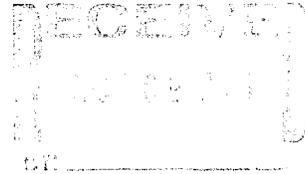


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CAPITOL GLASS & ARCHITECTURAL)
METALS INC.,)
)
Petitioner,)
)
)
v.)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

No.



15 TT 210

PETITION

Petitioner, Capitol Glass & Architectural Metals Inc. (“Petitioner”), by and through its attorneys, Dale & Gensburg, P.C., for its Petition before the Illinois Independent Tax Tribunal (the “Tribunal”) hereby complains of the Defendant, the Illinois Department of Revenue (the “Department”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 910 Touhy Avenue, Elk Grove Village, Illinois 60007.
2. Petitioner is represented by attorneys Lane M. Gensburg and Sandra D. Mertens of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Sandra D. Mertens can be reached at 312-263-2200 or smertens@dandgpc.com.
3. Petitioner’s Illinois Business Tax Number is 1087-9552, and its Employer Identification Number is 36-2813936.

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. See 20 ILCS 5/5-15.

NOTICES

Retailers Occupation/Use Tax

5. On September 10, 2015, the Department issued two Notices of Tax Liability (the “NTL”) assessing Retailer’s Occupation Tax and Use Tax for the period June 2008 through June 2014, in the amount of \$84,930, as well as \$19,817 for late payment penalties, \$1,981 for late filing penalties, and \$10,376.38 in interest. The NTLs evidence the Petitioner’s prior payments totaling \$75,000. The NTLs are attached hereto as **Exhibit A**.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*

7. 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 date of the NTLs.

BACKGROUND

8. Petitioner is a family owned specialized contractor which is primarily engaged in the creation and installation of customized glass and metal products into commercial and individual buildings, as well as high end residential units. The Petitioner does not often provide products used in the exterior of a building, nor does Petitioner provide any interior structural items.

9. The Department audited Petitioner’s books and records for the period at issue and, in part, determined that certain purchases of Petitioner were subject to use tax.

COUNT I

Petitioner's Special Orders Should be Exempt from ROT/UT

10. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 9, as and for this paragraph 10.

11. During the audit period, Petitioner was engaged for a number of jobs in which it contracted with vendors who are experts in their given fields and employ their own engineers and designers to prepare specialized "shop drawings," and then manufacture the product ordered by the Petitioner based on the drawings to produce specialized glass and steel products specific to a particular customer's specifications (the "Special Orders").

12. The Special Orders required specialized designs and shop drawings based on the customer's requirements for dimensions, load capacity, reinforcement, fire rating, insulation value, electrical connections, aesthetics, locking mechanism, design, etc.

13. Each Special Order item was designed and manufactured for each particular customer and could not be found anywhere as a stock or standard item, as most of the technology itself was proprietary and patented.

14. Each Special Order item was custom made to the exact and custom specifications of the Petitioner's customer. Each component of each product had to be positioned at an exact location and was not interchangeable with any other component.

15. Any Special Order item which was not manufactured correctly or was unacceptable to the customer could not be sold to any other buyer and would have to be scrapped. The Special Order products had value only to the Petitioner's customers and were not stock products.

16. The Special Orders came within the Special Order exception to sales/use tax pursuant to 86 Ill. Adm. Code §130.2115(b).

17. The Department erred in failing to exempt or exclude from sales/use tax Petitioner's Special Orders pursuant to the Special Order exception, which Special Orders should only have been subject to a service use tax on the tangible personal property.

WHEREFORE, Petitioner prays that the Tribunal:

- (a) Enters judgment in favor of Petitioner and against the Department and cancels the NTLs;
- (b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTLs; and
- (c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All Failure to File and Pay Penalties should be Abated for Reasonable Cause

18. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 11, inclusive, hereinabove, as and for this paragraph 19.

19. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. 35 ILCS §735/3-8.

20. The most important factor to be considered in making a determination to abate a late payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. 86 Ill. Adm. Code §700.400(b).

21. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Adm. Code §700.400(c).

22. Petitioner's failure to timely pay its ROT/Use Tax liabilities pertaining to the audit period was due to reasonable cause warranting abatement of the late filing and late payment penalties.

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

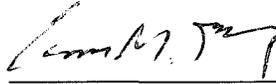
- (d) Finds and declares that all late filing and late payment penalties should be abated for reasonable cause;
- (e) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to file and failure to pay penalties stated in the NTLs; and
- (f) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

PETITIONER CAPITOL GLASS &
ARCHITECTURAL METALS, INC.

Lane M. Gensburg, Esq.
Sandra D. Mertens, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
P: (312) 263-2200
F: (312) 263-2242
LGensburg@dandgpc.com
SMertens@dandgpc.com

By:



One of Petitioner's Attorneys

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

RECEIVED
SEP 18 2015



DALE & GENSBURG, P.C.

September 10, 2015



Letter ID: CNXXX1X775557282

Account ID: 1087-9552

#BWNKMGV
#CNXX X1X7 7555 7282#
CAPITOL GLASS & ARCHTL MTL INC
ATTN: POA - DALE & GENSBURG, P.C. (LANE M.
GENSBURG)
200 WADAMS ST STE 2425
CHICAGO IL 60606-5251

We have audited your account for the reporting periods July 01, 2008, 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	14,154.00	(14,154.00)	0.00
Late Payment Penalty Increase	5,662.00	0.00	5,662.00
Late Filing Penalty Increase	566.00	0.00	566.00
Interest	5,092.00	0.00	5,092.00
Assessment Total	\$25,474.00	(\$14,154.00)	\$11,320.00

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.

you do not agree, you may contest this notice by following the instructions listed below.

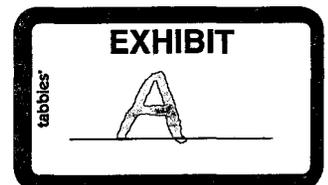
- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must 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 **November 09, 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



Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 Nonfiling penalty for transaction return - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

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.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX XX54 X684 8169#
CAPITOL GLASS & ARCHTL MTL INC
ATTN: POA - DALE & GENSBURG, P.C. (LANE M.
GENSBURG)
200 W ADAMS ST STE 2425
CHICAGO IL 60606-5251

September 10, 2015



Letter ID: CNXXXX54X6848169

Account ID: 1087-9552

We have audited your account for the reporting periods July 01, 2009, through June 30, 2014. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	70,776.00	(60,846.00)	9,930.00
Late Payment Penalty Increase	14,155.00	0.00	14,155.00
Late Filing Penalty Increase	1,415.00	0.00	1,415.00
Interest	5,284.38	0.00	5,284.38
Assessment Total	\$91,630.38	(\$60,846.00)	\$30,784.38

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 **November 09, 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.

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

217 785-6579

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- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.



Illinois Department of Revenue
Sales Tax Audit System
Schedule 1 - Summary Analysis

Date: 08/05/2015
Time: 12:07:34
Page: 1

IBT: 1087-9552
Taxpayer: CAPITOL GLASS & ARCHTL MTLN INC

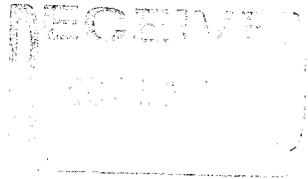
Auditor: Jason W. Misuinas

<u>Item Description</u>	<u>Tax Type/Str Codes</u>	<u>Exception Amount</u>	<u>Rate</u>	<u>Tax Amount</u>	<u>Tax Paid</u>	<u>Net Tax Due</u>	<u>Total</u>
Consumable Expense 2008	ROT / 31-201	\$6,342.40	06.25%	\$396.40	\$0.00	\$396.40	\$396.40
Consumable Expense 2014	ROT / 31-202	\$6,342.40	06.25%	\$396.40	\$0.00	\$396.40	\$396.40
Direct COS 2008	ROT / 31-203	\$106,177.19	06.25%	\$6,636.07	\$0.00	\$6,636.07	\$6,636.07
Direct COS 2014	ROT / 31-204	\$106,177.19	06.25%	\$6,636.07	\$0.00	\$6,636.07	\$6,636.07
Indirect COS 2008	ROT / 31-205	\$721.06	06.25%	\$45.07	\$0.00	\$45.07	\$45.07
Indirect COS 2014	ROT / 31-206	\$721.06	06.25%	\$45.07	\$0.00	\$45.07	\$45.07
Consumable Expense	ROT / 31-301	\$63,423.95	06.25%	\$3,964.00	\$0.00	\$3,964.00	\$3,964.00
Direct COS	ROT / 31-302	\$1,061,771.86	06.25%	\$66,360.74	\$0.00	\$66,360.74	\$66,360.74
Indirect COS	ROT / 31-303	\$7,210.56	06.25%	\$450.66	\$0.00	\$450.66	\$450.66
Total Additional Tax							\$84,930.48

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CAPITOL GLASS & ARCHITECTURAL METALS INC.,
Petitioner,
v.
ILLINOIS DEPARTMENT OF REVENUE,
Defendant.

No.



15 11 210

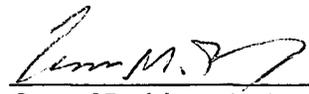
NOTICE OF FILING

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

PLEASE TAKE NOTICE that on the 9th day of October, 2015, the undersigned filed the attached Petition before the Illinois Independent Tax Tribunal, located at 160 N. LaSalle St. Room N506, Chicago, Illinois 60601, a copy of which is hereby served upon you.

Respectfully submitted,

CAPITOL GLASS & ARCHITECTURAL METALS, INC., Petitioner

By: 
One of Petitioner's Attorneys

Lane M. Gensburg, Esq.
Sandra Mertens, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
F – 312-263-2242
lgensburg@dandgpc.com
smertens@dandgpc.com

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CAPITOL GLASS & ARCHITECTURAL)
METALS INC.,)
)
Petitioner,)
)
)
v.)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

No.

RECEIVED
OCT 12 2015
BY: _____
15 TT 210

CERTIFICATE OF SERVICE

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

I, Nicholas Beideman, a law clerk, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Friday, October 9, 2015.


Nicholas Beideman

Lane M. Gensburg, Esq.
Sandra Mertens, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
F – 312-263-2242
Lgensburg@dandgpc.com
Smertens@dandgpc.com