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Attorney For Skyline Corner Mart Inc.

ILLINOIS INDEPENDENT TAX TRIBUNAL

CHICAGO, ILLINOIS

SKYLINE CORNER MART INC., )

PETITIONER )

v. )

DOCKET NO. 15 TT 119

ILLINOIS DEPARTMENT OF REVENUE, )

JUDGE B. BAROV

DEFENDANT. )

Petitioner hereby submits his Post-Trial Brief

Dated: 10/31/2016

Mansoor Ansari J.D., LL.M.

/s/ Mansoor Ansari

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PRELIMINARY STATEMENT:

Skyline Corner Mart Inc. is a gas station and convenience store. It was assessed \$182,834.93 in unpaid sales tax after a sales tax audit by the Illinois Department of Revenue. The audit was a result of a claim of refund sought by the owner of the gas station in order to recoup overpaid sales tax. A lack of books and records during the audit resulted in a very high liability. Sales tax sampling – a non precise science and system of estimating sales, was used to arrive at the liability.

In addition to the principal, interest, and A Fraud penalty of \$55,310.00 was assessed against the taxpayer. Interest subject to the fraud penalty is approximately \$1000.00.

SALES TAX LIABILTY AS OF JUNE 8, 2015:

	Liability	Payments	Unpaid Balance
Tax	104151	5053	99098
Late Payment Penalty	22124	0	22124
Fraud Penalty	55310	0	55310
Late Filing Penalty	1614	0	1614
Interest	4688	0	4688
TOTAL			182843

## PUBLICATION 103 – PENALTIES AND INTEREST FOR ILLINOIS TAXES

### 1. *Fraud penalty*

You owe this penalty if you file a return, an amended return, or a claim for refund or credit with the intent to defraud.

Per the IDOR, there must be a prerequisite of intent in order to justify a penalty of fraud. The auditor was provided with as much information that could possibly have been gathered by the taxpayer during the audit and afterwards through Petitioner's Attorney. **A lack of books and records alone, does not create a presumption of intent to defraud. Filing a claim of refund is a procedure set out for taxpayer who believe they have overpaid in taxes.** It neither creates a presumption of fraud. Furthermore, the auditor has not provided any data and/or facts to support a claim of an intentional omission.

During trial, the auditor stated that documents were received from the Attorney's office for the taxpayer. This is evidence of cooperation from the client.

Taxpayer does not contest any amounts of tax assessed. Instead, it argues that the Department failed to offer clear and convincing evidence that it filed returns during the audit period with an intent to defraud.

Section 3-6 of the Uniform Penalty and Interest Act (UPIA) provides, in pertinent part, "[i]f any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, ... a penalty shall be imposed in an amount equal to 50% of any resulting deficiency." 35 ILCS 735/3-6. The Department bears the burden to show fraud by clear and convincing evidence. *Brown Specialty Co. v. Allphin*, 75 Ill. App. 3d 845, 851, 394 N.E.2d 656

Case law: Clear and Convincing Standard:

Clear and convincing evidence of a taxpayer's intent to defraud can be circumstantial in nature. *Puleo v. th*

Department of Revenue, 117 Ill. App. 3d 260, 268, 453 N.E.2d 48, 53 (4 Dist. 1983); *Vitale v. rd*

Department of Revenue, 118 Ill. App. 3d 210, 213, 454 N.E.2d 799, 802 (3 Dist. 1983).

In this case, the sole basis for the Department's determination that Taxpayer filed returns with an intent to defraud is that there was a significant difference between the revenues reported on Taxpayer's income tax returns and the receipts reported on its ROT returns. The auditor treated the difference between those amounts as unreported receipts. Had there been any evidence which showed that the only revenues Taxpayer realized during a given year were the receipts realized from its Illinois-based retailing business, the auditor's treatment of the difference as being the result of fraud would have been fully supported. But no such evidence is to be found within this record. Further, the evidence shows that, prior to the time the audit was concluded, Taxpayer filed amended returns for every single month in the audit period. The Department requires taxpayers to file an amended return when the taxpayer determines that it has filed a return containing errors. ST-1-X Instructions, p. 1 (the instructions for preparing an amended ROT return are available to view at the Department's website at: <http://tax.illinois.gov/taxforms/Sales/ST-1-X-Instr-2011.pdf>) (last viewed on February 27, 2014). More specifically, the Department's instruction form for amended ROT returns provides, in part:

### **Who must file Form ST-1-X?**

You must file Form ST-1-X if you are a registered retailer who files Form ST- 1, Sales and Use Tax Return, and you need to

- correct your Form ST-1 to pay more tax;
- request a credit for tax you overpaid. Do not use the credit until we notify

you that your credit has been approved;

- respond to a notice or bill;
- make corrections to line items but there is no change in the amount of tax due.

ST-1-X Instructions, p. 1. If an error made on an original return caused the taxpayer to report and pay too little tax, it must pay the amount of tax properly due, plus interest, plus penalties. *See id.*, p. 2. Penalties may be abated if taxpayer can show that it exercised good faith and ordinary business care when attempting timely to report and pay the correct amount of tax due. 35 ILCS 735/3-8; 86 Ill. Admin. Code § 700.400(b)-(c). If an error made on an original return caused the taxpayer to report and pay more than the correct amount of tax due, it may request a credit or refund of the tax overpaid in error. 35 ILCS 120/6a; 86 Ill. Admin. Code § 130.1501; ST-1-X Instructions, p. 1.

### **Claim of refund**

The taxpayer was audited as a result of filing for a claim of refund. The audit itself echoes retaliation on the part of the IDOR. That it seems that a claim of refund should be discouraged such that it will cause greater harm than good.

## Public Policy

From a public policy perspective, business owners will be reluctant to create companies and move their businesses to the State of Illinois if this retaliatory practice is to continue.

## Relief Sought:

The taxpayer seeks relief in the amount of \$55,310.00 – the fraud penalty. Taxpayer does not refute that they did not provide all of the books and records for the audit. However, the Fraud Penalty is overly burdensome and unfounded.

Respectfully Submitted,

/s/ Mansoor Ansari

Mansoor Ansari J.D., LL.M. (TAX)