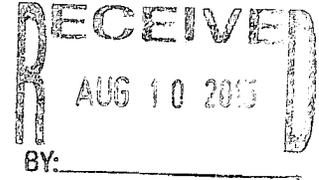


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

BIRLA LLC, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 ) Defendant. )

No.



(JTT) 160

**PETITION**

Petitioner, Birla LLC (“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 a corporation that can be contacted at 5918 Corey Lane, # 1 BL, Oak Forest, Illinois, 60452, and can be reached at 516-728-6062.
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](mailto:jdickett@aol.com).
3. Petitioner’s Account ID is 3933-6840.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement of Illinois tax laws. 20 ILCS 5/5-15.

## NOTICE

5. On May 8, 2015, the Department issued a Notice of Tax Liability letter (“Notice”) to Petitioner for the tax periods July 1, 2010 to December 31, 2013 in the amount of \$136,208 in tax (less payment/credit of \$16,346), plus late payment penalties of \$23,973 and negligence penalties of \$23,973, plus interest of \$8,823, for a total of \$176,631. 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 obtained a late discretionary hearing from the Department dated July 31, 2015 (copy attached as Exhibit 2), and then timely filed this Petition within 60 days of the Department’s letter granting the late discretionary hearing for Petitioner.

## BACKGROUND

8. Petitioner operated a liquor store in rural Illinois.

9. Defendant audited Petitioner’s books and records for the tax periods January 1, 2011 to December 31, 2013.

10. The audit liability contained in the Notice is based on projections whereby the Department overstated both the mark-up and the disallowed low rate sales adjustment.

## 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 calculated the audit liability by applying a mark-up to Petitioner's purchases.

13. By applying this audit methodology during the audit period, the Department unreasonably inflated Petitioner's audit liability because the mark-up is too high for the Petitioner's rural location and also because the disallowed low rate sales adjustment is overstated based on Petitioner's low rate purchases.

**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;
- (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 both late and negligence penalties based on the audit liability.

16. Illinois law provides that neither late 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 its proper tax liability 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 sales tax liability during the audit period and did not use an inflated mark-up to report its sales.

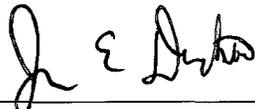
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds that all penalties should be abated based on reasonable cause;
- (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; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Thank you for considering this Petition.

Respectfully submitted,

Birla LLC,  
Petitioner

By:   
One of Petitioner's Attorneys

Date: 8/6/15

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

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

Exhibit  
1



#BWNKMGV  
#CNXX X151 67X6 5760#  
BIRLA LLC  
306 W NORTH AVE  
FLORA IL 62839-1241

May 8, 2015



Letter ID: CNXXX15167X65760

Account ID: 3933-6840



We have audited your account for the reporting periods July 01, 2010, through December 31, 2013. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	136,208.00	(16,346.00)	119,862.00
Late Payment Penalty Increase	23,973.00	0.00	23,973.00
Negligence Penalty	23,973.00	0.00	23,973.00
Interest	8,822.64	0.00	8,822.64
<b>Assessment Total</b>	<b>\$192,976.64</b>	<b>(\$16,346.00)</b>	<b>\$176,630.64</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.

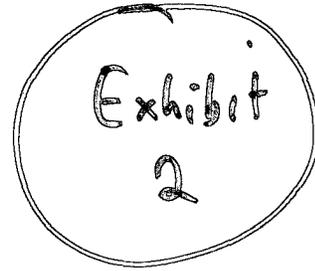
- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must 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, 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



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

July 31, 2015

Ashish Verma  
Birla LLC  
5918 Corey Lane #1 BL  
Oak Forest, IL 60452

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
Birla LLC  
Account ID: 3933-6840  
Notice of Tax Liability (NTL)  
Letter ID: CNXXX15167X65760, dated May 8, 2015

Dear Mr. Verma:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Brila LLC regarding the above NTL. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary for Brila LLC regarding the above NTL.

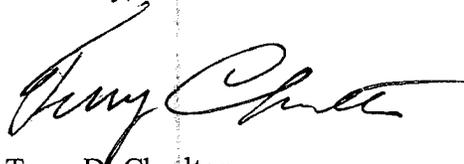
The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest or \$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's

rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is fluid and cursive, written over a vertical line that runs down the page.

Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC