

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.

NOTICE

Illinois Department of Revenue

5. On information and belief, in or about May or June of 2015, the Department issued an Assessment and Notice of Intent (the “Notice of Penalty Liability”) to Petitioner proposing a responsible officer penalty liability of \$17,305.54 equaling the outstanding sales/use tax liabilities of Top Table LLC covering the period October 2014 through December 2014 (the “period at issue”). A copy of the Department’s Collection Action Assessment and Notice of Intent dated August 20, 2015 reflecting the Notice of Penalty Liability balance 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. On December 8, 2015, The Department’s Office of Administrative Hearings granted Petitioner’s request for a late discretionary hearing. A copy of the Department’s December 8, 2015 letter is attached as **Exhibit B**.

8. 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 Department’s December 8, 2015 letter.

BACKGROUND

9. Top Table LLC was a restaurant located at 1 West Illinois Street, St. Charles, Illinois 601274. The liability appears to stem from the non-payment and/or underpayment of sales tax covered in the period at issue.

10. During the period at issue, Petitioner did not have control, supervision, or responsibility over the filing of Top Table LLC's sales tax returns (and attendant collection and payment of tax) and was not responsible for Top Table LLC's unpaid liabilities.

11. During the period at issue, Petitioner did not act willful in connection with Top Table LLC's sales/use tax liabilities.

COUNT I

Defendant's Proposed Penalty Liability Assessment against the Petitioner is not Supported

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11 above as and for this paragraph 12.

13. The Department erred in determining that Petitioner is personally responsible (in accordance with 35ILCS 735/3-7) for Top Table LLC's sales/use tax liabilities as set forth in the Department's Notice of Penalty Liability which the Petitioner has never received.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the Notice of Penalty Liability;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and/or collect the amount due stated in the Notice of Penalty Liability against Petitioner; and

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

Respectfully submitted,

CYNTHIA A. DRAFALL, Petitioner

By: 
One of Petitioner's Attorneys

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Michael W. Gutting, Esq.
Dale & Gensburg, P.C.
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mgutting@dandgpc.com

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Collection Action
Assessment and Notice of Intent



August 20, 2015



Letter ID: CNXXXX6X1X875X47

#BWNKMGV
#CNXX XX6X 1X87 5X47#
CYNTHIA A. DRAFALL
275 S COLLINS ST
SOUTH ELGIN IL 60177-1921

Taxpayer ID: XXX-XX-7195
NPL Penalty ID: 3890013



TOP TABLE, LLC
1 W ILLINOIS ST
SUITE 170 IL 60174

You now owe a personal liability penalty.

By September 3, 2015, pay us \$17,305.54, which is unpaid liability of TOP TABLE, LLC. We have determined that you are personally liable for this amount due to your status as a responsible officer, partner, or individual of TOP TABLE, LLC.

The enclosed statement details the items you owe.

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.

If we do not receive this payment, we intend to take collection 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.

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.

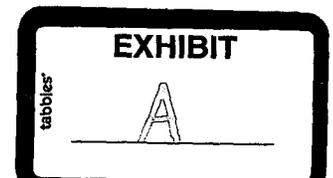
DMITRI CORNELIER
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

For information about

- > payments
- > bankruptcy
- > collection actions



217 782-9904 ext. 31613
217 785-2635 fax



Collection Action

Assessment and Notice of Intent



August 20, 2015



Letter ID: CNXXXX6X1X875X47

#BWNKMGV
#CNXX XX6X 1X87 5X47#
CYNTHIA A. DRAFALL
275 S COLLINS ST
SOUTH ELGIN IL 60177-1921

Taxpayer ID: XXX-XX-7195
NPL Penalty ID: 3890013



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

Sales/Use Tax & E911 Surcharge

Account ID: 4147-0818

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Oct-2014	6,131.00	713.10	97.78	0.00	(2,269.73)	4,672.15
30-Nov-2014	5,916.00	691.60	107.96	0.00	0.00	6,715.56
31-Dec-2014	5,194.00	641.40	82.43	0.00	0.00	5,917.83
Total Balance:						17,305.54



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

RECEIVED
DEC 11 2015
DALE & GENSBURG, P.C.

December 8, 2015

Anthony Calandriello
Dale & Gensburg P.C.
200 West Adams St., Suite 2425
Chicago, IL 60606

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Cynthia A. Drafall
Collection Action, Assessment & Notice of Intent dated May 26, 2015
NPL Penalty ID: 3890013
Letter ID: L1489664784

Dear Mr. Calandriello:

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

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

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

CYNTHIA A. DRAFALL)	
)	
Petitioner,)	
)	
)	No.
v.)	
)	
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

TO: Illinois Independent Tax Tribunal
160 North La Salle Street, Room N506
Chicago, Illinois 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 5:00 p.m. on Wednesday, February 03, 2016.



Anthony Calandriello

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