

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

VIPUL & NAYANA PATEL

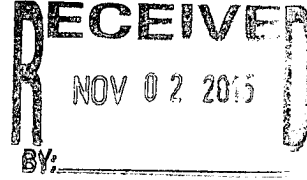
Petitioners,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Defendant

No.



1577 225

**PETITION**

Petitioner, Vipul and Nayana Patel ("Petitioners"), by and through their attorney, Gallagher & Gupta, P.C., complains of the Defendant, the Illinois Department of Revenue ("Department"), and alleges as follows:

**PARTIES**

1. Petitioners are individuals located at 308 Castle Drive, Elk Grove Village, Illinois, 60007, and can be reached at 847-456-5530.
2. Petitioners are represented by the Gallagher & Gupta, P.C.. Attorney Shiel M. Gallagher, located at 1910 South State Street, Suite 409, Chicago, Illinois 60616 and can be reached at 312-841-1141 or [sgallagher@gallagherpc.com](mailto:sgallagher@gallagherpc.com).
3. Petitioners' Taxpayer Audit ID is A278470656.
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 or about September 2, 2015, Petitioners received three (3) Notice of Deficiency letters for Form IL-1040 ("Notices") for the tax years 2009, 2010 and 2011. The Notices, in aggregate, reflect more than \$15,000 in tax due, plus penalties and interest. The Notices are 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 Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

### **BACKGROUND**

8. One of the Petitioners is the owner of an S corporation that is a petroleum retailer located in Illinois.
9. Defendant audited the S Corporation's books and records for the periods 2009 to 2011, and, based on that audit, the Department projected the individual income tax assessments at issue herein without providing the proper allowance for cost of goods sold for the corporation.

### **COUNT 1**

#### **Defendant's audit methodology overstates Petitioner's liability.**

10. Petitioners reallege and incorporate by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

11. The Department assessed the tax liabilities contained in the Notices based on the sales tax audit results without providing the proper allowance for cost of goods sold.
12. By applying the Department's sales tax audit results to the S Corporations' business income tax, the Department unreasonably inflated Petitioners' individual income tax liability.

**WHEREFORE**, Petitioners pray that the Tribunal enter an order that:

- (a) enters judgment in favor of Petitioners and against the Defendants and cancels the Notices;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notices;
- (c) grants such further relief that the Tribunal finds appropriate.

## **COUNT II**

### **All penalties should be abated based on reasonable cause**

13. Petitioners reallege and incorporate by reference the allegation made in paragraphs 1 through 12 inclusive, hereinabove.
14. In its Notices, the Department assessed late penalties.
15. Illinois law provides that late filing penalties shall not apply if the taxpayer's failure to pay the tax due was due to reasonable cause. 35 ILCS 735/3-8.
16. In making a determination whether penalties should be abated, the Department should consider whether the Taxpayer made a good faith effort to determine its proper tax liability, and whether the Taxpayer paid that proper tax liability in a timely fashion. Furthermore, the Department should find that a good faith effort was made in determining and paying the tax liability of the taxpayer exercised

ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

17. Petitioners exercised ordinary business care and prudence when they reasonably determined their business tax liability during the audit periods, as it was not based upon the Department's proposed sales tax audit results.

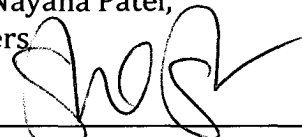
**WHEREFORE**, Petitioners pray that the Tribunal enter an order that:

- (a) finds that all penalties should be abated based upon reasonable cause;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of penalties due on the Notices; and
- (c) grants such further relief as the Tribunal finds appropriate under the circumstances.

Respectfully submitted,

Vipul & Nayana Patel,  
Petitioners

By:

  
Attorney for Petitioners

Date:

11-2-15

Shiel M. Gallagher, Esq.  
Gallagher & Gupta, P.C.  
1910 South State Street, Suite 409  
Chicago, Illinois 60616  
312-841-1141 phone  
847-828-0028 fax  
sgallagher@gallagherpc.com

**Notice of Deficiency**  
**for Form IL-1040, Individual Income Tax Return**



September 2, 2015



**Letter ID:** CNXXXX6579768XX4

#BXKMGV  
CNXX XX65 7976 8XX4#  
VIPUL and NAYANA PATEL  
308 CASTLE DR  
ELK GROVE VILLAGE IL 60007-4220

**Taxpayer ID:** XXX-XX-2376  
**Audit ID:** A278470656  
**Reporting period:** December 2009  
**Total Deficiency:** \$18,438.42  
**Balance due:** \$18,438.42

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue" and your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency 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, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. 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. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, 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 RX-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://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.

If you have questions, call us at the telephone number shown below.

Sincerely,

Constance Beard  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
(217) 558-4960

**Notice of Deficiency**  
**for Form IL-1040, Individual Income Tax Return**



September 2, 2015



Letter ID: CNXXXX3895413444

#BXNKMVG  
#CNXX3895413444#  
VIPUL and NAYANA PATEL  
308 CASTLE DR  
ELK GROVE VILLAGE IL 60007-4220

**Taxpayer ID:** XXX-XX-2376  
**Audit ID:** A278470656  
**Reporting period:** December 2010  
**Total Deficiency:** \$9,421.93  
**Balance due:** \$9,421.93

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue" write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency 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, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. 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. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Office and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form PD-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://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.

If you have questions, call us at the telephone number shown below.

Sincerely,

*Constance Beard*

Constance Beard  
Director

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

(217) 558-4960

**Notice of Deficiency**  
**for Form IL-1040, Individual Income Tax Return**



September 2, 2015



Letter ID: CNXXX1997XX27688

#BXNXX1997XX27688#  
VIPUL and NAYANA PATEL  
308 CASTLE DR  
ELK GROVE VILLAGE IL 60007-4220

**Taxpayer ID:** XXX-XX-2376  
**Audit ID:** A278470656  
**Reporting period:** December 2011  
**Total Deficiency:** \$11,845.06  
**Balance due:** \$11,845.06

We have audited your account for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. Illinois law requires that we notify you of this deficiency and your rights.

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue". Write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency 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, file a protest with us, the Illinois Department of Revenue, within 60 days of the date of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative and administrative hearing. 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. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, 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 R-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://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.

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