

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

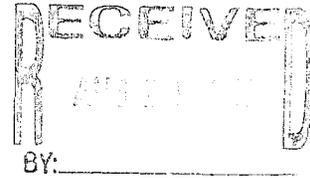
MACYS.COM, INC.

Petitioner,

v.

THE ILLINOIS DEPARTMENT OF REVENUE,

Defendant.



No.

15T176

NOTICE OF FILING

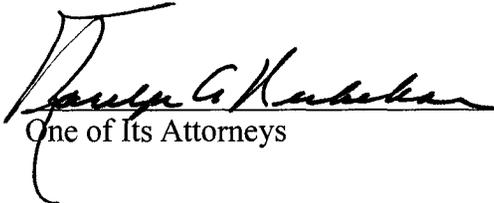
To: Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, Suite 7-900
Chicago, IL 60601

PLEASE TAKE NOTICE that on the 21st day of August, 2015, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, Macy's.com, Inc.'s **Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

MACYS.COM, INC.
Petitioner

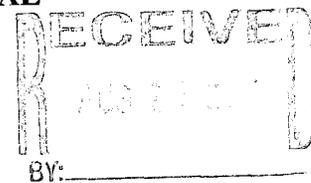
By:


One of Its Attorneys

Marilyn A. Wethekam
Breen M. Schiller
HORWOOD MARCUS & BERK CHARTERED
500 W. Madison, Suite 3700
Chicago, IL 60661
Phone: (312) 606-3200

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

MACYS.COM, INC.)
)
) Petitioner,)
)
) v.)
)
) THE ILLINOIS DEPARTMENT OF REVENUE,)
)
) Defendant.)



No.

15TT178

PETITION

Petitioner, Macy’s.com, Inc. (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner is a Delaware corporation located at 7 W. 7th Street, Cincinnati, Ohio, 45202-2424; and can be reached at 513-579-7331.
2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn A. Wethekam and Breen M. Schiller located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-324 or mwetheka@hmblaw.com; and 312-606-3220 or bschiller@hmblaw.com, respectively.
3. Petitioner’s FEIN is 31-1581352.
4. Petitioner’s Illinois Account Number is 3761-4045.
5. 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

6. On April 1, 2015, the Department issued Petitioner a Notice of Tentative Audit Claim Denial (“Notice”) for the taxable years ending December 2011 and December 2012 (“Years at Issue”) addressing Petitioner’s filing of its Amended Sales and Use Tax and E911 Surcharge Return, Form ST-1-X (“Refund Claims”) for the Years at Issue.

7. A true and accurate copy of the Notice is attached hereto as Exhibit A.

8. On November 20, 2013, Petitioner filed amended returns claiming bad debt deductions for the Years at Issue.

9. The Department denied Petitioner’s Refund Claims on the basis that Petitioner did not write off or take as a deduction on its federal income tax return the bad debts claimed on its amended returns.

JURISDICTION

10. 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.

11. This 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 Notice.

BACKGROUND

12. The tax involved herein is the Illinois Retailers’ Occupation Tax Act (the “ROT”), 35 ILCS 5/120/1, et seq.

13. Specifically, the issue in this case is the Department’s denial of Petitioner’s claim for a refund of ROT in the amount of \$53,629.00, pursuant to 86 Ill. Admin. Code

§130.1960 (the “Bad Debt Regulation”), paid on consumer purchases that Petitioner financed and that subsequently resulted in bad debts.

14. The Department issued the Notice denying Petitioner’s Refund Claims on April 2, 2015.

15. Petitioner timely, albeit mistakenly, filed a protest and request for hearing with the Department on May 28, 2015 (“Protest”) protesting this denial.

16. A true and accurate copy of Petitioner’s Protest is attached hereto as Exhibit B.

17. On June 23, 2015, the Department issued a Protest Dismissal due to lack of Jurisdiction (“Protest Dismissal”) to Petitioner advising Petitioner that it had sixty-days to file a petition with the Tax Tribunal pursuant to Subsection (a)(3) of Section 5000.310 of the Tax Tribunal’s rules.

18. A true and accurate copy of the Protest Dismissal is attached hereto as Exhibit C.

19. This petition is being filed within sixty-days of the Protest Dismissal.

CONTROVERSY

20. Petitioner originally filed its amended returns claiming bad debt deductions on November 20, 2013.

21. Petitioner’s Refund Claims were initially approved by the Department in March 2014.

22. At the time of the Department’s initial approval of Petitioner’s Refund Claims, it had a bad debt deduction case pending before the Illinois Circuit Court of Cook County, *Citibank, N.A. v. Dep’t. of Rev.*, Dkt. No. 2013-L-050072.

23. The *Citibank* matter was on appeal with Department of Revenue’s Office of Administrative Hearings at which the Department had received a favorable ruling.

24. The Circuit Court on appeal from the Office of Administrative Hearings reversed and ultimately found in favor of Citibank..

25. After the Circuit Court's reversal, the Department subsequently denied Petitioner's Refund Claims.

26. The Department has appealed the Circuit Court's ruling; and the *Citibank* case is currently pending before the Illinois Appellate Court.

COUNT I

Pursuant to the General Refund Statute and the Bad Debt Regulation, the Department's denial of Petitioner's Refund Claims was erroneous.

27. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 26.

28. Illinois imposes the ROT on retail sales of tangible personal property. 35 ILCS 120/2.

29. The requirements for entitlement to refund of the ROT remitted are set forth in two key provisions of Illinois law, 35 ILCS §120/6 (the "General Refund Statute"); and 86 Ill. Admin. Code §130.1960 (the "Bad Debt Regulation").

30. Section 6 of the Retailers' Occupation Tax Act provides in pertinent part:

Credit memorandum or refund. If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment No credit may be allowed or refund made for any amount paid by or collected from any claimant unless it appears (a) that **the claimant bore the burden of such amount** and has not been relieved thereof nor reimbursed therefor and has not shifted such burden directly or indirectly through inclusion of such amount in the price of the tangible personal property sold by him or her or in any manner whatsoever 35 ILCS 120/6

31. Bad Debt Regulation” provides, in pertinent part, that:

In the case of tax paid on an account receivable that becomes a bad debt, the tax paid becomes a tax paid in error, for which a claim for credit may be filed in accordance with Section 6 of the Retailers’ Occupation Tax Act, on the date that the Federal income tax return or amended return on which the receivable is written off is filed. 86 Ill. Admin. Code §130.1960(d)(3).

32. By its plain language, the General Refund Statute provides that a refund may be sought by the taxpayer for a tax “paid in error” so long as “the claimant bore the burden of such amount and has not been relieved thereof nor reimbursed therefor.” 35 ILCS 120/6.

33. Second, the regulation implementing the ROT provides that a tax paid on a defaulted credit account “becomes a tax paid in error . . . on the date that the Federal income tax return or amended return on which the [bad debt] receivable is written off is filed.” 86 Ill. Adm. Code § 130.1960(d)(3).

34. Here, Petitioner meets both of these requirements.

35. ROT was remitted to the State of Illinois on each of the sales that relate to the accounts that form the basis of Petitioner’s Refund claim.

36. Petitioner is the party that bore the burden of the ROT remitted to the State.

37. Those losses were written off as bad debts on the federal income tax returns of the servicers, who were made whole by service fees and other compensation that Petitioner paid the services in consideration of purchasing Petitioner’s receivables.

38. The Department denied Petitioner’s Refund Claims on the basis that it did not deduct its bad debts on its federal returns for the Years at Issue.

39. However, nowhere on the face of the General Refund Statute or the Bad Debt Regulation does it require that Petitioner be the party to deduct the bad debts on its federal return.

40. The Bad Debt Regulation provides that the, “tax paid becomes paid in error” on the corresponding date that they were written off at the federal level. See, 86 Ill. Admin. Code 130.1960(d)(3).

41. As a result, Petitioner meets each of the requirements of the Bad Debt Regulation and is entitled to a refund.

WHEREFORE, Petitioners pray that this Tribunal enter an Order that:

- a. finds and declares that Petitioner met the refund requirements set forth in the General Refund Statute codified at 35 ILCS 120/6;
- b. finds and declares that Petitioner met the requirements of the Bad Debt Regulation as set forth in 86 Ill. Admin. Code §130.1960(d)(4);
- c. finds and declares that the Department’s denial of Petitioner’s Refund Claims was erroneous;
- d. finds and declares that Petitioner is entitled to its Refund Claims; and
- e. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

42. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 41.

43. The Bad Debt Regulation allows a retailer to claim a refund or deduction where (1) the ROT was remitted on the sale and (2) the account is written off as uncollectible for federal income tax purposes. *Id.*

44. According to the General Revenue Statute, in order to qualify for a refund the claimant has to be the party that bore the ultimate burden of the tax. 35 ILCS §120/6.

45. Here, ROT was remitted to the Department on each of the sales that relate to the accounts that form the basis of Petitioner's Refund Claims.

46. Petitioner is the also the party that bore the burden of the ROT remitted to the State.

47. Accordingly, Petitioner is the only party entitled to claim a refund for the account receivables that form the basis of its Refund Claims.

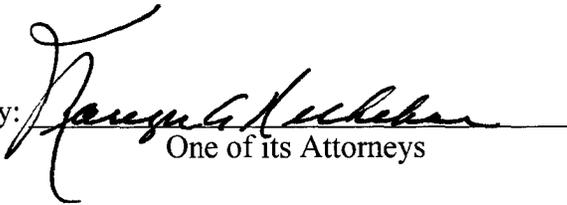
WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- a. finds and declares that Petitioner met the refund requirements set forth in the General Refund Statute codified at 35 ILCS 120/6;
- b. finds and declares that the Department's denial of Petitioner's Refund Claims was erroneous;
- a. finds and declares that Petitioner is entitled to its Refund Claims; and
- b. enters judgment in favor of Petitioner and against Defendants; and

c. grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully submitted,

MACY'S.COM, INC.
Petitioners

By: 
One of its Attorneys

Marilyn A. Wethekam
Breen M. Schiller
HORWOOD MARCUS & BERK CHARTERED
500 West Madison Street, Suite 3700
Chicago, Illinois 60661
(312) 606-3200

Notice of Tentative Audit Denial of Claim



April 1, 2015

#BWNKMGV

#CNXX XX41 3799 9X44#

MACYS.COM INC

ATTN: TAX DEPT
7 W 7TH ST
CINCINNATI OH 45202-2424



Letter ID: CNXXXX4137999X44

Taxpayer ID: 31-1581352
Account ID: 3761-4045
Audit ID: A1172905984
Return type: ST-1
Audit periods: 12/2011 - 12/2012



We have audited your claims for credit filed on Form ST-1-X, Amended Sales and Use Tax and E911 Surcharge Return, described above totaling \$53,629.00 and have denied them because you did not write off or take as a deduction on your federal income tax return the bad debts claimed.

If you do not agree, you may contest this tentative denial of claim following the instructions listed below.

- If the amount of the tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied 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 **May 31, 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 tentative denial of claim 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.

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.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

Sincerely,

Linda Wade
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 524-5628
217 785-3251 fax



May 28, 2015

Via Certified Mail
Return Receipt #92147969009997901601822329

Illinois Department of Revenue
Office of Administrative Hearings MC 5-500
101 W. Jefferson Street
P.O. Box 19014
Springfield, Illinois 62794-9014

Re: Macys.com, Inc.
Form AH-4

To Whom It May Concern:

Please find enclosed Form AH-4 ("Protest") for Macys.com, Inc. ("Macys.com"). This Protest contests the denial of Macys.com's refund claim with respect to bad debt deductions. The Notice of Tentative Audit Denial of Claim is attached.

Macys.com filed amended returns November 20, 2013, claiming bad debt deductions for the period 12/2011 - 12/2012 ("Refund Period"). These refunds were initially approved in March 2014. However, after the reversal of Citibank, NA v. Illinois Department of Revenue, the refunds were subsequently denied.

By filing Form AH-4, Macys.com protests the denial of the refund claims for the Refund Period. Macys.com asks that this matter be held in abeyance pending the final decision in the Citibank, NA v Illinois Department of Revenue case.

If you have any questions, please contact me at 513-579-7331 or steven.dzibinski@macys.com.

Sincerely,

Steven T. Dzibinski
Tax Counsel

Enclosures

Notice of Tentative Audit Denial of Claim



April 1, 2015



Letter ID: CNXXXX4137999X44

#BWNKMGV
#CNXX XX41 3799 9X44#
MACYS.COM INC
ATTN: TAX DEPT
7 W 7TH ST
CINCINNATI OH 45202-2424

Taxpayer ID: 31-1581352
Account ID: 3761-4045
Audit ID: A1172905984
Return type: ST-1
Audit periods: 12/2011 - 12/2012



We have audited your claims for credit filed on Form ST-1-X, Amended Sales and Use Tax and E911 Surcharge Return, described above totaling \$53,629.00 and have denied them because you did not write off or take as a deduction on your federal income tax return the bad debts claimed.

If you do not agree, you may contest this tentative denial of claim following the instructions listed below.

- If the amount of the tax tentatively denied, exclusive of penalty and interest, is more than \$15,000, or if no tax is being denied 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 May 31, 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 tentative denial of claim 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.

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.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are below.

Sincerely,

Linda Wade
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 524-5628
217 785-3251 fax



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

June 23, 2015

Steven T. Dzibinski
Macy's.com Inc.
7 West Seventh Street
Cincinnati, OH 45202

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Macy's.com Inc.
Account ID: 31-1581352
Notice of Tentative Audit Denial of Claim for Audit Period: 12/2011-12/2012
Letter ID: CNXXXX4137999X44 dated April 1, 2015

The Office of Administrative Hearings of the Illinois Department of Revenue recently received your protest and request for an administrative hearing for Macy's.com Inc.. regarding the above Notice. The mailing date of the protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Notice. However, the amount at issue for the 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 protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) 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 written in a cursive style with a large, sweeping initial "T".

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

TDC:vs

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be placed in an envelope, properly addressed and deposited in the U.S. Mail at 500 W. Madison, Chicago, IL 60661 before the hour of 5:00 p.m. on the 21st day of August, 2015

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

