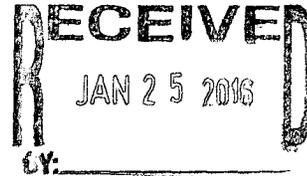


ILLINOIS INDEPENDENT  
TAX TRIBUNAL

DAVID M. KLEIN )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS DEPARTMENT OF )  
REVENUE )  
)  
Respondent. )

Docket No. 16- 1114



PETITION

Petitioner hereby petitions for a redetermination of the tax liabilities set forth in the Assessment and Notice of Intent issued by the Illinois Department of Revenue (the “Department”) dated November 20, 2015, against David M. Klein (“Petitioner”). As the basis for its case, Petitioner alleges as follows:

JURISDICTIONAL STATEMENT

1. Jurisdiction before the Independent Tax Tribunal is appropriate, as this Petition arises from the Assessment and Notice of Intent issued on November 20, 2015, by the Illinois Department of Revenue against Petitioner for an Illinois tax liability in excess of \$15,000.00 in the aggregate.

2. On August 24, 2015, the Department issued Final Notices of Tax Due (Letters ID: CNXXX8X595368X2, CNXXX13428245922) and a Taxpayer Statement (Letter ID: CNXXX1143X718888) (the “Notices”), proposing an assessment of the following taxes for the following periods, plus penalties and interest:

Letter ID: CNXXX13428245922			
	Liability	Payments/Credit	Unpaid Balance
Tax	5,282.00	0.00	5,282.00
Late Payment Penalty Increase	528.20	0.00	528.20
Interest	145.86	0.00	145.86
<b>Assessment Total</b>	<b>\$6,311.70</b>	<b>\$0.00</b>	<b>\$6,311.70</b>

Letter ID: CNXXX8X595368X2			
	Liability	Payments/Credit	Unpaid Balance
Tax	5,282.00	0.00	5,282.00
Late Payment Penalty Increase	528.20	0.00	528.20
Interest	355.64	0.00	355.64
<b>Assessment Total</b>	<b>\$6,299.54</b>	<b>\$0.00</b>	<b>\$6,299.54</b>

Letter ID: CNXXX1143X718888				
	Tax	Penalty	Interest	Balance
31-July 2014	4,991	698.92	151.34	5,841.26
31-Aug 2014	5,282.00	863.84	145.86	6,311.70
30-Sep 2014	5,282.00	863.84	133.70	6,299.54

Copies of the Notices are attached hereto as Exhibits A, B, and C, and are incorporated herein by reference.

3. On November 20, 2015, the Department issued an Assessment and Notice of Intent (Letter ID: L0955972368) determining that Petitioner is personally liable for a penalty of \$18,765.00. (Exhibit D).

#### FACTUAL BACKGROUND

4. Petitioner is an individual whose address is 969 Stanford Way, Fairview Heights, Illinois 62208-3795 and whose phone number is (618) 530-4320.

5. Petitioner's Social Security Number is omitted from this Petition in accordance with the rules published by the Illinois Independent Tax Tribunal.

6. Petitioner is a member of DAFR, LLC ("DAFR").

7. DAFR's Taxpayer Identification Number is 46-5250187.

8. Petitioner and Frank Ferrara ("Ferrara") were the members of DAFR.

9. DAFR operated a restaurant, Gus's Place, in Fairview Heights, Illinois, from April 2014 through September 2014.

10. On or about June 6, 2014, Ferrara sold all of his interest in DAFR to Petitioner.

11. At all times, Ferrara completely handled the finances, including any taxes owed to the State of Illinois, for DAFR.

ERROR IN DETERMINATION OF PETITIONER'S LIABILITY

12. Respondent erroneously determined that Petitioner is personally liable for willfully failing to file tax returns and willfully failing to pay taxes due under 35 ILCS 735/3-7 of the Illinois Uniform Penalty and Interest Act (the "Act").

13. Section 3-7(a) provides that an officer or employee... "who has the control, supervision or responsibility of filing returns and making payment..."

14. Petitioner did not have the "control, supervision or responsibility" of filing the tax returns for DAFR or making payment thereupon.

15. Ferrara managed DAFR's operations, prepared all returns and reports, made any payments due, and handled the day-to-day business.

16. A review of the bank records for DAFR shows that Petitioner only signed two checks from DAFR's account during the life of the business.

17. All other checks from DAFR were signed by Ferrara.

18. Section 3-7(a) of the Act provides imposes a personal liability penalty on an individual "who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax..."

19. Petitioner did not “willfully” fail to file any returns, nor did Petitioner “willfully” fail to make payment to the Department.

20. Whenever Petitioner received notices from the Department, Petitioner gave Ferrara the notices to handle.

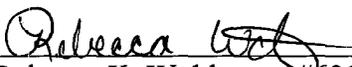
21. Petitioner reasonably believed that Ferrara sufficiently and timely addressed any notices from the Department based on Ferrara’s assurances that he did so.

22. If it is determined that Petitioner is personally liable, the amount of tax due is overstated because DAFR’s sales were significant lower than estimated by the Department.

WHEREFORE, Petitioner prays that this Tribunal hear its Petition and determine its liability for tax, penalties and interest in accordance with the assertions of errors and facts set forth hereinabove, and for all other appropriate relief.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

By:   
Rebecca K. Wohltman, #6319584  
Attorneys for Petitioner  
23 Public Square, Suite 300  
Belleville, IL 62220  
(618) 234-9800  
(618) 234-9786 (fax)  
rwohltman@mmrltd.com

**Final Notice of Tax Due**  
**for Form ST-1, Sales and Use Tax and E911 Surcharge Return**



#BWNKMGV  
#CNXX XX8X 5953 68X2#  
DAFR LLC  
GUS'S PLACE  
969 STANFORD WAY  
FAIRVIEW HEIGHTS IL 62208-3795

August 24, 2015 TDD 1 800 544-6304



Letter ID: CNXXXX8X595368X2

Account ID: 4136-9173  
Reporting Period: September 2014



**The Notice of Tax Liability issued on June 8, 2015 is final.** Any correspondence and/or amended figures received for this liability have been processed.

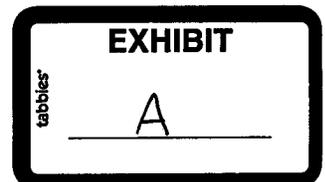
As a result we have assessed the amounts shown below.

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before September 23, 2015.

Please use the voucher on the enclosed Taxpayer Statement to make your payment.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	5,282.00	0.00	5,282.00
Late-Payment Penalty	528.20	0.00	528.20
Late-Filing Penalty	355.64	0.00	355.64
Interest	133.70	0.00	133.70
<b>Assessment Total</b>	<b>\$6,299.54</b>	<b>\$0.00</b>	<b>\$6,299.54</b>

For questions, visit our web site or call one of the numbers above.



# Final Notice of Tax Due

for Form ST-1, Sales and Use Tax and E911 Surcharge Return



\_\_\_\_\_ #BWNKMGV  
\_\_\_\_\_ #CNXX X134 2824 5922#  
\_\_\_\_\_ DAFR LLC  
\_\_\_\_\_ GUS'S PLACE  
\_\_\_\_\_ 969 STANFORD WAY  
\_\_\_\_\_ FAIRVIEW HEIGHTS IL 62208-3795

August 24, 2015

TDD 1 800 544-5304



Letter ID: CNXXX13428245922

Account ID: 4136-9173  
Reporting Period: August 2014



**The Notice of Tax Liability issued on June 8, 2015 is final.** Any correspondence and/or amended figures received for this liability have been processed.

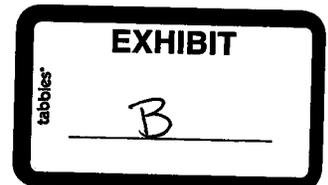
As a result we have assessed the amounts shown below.

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before September 23, 2015.

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Late-Payment Penalty	528.20	0.00	528.20
Late-Filing Penalty	355.64	0.00	355.64
Interest	145.86	0.00	145.86
<b>Assessment Total</b>	<b>\$6,311.70</b>	<b>\$0.00</b>	<b>\$6,311.70</b>

For questions, visit our web site or call one of the numbers above.



# Taxpayer Statement



August 24, 2015

TDD 1 800 544-5304

\_\_\_\_\_  
#BWNKMGV  
\_\_\_\_\_  
#CNXX X114 3X71 8888#  
DAFR LLC  
GUS'S PLACE  
969 STANFORD WAY  
FAIRVIEW HEIGHTS IL 62208-3795



Letter ID: CNXXX1143X718888

Account ID: 4136-9173

Total amount due: \$18,452.50



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: 4136-9173

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Jul-2014	4,991.00	698.92	151.34	-	-	5,841.26
31-Aug-2014	5,282.00	883.84	145.86	-	-	6,311.70
30-Sep-2014	5,282.00	883.84	133.70	-	-	6,299.54

SQA

Retain this portion for your records.

F-000563

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

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



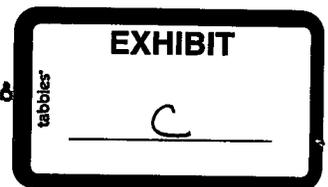
Letter ID: CNXXX1143X718888  
DAFR LLC

Total amount due: \$18,452.50

Write the amount you are paying below.

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

\$ \_\_\_\_\_  
Write your Account ID on your check.



000 006 010670196004 731 123199 6 00000018

**Collection Action**  
**Assessment and Notice of Intent**



November 20, 2015



Letter ID: L0955972368

DAVID M. KLEIN  
969 STANFORD WAY  
FAIRVIEW HEIGHTS IL 62208-3795

Taxpayer ID: XXX-XX-8441  
NPL Penalty ID: 160932



DAFR LLC  
969 STANFORD WAY  
FAIRVIEW HEIGHTS IL 62208-3795

**We have determined you are personally liable  
for a penalty of \$18,765.00.**

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

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 \$18,765.00. 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 January 19, 2016. 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

