

ILLINOIS INDEPENDENT
TAX TRIBUNAL

CRAIG ENGBERG,

Petitioner,

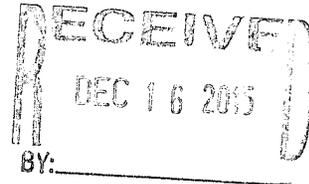
v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

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)
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No.



15 TT 256

NOTICE OF FILING

To: Illinois Department of Revenue
Office of Legal Services
100 West Randolph Street - 7-900
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on December 16, 2015, I caused to be filed with the Illinois Independent Tax Tribunal located at 160 North LaSalle Street - Room N506, Chicago, Illinois 60601 the attached Petition.



Scott A. Schimanski

PROOF OF SERVICE

The undersigned attorney certifies under penalties as provided by law pursuant to the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that he served this Notice and the attached Petition to the Illinois Department of Revenue by depositing same for delivery with the United States Postal Service proper postage pre-paid at Bridgeview, Illinois on the 16th day of December, 2015.

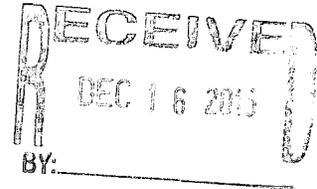


Scott A. Schimanski
Thomas W. Lynch, P.C.
9231 South Roberts Road
Hickory Hills, Illinois 60457
(708) 598-5999
Attorney Number: 6243826

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

CRAIG ENGBERG,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Respondent.)

No.



15 77 256

PETITION

NOW COMES, the Petitioner, CRAIG ENGBERG (“ENGBERG”) by and through his attorneys at Thomas W. Lynch, P.C., pursuant to the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq.*) and submits his Petition regarding two (2) Notices of Tax Liability dated September 16, 2015 (“Notices”)¹ and issued by the Respondent, ILLINOIS DEPARTMENT OF REVENUE (“DEPARTMENT”).

1. The DEPARTMENT issued the Notices regarding Max 18, Inc. (11-3716734 and 5518-1570) and finding ENGBERG liable for a penalty pursuant to Illinois law (35 ILCS 5/1002(d)) related to withholding income tax and a penalty pursuant to Illinois law (35 ILCS 735/3-7)) related to Sales/Use Tax and E911 Surcharge and ST-4 MPEA Food and Beverage Tax as a person who has control, supervision or responsibility for filing returns or making payments and who willfully fails to do so.

2. The Notices specify the 1002D Penalty ID 3410066 and NPL Penalty ID 3254089, federal identification number XXX-XX-6431 and reporting periods and figures as follows:

a. 1002D Penalty

Period	Tax	Penalty	Interest	Credits	Balance
09/30/2013	\$ 8,615.93	\$ 78.95	\$ 20.02	(\$ 8,208.04)	\$ 506.86
12/31/2013	\$ 7,398.09	\$ 567.77	\$178.80	(\$ 3,750.00)	\$ 4,394.66
03/31/2014	\$ 8,000.03	\$ 900.00	\$331.98		\$ 9,232.01
06/30/2014	\$ 7,263.64	\$ 826.36	\$246.41		\$ 8,336.41
09/30/2014	\$ 6,229.18	\$ 722.91	\$163.56		\$ 7,115.65

¹ True and accurate copies of the Notices are attached hereto as Exhibits 1 and 2. A true and accurate copy of the correspondence from Chief Administrative Law Judge Terry D. Charlton granting late discretionary hearing is attached hereto as Exhibit 3.

b. NPL Penalty

Period	Tax	Penalty	Interest	Credits	Balance
Sales/Use Tax & E911 Surcharge					
10/31/2013	\$12,803.00	\$1,630.30	\$127.72	(\$13,048.83)	\$ 1,512.19
11/30/2013	\$14,836.00	\$1,608.60	\$761.21		\$17,205.81
12/31/2013	\$14,025.00	\$1,752.50	\$694.63		\$16,472.13
01/31/2014	\$ 8,715.00	\$ 216.54	\$ 10.35	(\$ 8,562.00)	\$ 379.89
03/31/2014	\$13,796.00	\$ 325.20	\$ 13.58	(\$13,555.00)	\$ 579.78
04/30/2014	\$13,114.00	\$1,616.40	\$522.11		\$15,252.51
05/31/2014	\$12,888.00	\$ 305.84	\$ 16.23	(\$12,662.00)	\$ 548.07
06/30/2014	\$ 9,350.00	\$ 454.00	\$ 5.39	(\$ 9,350.00)	\$ 459.39
07/31/2014	\$ 8,501.00	\$1,120.12	\$274.30		\$ 9,895.42
08/31/2014	\$ 6,002.00	\$ 870.24	\$176.63		\$ 7,048.87
ST-4 MPEA Food & Beverage Tax					
04/30/2014	\$ 1,418.00	\$ 295.16	\$ 57.14		\$ 1,770.30
07/31/2014	\$ 920.00	\$ 140.40	\$ 30.51		\$ 1,090.91
08/31/2014	\$ 649.00	\$ 107.88	\$ 18.65		\$ 775.53

3. Max 18, Inc. was incorporated in 2003 for the purpose of operating a restaurant establishment under the exclusive authority of Paul Engberg.
4. Max 18, Inc. was dissolved and ceased operations at the end of October in 2014.
5. ENGBERG was at all times solely a minority shareholder owning approximately twenty percent (20%) of Max 18, Inc.
6. ENGBERG never had any operational authority, including no authority over the daily operations.
7. ENGBERG never was an employee of Max 18, Inc.
8. ENGBERG has at all times since 2003, been the exclusive operational manager of BCP, Inc., a restaurant and entertainment establishment existing under the name Thunder Bowl in Mokena, Illinois.
9. ENGBERG never had any duty to collect, truthfully account for or pay over any of the taxes at issue.

10. ENGBERG never had any power to control the decision-making process by which Max 18, Inc. allocated funds to any creditors, including any creditors in preference to the withholding tax, or other trust fund tax obligations of Max 18, Inc.

11. ENGBERG never had any authority, ultimate or otherwise, over the expenditure of funds for Max 18, Inc.

12. ENGBERG had no knowledge that any State of Illinois, Illinois Department of Revenue tax obligation was delinquent and unpaid.

13. ENGBERG never had control over, supervision of, or responsibility for filing returns or making payments related to tax returns.

14. ENGBERG never willfully failed to file any return or make any payment.

15. Paul Engberg is the sole individual responsible for the operations of Max 18, Inc., including the daily operations and the preparation, filing and paying of tax returns.

16. ENGBERG is not a person responsible for the payroll, withholding, sales/use and/or food and beverage tax obligations of Max 18, Inc.

17. ENGBERG did not willfully fail to collect, truthfully account for, or pay over any payroll, withholding, sales/use and/or food and beverage tax for Max 18, Inc.

18. ENGBERG did not willfully attempt in any manner to evade or defeat any tax or the payment of any tax of Max 18, Inc.

19. The Notices improperly determine that ENGBERG is liable for a penalty pursuant to Illinois law (35 ILCS 5/1002(d)) related to Illinois withholding income tax of Max 18, Inc.

20. The Notices improperly determine that ENGBERG is liable for a penalty pursuant to Illinois law (35 ILCS 735/3-7)) related to Illinois Sales/Use Tax and E911 Surcharge and ST-4 MPEA Food and Beverage Tax of Max 18, Inc.

21. The Notices improperly determine that ENGBERG is liable for penalties as a person who has control, supervision or responsibility for filing returns or making payments and who willfully fails to do so related to Max 18, Inc.

22. The Notices do not account for the following:

- a. Max 18, Inc. was incorporated in 2003 for the purpose of operating a restaurant establishment under the exclusive authority of Paul Engberg.
- b. ENGBERG was at all times solely a minority shareholder owning approximately twenty percent (20%) of Max 18, Inc.
- c. ENGBERG never had any operational authority, including no authority over the daily operations.
- d. ENGBERG never was an employee of Max 18, Inc.
- e. ENGBERG has at all times since 2003, been the exclusive operational manager of BCP, Inc., a restaurant and entertainment establishment existing under the name Thunder Bowl in Mokena, Illinois.
- f. ENGBERG never had any duty to collect, truthfully account for or pay over any of the taxes at issue.
- g. ENGBERG never had any power to control the decision-making process by which Max 18, Inc. allocated funds to any creditors, including any creditors in preference to the withholding tax, or other trust fund tax obligations of Max 18, Inc.
- h. ENGBERG never had any authority, ultimate or otherwise, over the expenditure of funds for Max 18, Inc.
- i. ENGBERG had no knowledge that any State of Illinois, Illinois Department of Revenue tax obligation was delinquent and unpaid.
- j. ENGBERG never had control over, supervision of, or responsibility for filing returns or making payments.
- k. ENGBERG never willfully failed to file any return or make any payment.
- l. Paul Engberg is the sole individual responsible for the operations of Max 18, Inc., including the daily operations and the preparation, filing and paying of tax returns.
- m. ENGBERG is not a person responsible for the payroll, withholding, sales/use and/or food and beverage tax obligations of Max 18, Inc.
- n. ENGBERG did not willfully fail to collect, truthfully account for, or pay over any payroll, withholding, sales/use and/or food and beverage tax for Max 18, Inc.
- o. ENGBERG did not willfully attempt in any manner to evade or defeat any tax or the payment of any tax of Max 18, Inc.

27. The Notices include penalties and interest charges that are improper.

28. ENGBERG requests that a determination be made that ENGBERG is not liable for a penalty pursuant to Illinois law (35 ILCS 5/1002(d)) related to Illinois withholding income tax, that ENGBERG is not liable for a penalty pursuant to Illinois law (35 ILCS 735/3-7)) related to Illinois Sales/Use Tax and E911 Surcharge and ST-4 MPEA Food and Beverage Tax, that ENGBERG is not a person who had control, supervision or responsibility for filing returns or making payments and that ENGBERG did not willfully fail to file any return or pay any tax regarding Max 18, Inc.

29. ENGBERG requests that a determination be made that there are no penalties and interest charges.

WHEREFORE, the Petitioner, CRAIG ENGBERG respectfully requests that the Court enter an Order that there is no penalty liability and that no penalties or interest should be imposed and for such other relief that is proper under the circumstances.

Respectfully submitted,
Craig Engberg

By:  Scott A. Schimanski

Craig Engberg
17548 Crystal Lake Drive
Homer Glen, Illinois 60491
(708) 769-6758

Thomas W. Lynch - 6194247
Scott A. Schimanski - 6243826
Thomas W. Lynch, P.C.
9231 South Roberts Road
Hickory Hills, Illinois 60457
(708) 598-5999
twlpc@att.net

Collection Action

Assessment and Notice of Intent



September 16, 2015



Letter ID: L1254890000

CRAIG L. ENGBERG
17548 CRYSTAL LAKE DR
HOMER GLEN IL 60491-6166

Taxpayer ID: XXX-XX-6431
1002D Penalty ID: 3410066



MAX 18 INC
PO BOX 806040
CHICAGO IL 60680-4121

We have determined you are personally liable for a penalty of \$29,585.59.

The penalty is equal to the amount of unpaid liability of MAX 18 INC, due to your status as a responsible officer, partner, or individual of MAX 18 INC.

Illinois law (35 ILCS 5/1002(d)) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$29,585.59. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

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

- **If the amount of this liability 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 15, 2015**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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 the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax

For information about
› how to pay
› submitting proof
› collection actions

Turn page

Ex. 1

Collection Action

Assessment and Notice of Intent



September 16, 2015



Letter ID: L1254890000

CRAIG L. ENGBERG
17548 CRYSTAL LAKE DR
HOMER GLEN IL 60491-6166

Taxpayer ID: XXX-XX-6431

1002D Penalty ID: 3410066



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

IL Withholding Income Tax

Account ID: 11-3716734-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Sep-2013	8,615.93	78.95	20.02	-	(8,208.04)	506.86
31-Dec-2013	7,398.09	567.77	178.80	-	(3,750.00)	4,394.66
31-Mar-2014	8,000.03	900.00	331.98	-	-	9,232.01
30-Jun-2014	7,263.64	826.36	246.41	-	-	8,336.41
30-Sep-2014	6,229.18	722.91	163.56	-	-	7,115.65

IDOR-5P-NPL (N-03/07)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L1254890000
CRAIG L. ENGBERG

Total amount due: \$29,585.59

Write the amount you are paying below.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

\$ _____

Write your Account ID on your check.

000 006 008863803049 731 123199 5 0000002958559

Collection Action

Assessment and Notice of Intent



September 16, 2015



Letter ID: L1811969552

CRAIG L. ENGBERG
17548 CRYSTAL LAKE DR
HOMER GLEN IL 60491-6166

Taxpayer ID: XXX-XX-6431
NPL Penalty ID: 3254089



MAX 18 INC
PO BOX 806040
CHICAGO IL 60680-4121

We have determined you are personally liable for a penalty of \$72,990.80.

The penalty is equal to the amount of unpaid liability of MAX 18 INC, due to your status as a responsible officer, partner, or individual of MAX 18 INC.

Illinois law (35 ILCS 735/3-7) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$72,990.80. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

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

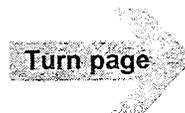
- **If the amount of this liability is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other 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 15, 2015**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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 the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS
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PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax

For information about
› how to pay
› submitting proof
› collection actions



Ex. 2

Collection Action
Assessment and Notice of Intent



September 16, 2015



Letter ID: L1811969552

CRAIG L. ENGBERG
 17548 CRYSTAL LAKE DR
 HOMER GLEN IL 60491-6166

Taxpayer ID: XXX-XX-6431
 NPL Penalty ID: 3254089



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge

Account ID: 5518-1570

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Oct-2013	12,803.00	1,630.30	127.72	-	(13,048.83)	1,512.19
30-Nov-2013	14,836.00	1,608.60	761.21	-	-	17,205.81
31-Dec-2013	14,025.00	1,752.50	694.63	-	-	16,472.13
31-Jan-2014	8,715.00	216.54	10.35	-	(8,562.00)	379.89
31-Mar-2014	13,796.00	325.20	13.58	-	(13,555.00)	579.78
30-Apr-2014	13,114.00	1,616.40	522.11	-	-	15,252.51
31-May-2014	12,888.00	305.84	16.23	-	(12,662.00)	548.07
30-Jun-2014	9,350.00	454.00	5.39	-	(9,350.00)	459.39
31-Jul-2014	8,501.00	1,120.12	274.30	-	-	9,895.42
31-Aug-2014	6,002.00	870.24	176.63	-	-	7,048.87

ST-4 MPEA Food & Beverage Tax

Account ID: 5518-1570

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Apr-2014	1,418.00	295.16	57.14	-	-	1,770.30
31-Jul-2014	920.00	140.40	30.51	-	-	1,090.91

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L1811969552
 CRAIG L. ENGBERG

Total amount due: \$72,990.80

Write the amount you are paying below.

Mail this voucher and your payment to:
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19035
 SPRINGFIELD IL 62794-9035

\$ _____

Write your Account ID on your check.

Collection Action

September 16, 2015

ST-4 MPEA Food & Beverage Tax

Account ID: 5518-1570

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Aug-2014	649.00	107.88	18.65	-	-	775.53



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

December 8, 2015

Attorney Scott A. Schimanski
9231 South Roberts Road
Hickory Hills, IL 60457

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Craig Engberg
Collection Action, Assessment & Notice of Intent dated September 16, 2015
1002(d) Penalty ID: 3410066
Letter ID: L1254890000
Collection Action, Assessment & Notice of Intent dated September 16, 2015
NPL Penalty ID: 3254089
Letter ID: L1811969552

Dear Mr. Schimanski:

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

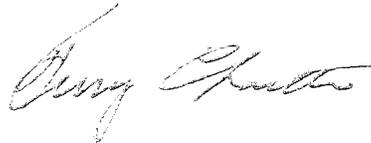
The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 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) 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 cursive script, appearing to read "Terry Charlton".

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

TDC