

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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**BP PRODUCTS NORTH AMERICA INC.,** )  
 )  
 ) **Petitioner,** )  
 )  
 ) **vs.** )  
 )  
 ) **ILLINOIS DEPARTMENT OF REVENUE.** )

**RECEIVED**  
JUL 28 2015  
Docket No. \_\_\_\_\_  
BY: \_\_\_\_\_  
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**PETITION**

The Petitioner, BP Products North America Inc., hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notices of Tax Liability (“Notices”) issued by the Department of Revenue (“Department”), for the reasons stated below:

**INTRODUCTION**

1. The Notices were issued on June 2, 2015, assessing Retailers’ Occupation (sales) Tax liability in individual amounts in excess of \$15,000, exclusive of penalties and interest, for the periods July 1, 2007 through June 30, 2009, and July 1, 2009 through March 31, 2011, respectively. Copies of the Notices are attached to this Petition.
2. Petitioner is a corporation with its principal place of business in Houston, Texas.
3. It is located at 501 Westlake Park Blvd., Houston, Texas 77079, and its telephone number is 281-366-4886. Its taxpayer account number is 0867-3063.

**BACKGROUND FACTS**

4. During the periods at issue, Petitioner marketed petroleum products and sundry items (*e.g.*, gum, candy, coffee, soft drinks, and cigarettes) from company-operated

retail service stations throughout Illinois. Petitioner also marketed petroleum products throughout Illinois at retail service stations operated by independent businesses (known as “commission marketers”), who acted as agents for Petitioner in selling petroleum products.

5. The Department audited Petitioner’s marketing activity for these periods for compliance with the sales tax laws.
6. Based on its audit, the Department determined that during this timeframe, Petitioner used the wrong rate in collecting and remitting local tax on some of its sales.
7. Based principally on this determination, the Department issued the Notices at issue.

**ERROR I – Petitioner Collected and Remitted the Correct Local Tax**

8. The corporate authorities of a home rule municipality may impose a local retailers’ occupation (sales) tax, measured by gross receipts, on all persons engaged in the business of selling tangible personal property at retail in the taxing municipality. 65 ILCS 5/8-11-1.
9. As in effect during the periods at issue, a Department regulation provided in general that the local sales tax on gross receipts from a given transaction should be collected at the rate in effect in the municipality where the retailer accepted the purchase order. See 86 Ill. Admin. Code 270.115 (eff. until June 25, 2014).
10. Petitioner adhered to this rule in collecting and remitting the correct local sales tax on the gross receipts from the transactions giving rise to the assessments in the Notices.
11. The Department erred in determining to the contrary.

**ERROR II – In the Alternative, Petitioner’s Tax Returns Were Not Prepared or Filed Negligently**

12. If any sales tax return is prepared and filed negligently, but without fraudulent intent, in addition to any penalty imposed for late payment, a penalty is imposed in the amount of 20% of any resulting deficiency. 35 ILCS 735/3-5(a).
13. If the liability was for a taxable period ending after June 30, 2002 and before July 1, 2009, and the liability was eligible for amnesty under the Tax Delinquency Amnesty Act, and the taxpayer did not satisfy the deficiency during the amnesty period provided for in that Act, then the negligence penalty is imposed at twice the amount that would otherwise be imposed. 35 ILCS 735/3-5(e).
14. For purposes of this penalty, negligence includes any failure to make a reasonable attempt to comply with the sales tax laws, including careless, reckless or intentional disregard of the laws or rules. 86 Ill. Admin. Code 700.320(b).
15. Petitioner made a reasonable attempt to collect and remit the correct local tax on the sales at issue; it therefore was not negligent in preparing and filing its returns for the periods at issue.
16. The negligence penalty is not imposed where an assessment results from a reasonable difference of opinion as to taxability. 86 Ill. Admin. Code 700.320(c).
17. There is a reasonable difference of opinion regarding the correct rate of tax on the gross receipt from the transactions at issue.
18. The Department erred in assessing the negligence penalties.
19. If the assessments of tax are upheld, the negligence penalties should be waived accordingly.

**ERROR III – In the Alternative, Petitioner Had Reasonable Cause  
For Any Tax Underpayment**

20. The negligence penalty is not imposed if the failure to comply with the sales tax laws is due to reasonable cause. 35 ILCS 735/3-5(c); 86 Ill. Admin. Code 700.400(a).
21. The paramount factor in determining whether a person meets this standard is the extent to which the person makes a good faith effort to determine the proper tax liability. 86 Ill. Admin. Code 700.400(b).
22. Petitioner exercised ordinary business care and prudence in determining the rate of local tax to collect and remit on the gross receipts from the transactions at issue.
23. Petitioner's failure, if any, to comply with the sales tax laws was due to reasonable cause.
24. If the tax assessments are upheld, the negligence penalties should be abated as a result.

**RELIEF REQUESTED**

Petitioner respectfully requests reversal of the Notices in their entirety. In the alternative, if the assessments of tax are upheld, Petitioner requests that the late payment and negligence penalties be abated in full.

Dated: July 27, 2015.

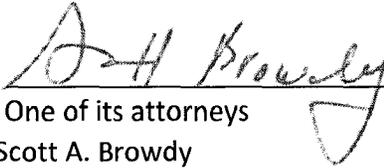
**BP PRODUCTS NORTH AMERICA INC.**

501 Westlake Park Blvd., #E439

Houston, Texas 77079

(281) 366-4886 (Phone)

By:

A handwritten signature in cursive script, appearing to read "S.A. Browdy", is written over a horizontal line.

One of its attorneys

Scott A. Browdy

Brian L. Browdy

Ryan Law Firm LLP

311 S. Wacker Drive, Suite 4800

Chicago, IL 60606

(872) 529-5037 (Phone)

(312) 262-5890 (Fax)

[Scott.Browdy@ryanlawllp.com](mailto:Scott.Browdy@ryanlawllp.com)

[Brian.Browdy@ryanlawllp.com](mailto:Brian.Browdy@ryanlawllp.com)

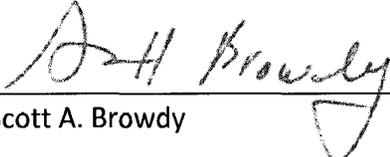
**CERTIFICATE OF SERVICE**

I, Scott A. Browdy, hereby certify that on July 27, 2015, a copy of the foregoing Petition was sent to the Independent Tax Tribunal and Department of Revenue by overnight delivery via Federal Express:

Illinois Independent Tax Tribunal  
160 N. LaSalle Street, Room N506  
Chicago, Illinois 60601

-and-

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., Level 7-900 (7<sup>th</sup> Floor Thompson Center)  
Chicago, Illinois 60601

  
\_\_\_\_\_  
Scott A. Browdy

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



June 2, 2015



Letter ID: CNXXX194X3181761

Account ID: 0867-3063

RECEIVED BY  
EXCISE TAX



#BWNKMGV  
#CNXX X194 X318 1761#  
BP PRODUCTS NORTH AMERICA INC  
ATTN: MGR EXCISE TAX  
501 WESTLAKE PK BLVD # E439  
HOUSTON TX 77079-2604

We have audited your account for the reporting periods July 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	67,879,211.00	(53,850,833.89)	14,028,377.11
Late Payment Penalty Increase	27,151,686.00	(20,746,776.00)	6,404,910.00
Negligence Penalty	5,880,372.00	0.00	5,880,372.00
Interest	26,024,577.16	(19,248,787.00)	6,775,790.16
<b>Assessment Total</b>	<b>\$126,935,846.16</b>	<b>(\$93,846,396.89)</b>	<b>\$33,089,449.27</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 August 03, 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

# Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX X128 7351 7769#  
BP PRODUCTS NORTH AMERICA INC  
ATTN: MGR EXCISE TAX  
501 WESTLAKE PK BLVD # E439  
HOUSTON TX 77079-2604

June 2, 2015



Letter ID: CNXXX12873517769

Account ID: 0867-3063



We have audited your account for the reporting periods July 01, 2009, through March 31, 2011. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	2,877,653.00	(1,748,322.00)	1,129,331.00
Late Payment Penalty Increase	575,532.00	(349,664.00)	225,868.00
Negligence Penalty	154,933.00	0.00	154,933.00
Interest	334,062.79	(198,789.00)	135,273.79
<b>Assessment Total</b>	<b>\$3,942,180.79</b>	<b>(\$2,296,775.00)</b>	<b>\$1,645,405.79</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.

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