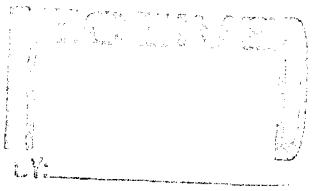
IN THE ILLINOIS INDENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS



EWING LIQUORS INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1577157
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

PETITION

Ewing Liquors 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 10459 South Ewing Avenue, Chicago, Illinois, 60617, and can be reached at 773-721-8511.

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 Taxpayer (Account) ID is 3098-9523.

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 July 21, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods January 1, 2012 to June 30, 2014. The Notice reflects $144,214 in tax due, $28,843 in late payment penalties, $72,107 in fraud penalties, and $7,047 in interest, for a total of $252,211. 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 liquor store located on the southeast side of Chicago.

9. Defendants audited Petitioner for the tax periods Jan. 1, 2012 to June 30, 2014.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products. The estimated selling prices were found by the Department in a book at the library, and the Department's projections did not adequately provide allowances for theft, waste, etc.

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 multiplying all of Petitioner's purchases by estimated selling prices found in a book at the library.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department especially with respect to liquor sales due to the location of the business and its customer base, and also because the Department's projections improperly failed to provide an allowance for theft, waste, etc.

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

(a) enters judgment in favor or 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 and other factors.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed penalties based on the audit liability.

16. Illinois law provides that late penalties do not 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 to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(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 estimated selling prices, so neither the late penalties nor the fraud penalties are proper.

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

(a) finds that all penalties should be fully abated based on reasonable cause and other factors;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way collect the amount of penalties due on the Notice; and

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

Thank you for considering this Petition.

Respectfully submitted,

Ewing Liquors Inc.,
Petitioner

By: _____
One of Petitioner's Attorneys

Date: 9-17-15

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 EDA-105-R, ROT Audit Report

Exhibit 1

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#EWNKMGV
#CNXXX171 2528 8648#
EWING LIQUORS INC
10459 S EWING AVE
CHICAGO IL 60617-6218

July 21, 2015

Letter ID: CNXXX17125288648

Account ID: 3098-9523

Duplicate

We have audited your account for the reporting periods January 01, 2012, through June 30, 2014. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	144,214.00	0.00	144,214.00
Late Payment Penalty Increase	28,843.00	0.00	28,843.00
Fraud Penalty	72,107.00	0.00	72,107.00
Interest	7,046.82	0.00	7,046.82
Assessment Total	$252,210.82	$0.00	**$252,210.82**

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 **September 21, 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