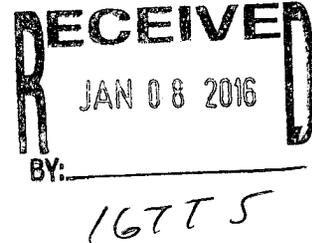


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

EXPRESS OF TINLEY PARK, INC.,)
)
 Petitioner,)
)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



PETITION

Petitioner, Express of Tinley Park, 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 8021 West 183rd Street, Suite F, Tinley Park, Illinois 60487 and can be reached at 708-898-8538.
2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg and Michael Gutting of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or tcalandriello@dandgpc.com. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Michael Gutting can be reached at 312-263-2200 or mgutting@dandgpc.com.
3. Petitioner’s Illinois Business Tax number is 4074-6747.

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 November 9, 2015, the Department issued a Notice of Tax Liability (the “NTL”) to Petitioner asserting a total Retailers Occupation Tax/Use Tax (“ROT”) liability of \$255,368.77, covering the period April 4, 2012 through January 31, 2014 (the “period at issue”). The total liability consists of \$174,992 in tax due, \$35,527 in late payment and late filing penalties, a \$34,691 negligence penalty and \$10,158.77 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

JURISDICTION

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

7. The 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 issuance of the NTL.

BACKGROUND

8. Petitioner is a retailer of cigarettes, tobacco products and other general merchandise. The Department audited Petitioner’s books and records for the period at issue.

9. The ROT audit liability stated in the NTL is based on projections whereby the Department multiplied Petitioner’s purchases by a percentage markup to project Petitioner’s total sales for the period at issue. The Department credited Petitioner for its taxable sales reported on

its sales tax returns for the period at issue and applied the high tax sales rate to the projected additional taxable sales and imposed a negligence penalty on the Petitioner's estimated ROT liability.

COUNT I

The Department's Audit Methodology Overstates Petitioner's ROT Liability

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

11. The 17% markup utilized by the Department to project Petitioner's cigarette sales was arbitrary, too high and overstated those sales. Petitioner's actual markup was far less than 17%.

12. The Department further erred in not allowing any reduction in projected sales for spoilage and theft loss and by failing to consider Petitioner's sales promotions.

13. The Department erred in applying the high tax sales rate to all of the Petitioner's projected additional taxable sales. Petitioner maintains that a portion of its general merchandise sales were low tax or non-taxable merchandise sales.

14. The Department did not adequately reduce Petitioner's projected sales for the period at issue to account for ending inventory.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the NTL;

(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 NTL; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All Negligence Penalties should be Abated

15. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 14 as and for this paragraph 15.

16. In its NTLs, the Department assessed negligence penalties in an amount totaling \$34,691.

17. Illinois provides that a negligence penalty is applicable only where a return is prepared negligently, and defines negligence to constitute any failure to make a reasonable attempt to comply with the provisions of any tax Act and includes careless, reckless, or intentional disregard of the law or regulations. 35 ILCS 735/3-5. Illinois law further provides that no negligence penalty shall be imposed if it is shown that the failure to comply with the Tax Act is due to reasonable cause; and that a taxpayer is not negligent if the taxpayer shows substantial authority to support the return as filed. *Id.*

18. Any understatement of ROT tax determined to be owed by Petition was not attributable to negligence as Petition did not act negligently in the preparation and filing of its ROT returns for the period in question, and any liability determined to exist was attributable to reasonable cause.

19. The Department's determination that Petitioner owed negligence penalties is not supported by fact or law.

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

- (a) Finds and declares that all negligence penalties should be abated because there was no negligence and/or for 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 the negligence penalties stated in the NTLs; and
- (c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

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

20. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 19 as and for this paragraph 20.

21. 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. See 35 ILCS 735/3-8.

22. The most important factor to be considered in making a determination to abate a late filing or 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. See 86 Ill. Admin. Code 700.400(b).

23. 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. See 86 Ill. Admin. Code 700.400(c).

24. Petitioner's failure to timely file and pay its ROT liabilities during the period at issue 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:

(a) Finds and declares that all late filing and late payment penalties should be abated for 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 the failure to file and failure to pay penalties stated in the NTL; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

EXPRESS OF TINLEY PARK, INC.,
Petitioner

Anthony Calandriello, Esq.
Lane M. Gensburg, Esq.
Michael Gutting, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
F – 312-263-2242
tcalandriello@dandgpc.com
lgensburg@dandgpc.com
mgutting@dandgpc.com
P:\Clients\Express of Tinley Park\Petition Express of Tinley Park.doc

By: 
One of Petitioner's Attorneys

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

EXPRESS OF TINLEY PARK, INC.,)	
)	
Petitioner,)	
)	
)	No.
v.)	
)	
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

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

I, Anthony Calandriello, an attorney, 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, January 8, 2016.



Anthony Calandriello

Anthony Calandriello, Esq.
Lane M. Gensburg, Esq.
Michael Gutting, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
F – 312-263-2242
tcalandriello@dandgpc.com
lgensburg@dandgpc.com
mgutting@dandgpc.com

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X2X2 9111 9525#
EXPRESS OF TINLEY PARK INC
ATTN: POA - DALE & GENSBURG, P.C. (ANTHONY
CALANDRIELLO)
200 W ADAMS ST STE 2425
CHICAGO IL 60606-5251

November 9, 2015



Letter ID: CNXXX2X291119525

Account ID: 4074-6747

We have audited your account for the reporting periods April 04, 2012, through January 31, 2014. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	174,992.00	0.00	174,992.00
Late Payment Penalty Increase	34,999.00	0.00	34,999.00
Negligence Penalty	34,691.00	0.00	34,691.00
Late Filing Penalty Increase	528.00	0.00	528.00
Interest	10,158.77	0.00	10,158.77
Assessment Total	\$255,368.77	\$0.00	\$255,368.77

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.

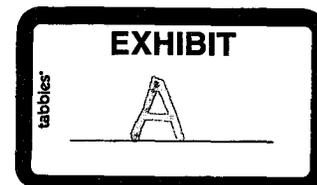
- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must 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 08, 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). 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



Taxpayer Statement



November 9, 2015

TDD 1 800 544-5304



Letter ID: CNXXXX4723699360

Account ID: 4074-6747

Total amount due: \$255,368.77

#BWNKMGV
#CNXX XX47 2369 9360#
EXPRESS OF TINLEY PARK INC
ATTN: POA - DALE & GENSBURG, P.C. (ANTHONY
CALANDRIELLO)
200 W ADAMS ST STE 2425
CHICAGO IL 60606-5251

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

You have available credits of \$2.71

Account ID: 4074-6747

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2013	-	-	-	-	(2.71)	(2.71)
31-Jan-2014	182,330.00	70,405.00	10,160.95	-	(7,527.18)	255,368.77

• \$255,368.77 of this amount is subject to protest.

SOA

Retain this portion for your records.

P-000265

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

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX4723699360
EXPRESS OF TINLEY PARK INC

Total amount due: \$255,368.77

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

\$255,368.77 is subject to protest.

Do not pay any Income Tax liability that you intend to protest.

000 006 006142222887 731 123199 0 0000025536877