ILLINOIS INDEPENDENT

TAX TRIBUNAL

RECEIVED
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ROMAN POOLS AND SPAS

Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE

Respondent,

**PETITION**

The Petitioner, ROMAN POOLS AND SPAS, hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Proposed Liability, issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

**INTRODUCTION**

1. The "Notice" was issued by the Department on April 16, 2014 assessing in the amount of $9,965.00 in tax, $2,192.00 in penalties and $726.20 in interest for the taxable periods July 01, 2009 through June 30, 2012. A copy of the "Notice" is attached to this Petition.

2. The "Notice" was issued by the Department on April 16, 2014 assessing in the amount of $8,304.00 in tax, $3,654.00 in penalties and $3,341.67 in interest for the taxable periods January 01, 2007 through June 30, 2009. A copy of the "Notice" is attached to this Petition.

3. Petitioner is an individual with his principal place of business in Quincy, Illinois.

4. It is located at 3110 Broadway, Quincy, IL 62301, and its telephone number is 217-222-2222. The Taxpayer Account number is 4077-9548.

5. Roman Pools and Spas is a sole-proprietorship, owned by Robert R. Roman. This company constructs pools and spas of various shapes and sizes for homeowners in Quincy, Illinois and the surrounding area.

## BACKGROUND AND RELEVANT FACTS

6. Petitioner was audited by the Illinois Department of Revenue on December 7, 2012. The results of that audit were the assessment of sales/use tax due on the purchases of pool and spa construction supplies. The sales/use tax was assess because invoices showing the sales tax paid for these purchases could not be located during the audit.

## APPLICABLE LAW

7. Title 86, Part 130, Section 130.2075

## ERROR

8. The invoices not located during the audit were later found and clearly show that sales tax was paid at the time of purchase. In addition, the taxpayer has never registered with the Department as a retailer or reseller and therefore has never issued a certificate of resale to any suppliers. During the audit, the taxpayer was able to locate some invoices selected by the auditor and all invoices indicated sales tax was paid to the supplier. Additional invoices have also been located and are ready for review by the Department. All invoices indicate sales tax paid was on purchases.

## CONCLUSION AND RELIEF REQUESTED

9. We respectfully request all sales/use tax assessments be removed, as sales/use tax on these purchases of tangible personal property have already been collected and remitted to the Department by the seller. We are also asking for abatement of the related interest and penalties.

WHEREAS, Petitioner requests that the "Notice" be modified or canceled for the reasons contained herein.

ROBERT R. ROMAN

# Notice of Tax Liability

**for Form EDA-105-R, ROT Audit Report**

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX XX2X 7863 52X8#
ROBERT R. ROMAN
ROMAN POOLS & SPAS
1401 S 22ND ST
QUINCY IL 62301-6749

April 16, 2014

**Letter ID:** CNXXXX2X786352X8

**Account ID:** 4077-9548

We have audited your account for the reporting periods July 01, 2009, through June 30, 2012. As a result we have assessed the amounts shown below.

| | Liability | Payments/Credit | Unpaid Balance |
|---|---|---|---|
| Tax | 9,965.00 | 0.00 | 9,965.00 |
| Late Payment Penalty Increase | 1,993.00 | 0.00 | 1,993.00 |
| Late Filing Penalty Increase | 199.00 | 0.00 | 199.00 |
| Interest | 726.20 | 0.00 | 726.20 |
| **Assessment Total** | $12,883.20 | $0.00 | **$12,883.20** |

**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 **June 16, 2014**. 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

# Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

1 **Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

2 **Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

3 **Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.

4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.

6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

7 **Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

8 **Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

**Are penalties ever abated?**

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

**How is interest figured?**

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

# Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

# Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

# Notice of Tax Liability

**for Form EDA-105-R, ROT Audit Report**

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X128 16X5 3446#
ROBERT R. ROMAN
ROMAN POOLS & SPAS
1401 S 22ND ST
QUINCY IL 62301-6749

April 16, 2014

**Letter ID:** CNXXX12816X53446

**Account ID:** 4077-9548

We have audited your account for the reporting periods January 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

| | Liability | Payments/Credit | Unpaid Balance |
|---|---|---|---|
| Tax | 8,304.00 | 0.00 | 8,304.00 |
| Late Payment Penalty Increase | 3,322.00 | 0.00 | 3,322.00 |
| Late Filing Penalty Increase | 332.00 | 0.00 | 332.00 |
| Interest | 3,341.67 | 0.00 | 3,341.67 |
| **Assessment Total** | $15,299.67 | $0.00 | **$15,299.67** |

**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 **June 16, 2014**. 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.

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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.

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TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
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**Are penalties ever abated?**

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- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

# Notice of Proposed Liability
## for Sales, Use, and Excise Taxes and Fees

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

December 7, 2012

**Letter ID:** L2065073824

ROMAN POOLS AND SPAS
1401 S 22ND ST
QUINCY IL 62301-6749

| | |
|---|---|
| **Taxpayer ID:** | 35-1941888 |
| **Account ID:** | 4077-9548 |
| **Audit ID:** | A1464379392 |
| **Return type:** | ST-1 |
| **Audit periods:** | 01/2007 - 06/2012 |

We have audited your account and have determined that there is additional liability due.

| | |
|---|---|
| Tax | **$34,198.00** |
| Penalty | **$8,435.00** |
| Interest | **$5,596.00** |
| Total | **$48,229.00** |

Our calculations, periods covered, and other explanations resulting in the determination are attached for your review.

**If you agree** with the tax amount as shown, contact the auditor at the phone number shown below for further instructions. Please note, if you sign the Audit Report, you waive the right to seek review by the Informal Conference Board.

**If you do not agree** with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice and mail it, along with a copy of the auditor's work papers and a copy of this notice, to:

INFORMAL CONFERENCE BOARD
100 W RANDOLPH SUITE 7-341
CHICAGO IL 60601

If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.

Sincerely,

GARY HANNANT
Revenue Auditor I

ILLINOIS DEPARTMENT OF REVENUE
AUDIT-SPI-A, IL DEPT OF REVENUE, PO BOX 19475,
SPRINGFIELD, IL 62794-9475

217 720-5203
217 720-5203 cell
217 785-3251 fax

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

November 23, 2015

Mr. Curtis Moore
Dillman & Associates
523 S. 8th Street
Quincy, IL 62301

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Robert Roman/Roman Pools & Spas
Registration No.: 4077-9548
2 Notices of Tax Liability (NTLs) dated April 16, 2014
Letter ID: CNXXX12816X53446
Letter ID: CNXXXX2X786352X8

Dear Mr. Moore:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Robert Roman/Roman Pools & Spas regarding the above NTLs. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for Robert Roman/Roman Pools & Spas regarding the above NTLs.

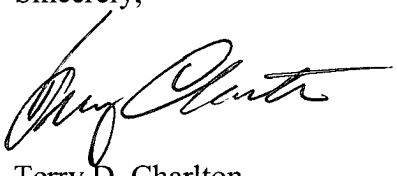
The amount of liability at issue for this protest exceeds the statutory amount ($15,000, exclusive of penalties and interest) or ($15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 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,



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

TDC