

10. The audit liability contained in the Notice is not based on the Petitioner’s books and records but instead is based on the estimates whereby the Defendant projected out-of-state purchases of other tobacco products from one vendor (MY ENTERPRISE) into all of the tax periods under audit even though that vendor closed during the audit period and the Petitioner made purchases from Illinois vendors during the audit.

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 estimated the audit liability by projecting out-of-state other tobacco product purchases from one vendor into the entire audit tax period even though that vendor closed during the audit period and the Petitioner made purchases of other tobacco products from Illinois vendors who properly charged Tobacco Products Tax.

13. By utilizing estimates instead of actual books and records, the Defendant drastically and unreasonably inflated Petitioner's audit liability.

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;
- (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; and
- (c) grants such further relief as the Tribunal deems appropriate.

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 penalties in excess of \$15,000.

16. Illinois law provides that neither late penalties nor negligence penalties 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 tax liability during the audit period based on its books and records (and did not use estimates).

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

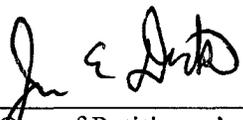
- (a) finds and declares that all penalties should be fully abated based on reasonable cause; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice.

Thank you for considering this Petition.

Respectfully submitted,

A E B Petromart Inc.,
Petitioner

By:



One of Petitioner's Attorneys

Date:

6/23/15

James E. Dickett
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)
Email: jdickett@aol.com

Notice of Tax Liability
for Form TP-1A, Tobacco Products Tax Audit Return

Exhibit 1



217 782-6045

#BWNKMGV
#CNXX X166 723X 2242#
A E B PETROMART INC
15836 WOOD ST
HARVEY IL 60426-4250

May 7, 2015



Letter ID: CNXXX166723X2242

License No: TP-00251
Account ID: 41284534



We have audited your account for the reporting periods November 01, 2010, through June 30, 2014. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	69,473.00	0.00	69,473.00
Late Payment Penalty	13,896.00	0.00	13,896.00
Late Filing Penalty Increase	1,389.00	0.00	1,389.00
Interest	3,568.63	0.00	3,568.63
Assessment Total	\$88,326.63	\$0.00	\$88,326.63

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 06, 2015. 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 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), 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