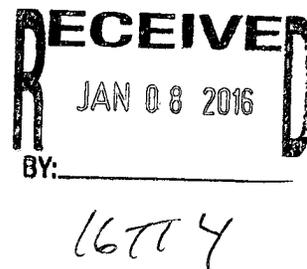


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

SAM'S WHOLESALE INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendant. )

No.



**PETITION**

Discount Sam's Wholesale 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 8940 West 192<sup>nd</sup> Street, Mokena, Illinois, 60448, and can be reached at 708-296-1352.
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](mailto:jdickett@aol.com).
3. Petitioner's Taxpayer Account ID is 40345580.
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 November 6, 2015, Petitioner received a Notice of Tax Liability letter for Form RC-28, Cigarette Revenue Audit Report (“Notice”) from the Department for an audit of the tax periods July 31, 2010 to June 30, 2013. The Notice reflects \$1,348,442 in tax due, \$1,744 in negligence penalty, \$664,862 in fraud penalty, \$269,688 in late payment penalty, and \$78,999 in interest, for a total of \$2,363,735. 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 cigarette wholesaler with customers located throughout the country.

9. Defendants audited Petitioner’s books and records for the tax periods July 31, 2010 to June 30, 2013.

10. The audit liability contained in the Notice is based on the Department disallowing the interstate sales exemption for cigarettes sold to two (2) out of state customers located in Indiana and Missouri, even though Petitioner provided documentation to the Department that corroborated all of the interstate sales at issue in the Notice.

## 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 disallowed multiple interstate sales even though Petitioner provided documentation to substantiate the interstate sales exemption.

13. By disallowing Petitioner's interstate sales exemption during the audit tax periods, the Department unreasonably inflated Petitioner's audit liability.

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

- (a) enters judgment in favor of Petitioner 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 multiple penalties based on the audit liability.

16. Illinois law provides that neither late penalties nor negligence penalties 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 during the audit tax periods because Petitioner maintained documentation to support all of its interstate sales.

20. Finally, the fraud penalty is improper because it is based solely on the large amount of tax due and also because there is no intent to defraud since Petitioner maintained and provided interstate sales documentation to the Department during the audit.

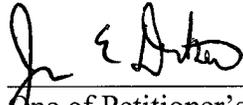
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares 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 prosecute and collect the amount of penalties due on the Notice; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Thank you for considering this Petition.

Respectfully submitted,

Sam's Wholesale Inc.,  
Petitioner

By:   
One of Petitioner's Attorneys

Date: 12/28/15

James E. Dickett  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)  
Email: [jdickett@aol.com](mailto:jdickett@aol.com)

**Notice of Tax Liability**  
for Form RC-28, Cigarette Revenue Audit Report

Exhibit 1



217 782-6045

\_\_\_\_\_ #BWNKMGV  
 \_\_\_\_\_ #CNXX X211 6715 4882#  
 SAMS WHOLESALE INC  
 MAK DISTRIBUTORS INC  
 8940 W 192ND ST STE H  
 MOKENA IL 60448-8137

November 6, 2015



Letter ID: CNXXX21167154882

License No: C-02146  
 Account ID: 40345580



We have audited your account for the reporting periods July 31, 2010, through June 30, 2013. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	1,348,442.00	0.00	1,348,442.00
Negligence Penalty	1,744.00	0.00	1,744.00
Fraud Penalty	664,862.00	0.00	664,862.00
Late Payment Penalty	269,688.00	0.00	269,688.00
Interest	78,999.19	0.00	78,999.19
<b>Assessment Total</b>	<b>\$2,363,735.19</b>	<b>\$0.00</b>	<b>\$2,363,735.19</b>

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 January 05, 2016. 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](http://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](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 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