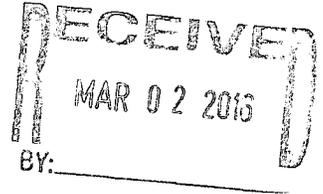


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

CENTURION SERVICE GROUP, )  
)  
Petitioner, )  
v. )  
)  
THE ILLINOIS DEPARTMENT OF REVENUE, )  
)  
Defendant. )

No.



**PETITION**

Centurion Service Group (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. For the tax period beginning July 1, 2010 through December 31, 2012 (“Period in Issue”), Petitioner was an Illinois corporation whose headquarters were located at 1400 North 25th Avenue, Melrose Park, IL, 60160-3001.

2. Petitioner is represented by David A. Hughes and Samantha K. Breslow of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3212 or dhughes@hmblaw.com; and sbreslow@hmblaw.com or 312-606-3206, respectively.

3. Petitioner’s IBT No. is 3268-8776.

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.

## **NOTICES**

5. On January 7, 2016, the Department issued a Notice of Tax Liability to the Petitioner for the tax periods July 1, 2010 through December 31, 2012 in the amount of \$413,286.98.

6. The Notice of Tax Liability (“Notice”) is attached hereto as Exhibit A.

## **JURISDICTION**

7. 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 and the Illinois Retailers’ Occupation Tax Act (“ROT Act”), 35 ILCS 120/1 et. seq.

8. This 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 Notices.

## **BACKGROUND**

9. Petitioner operates a used medical equipment auction house that facilitates auction sales primarily in Illinois, Florida, Nevada, and via the internet.

10. The sellers at the auctions are primarily hospitals or medical centers who sell used medical equipment.

11. Many of the buyers at the auctions are in the business of selling medical equipment.

12. As a result of an audit of Petitioner’s Sales and Use Tax and E911 Surcharge Returns for the Period in Issue (Form ST-1), the Illinois Department of Revenue determined that Petitioner’s auction sales were subject to the Illinois Retailers’ Occupation Tax (“ROT”).

13. On July 14, 2014 Petitioner requested Informal Conference Board review and the conference was held on January 8, 2015.

14. The Informal Conference Board reviewed the Illinois Department of Revenue Audit Bureau's proposed adjustments and on August 9, 2015 issued the Action Decision attached hereto as Exhibit B.

## COUNT I

### **Petitioner Properly Disclosed the Principal of the Auction Sale**

15. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 14, inclusive, hereinabove.

16. Pursuant to a Department regulation, the receipts from any sale made by an auctioneer or agent who is acting for a known or disclosed principal are taxable to the principal, provided the principal is engaged in the business of selling such tangible personal property at retail. 86 Ill. Adm. Code Sec. 130.1915(a)(2).

17. A principal is deemed to be disclosed to a purchaser only when the name and address of the principal is made known to the purchaser at or before the time of the sale. 86 Ill. Adm. Code Sec. 130.1915.

18. Acceptable evidence of disclosure includes posting a written list of the principals' names and addresses at the auction site; distributing sale bills or brochures that name the principals and their addresses; recording the principals' names and their addresses on legal documents regarding the item that is sold; or other methods that provide a permanent, written record of the disclosure of the names and addresses of the principals. 86 Ill. Adm. Code Sec. 130.1915(b).

19. At its auctions during the Period in Issue, Petitioner made the identity of the principal known to the purchaser at or before the time of the sale.

20. When auctioning a unit, Petitioner attached two barcodes and a lot number to the unit.

21. One of the barcodes expressly stated the name of the owner of the property and provided a reference ID number.

22. Petitioner also provided a list of sellers at the check-in table and computer terminals of the auction house where potential bidders could reference the ID numbers provided to determine the seller's name and location.

23. When a unit was sold, Petitioner provided the buyer with an invoice that explicitly referenced the lot number and the ID number of the seller.

24. The names of the sellers and corresponding identification numbers were also included in the terms of sale that were posted online.

25. Petitioner properly disclosed the identity of the principal to the purchaser at or before the time of the sale in accordance with the Department's regulation.

26. Accordingly, the Petitioner is not subject to the ROT Act, and the Notice should be withdrawn.

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

- (a) finds and declares that during the Period in Issue, Petitioner was not subject to ROT on the auction sales;
- (b) finds and declares that the Department's assessment of tax due is erroneous;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;

- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

## COUNT II

### **Certain Sales are not Subject to the ROT because the Sales Occurred Outside of Illinois**

27. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 26, inclusive, hereinabove.
28. The ROT does not apply to gross receipts from sales in which the seller, by carrier, delivers goods from a point in Illinois to a point outside Illinois. 86 Ill. Adm. Code Sec. 130.605(d).
29. In order for the exemption to apply, the seller must be shown as the consignor or shipper on the bill of lading. 86 Ill. Adm. Code Sec. 130.605(d).
30. Certain sales to non-resident buyers were delivered to out-of-state locations via common carrier.
31. Petitioner was listed as the shipper on the bills of lading.
32. Many of the goods sold were not located at Petitioner's auction house in Illinois at the time of sale, but instead remained at the seller's location or the other auction houses outside of Illinois.
33. Petitioner is not subject to ROT on those sales to non-resident buyers delivered outside the state of Illinois.

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

- (a) finds and declares that during the Periods in Issue, Petitioner was not liable for ROT on sales of goods delivered outside of Illinois;

- (b) finds and declares that the Department's assessment of tax due is erroneous;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

### COUNT III

#### **Certain Sales are not Subject to ROT because the Sales are for Resale**

34. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 33, inclusive, hereinabove.

35. The sale of tangible personal property to a purchaser for the purpose of resale in any form as tangible personal property, to the extent not first subjected to a use for which it was purchased, is not subject to ROT. 86 Ill. Adm. Code Sec. 130.210(a).

36. Many of Petitioner's buyers are in the business of selling medical equipment.

37. These customers did not purchase equipment at Petitioner's auctions for their own use, but rather purchased the equipment for purposes of resale.

38. All sales by Petitioner for the purpose of resale are not subject to ROT.

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

- (a) finds and declares that during the Periods in Issue, Petitioner was not liable for ROT on sales of goods purchased for resale;
- (b) finds and declares that the Department's assessment of tax due is erroneous;

- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

#### **COUNT IV**

##### **Sales of Medical Appliances are Subject to the ROT at a Lower Rate**

39. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 38 inclusive, hereinabove.
40. With respect to medical appliances, the ROT is imposed at the rate of 1 percent. 86 Ill. Admin. Code Sec. 130.311(a).
41. A medical appliance is an item that is used to directly substitute for a malfunctioning part of the human body. Ill. Admin. Code Sec. 130.311(d).
42. Some of Petitioner's sales were items used to directly substitute for a malfunctioning part of the human body.
43. If any of Petitioner's sales are subject to ROT, these sales are subject to tax at a lower rate of 1 percent to the extent the item sold was a medical appliance.

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

- (a) finds and declares that during the Periods in Issue, if any of Petitioner's sales were subject to ROT, then sales of medical appliances were subject to tax at a lower rate of 1 percent;
- (b) finds and declares that the Department's assessment of tax due is erroneous;

- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

#### COUNT IV

**Illinois Administrative Code Section 130.1915 Exceeds the Scope of the Illinois Retailers' Occupation Tax Act and Should Therefore be Invalidated**

- 44. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 43, inclusive, hereinabove.
- 45. The Illinois Retailers' Occupation Tax Act imposes tax upon "persons engaged in the business of selling at retail tangible personal property." 35 ILCS 120/2.
- 46. "Sale at retail" means any transfer of the ownership of or title to tangible personal property to a purchaser. 35 ILCS 120/1.
- 47. Title 86, section 130.1915(a) of the Illinois Administrative Code imposes the ROT on receipts from any sale made by an auctioneer or agent who is acting for an unknown or undisclosed principal even if the auctioneer never takes title to the item sold. 86 Ill. Adm. Code Sec. 130.1915(a)(1).
- 48. A regulation is invalid if it limits or exceeds the scope of the statute under which it was promulgated. *Exhibits, Inc. v. Sweet*, 303 Ill. App. 3d 423, 427 (Ill. App. Ct. 1st Dist. 1998).
- 49. Title 86, section 130.1915 of the Illinois Administrative Code is invalid and unenforceable because it exceeds the scope of the ROT Act, which imposes a tax only if the seller owns the property sold.

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

- (a) finds and declares that Title 86, section 130.1915 of the Illinois Administrative Code is invalid on the ground that it exceeds the scope of the ROT Act;
- (b) finds and declares that the Department's assessment of tax due is erroneous;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

## **COUNT V**

### **Reasonable Attorney's Fees Must be Awarded if the Administrative Rule is Invalidated**

50. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 49, inclusive, hereinabove.

51. In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. 5 ILCS 100/10-55(c).

52. If this Court invalidates the administrative rule, the Petitioner is entitled to reimbursement for reasonable expenses of the litigation, including attorney's fees.

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

- (a) finds and declares that if this Court invalidates the administrative rule, the Petitioner should be awarded reasonable expenses of the litigation, including attorney's fees;
- (b) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notice;
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

## **COUNT VI**

### **Penalties Should be Abated Based on Reasonable Cause**

53. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 52, inclusive, hereinabove.
54. The Department assessed late payment and late filing penalties in the amount of \$62,777.00 and \$5,861.00, respectively.
55. Late payment and late filing penalties do not apply if the taxpayer demonstrates that the failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.
56. Petitioner reasonably determined that it was not subject to ROT on its auction sales because the principal was disclosed at the time of the sale.
57. Petitioner acted in good faith and demonstrated reasonable cause when it determined that it was not subject to ROT on the auction sales.

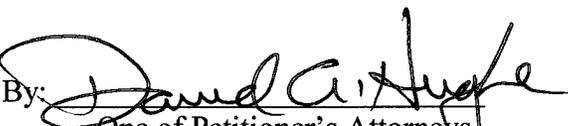
58. All late payment and late filing penalties must be abated because Petitioner exercised reasonable cause in determining that it was not required to pay ROT on the sales in issue.

**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;
- (b) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to abate penalties;
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

**CENTURION SERVICE GROUP,**  
Petitioner

By:   
One of Petitioner's Attorneys

David A. Hughes (dhughes@hmblaw.com)  
Samantha K. Breslow (sbreslow@hmblaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3200

# Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



January 7, 2016



Letter ID: CNXXX146283X8645

Account ID: 3268-8776

#BWNKMGV  
#CNXX X146 283X 8645#  
CENTURION SERVICE GROUP  
ATTN: POA - MILLER COOPER & CO (JOEL POLAKOW)  
1751 LAKE COOK RD STE 400  
DEERFIELD IL 60015-5286

We have audited your account for the reporting periods July 01, 2010, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	313,883.00	0.00	313,883.00
Late Payment Penalty Increase	62,777.00	0.00	62,777.00
Late Filing Penalty Increase	5,861.00	0.00	5,861.00
Interest	30,765.98	0.00	30,765.98
<b>Assessment Total</b>	<b>\$413,286.98</b>	<b>\$0.00</b>	<b>\$413,286.98</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 March 07, 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

# Taxpayer Statement



January 7, 2016

TDD 1 800 644-5304



Letter ID: CNXXXX1158414240

Account ID: 3268-8776

Total amount due: \$413,286.98

#BWNKMGV  
#CNXX XX11 5841 4240#  
CENTURION SERVICE GROUP  
ATTN: POA - MILLER COOPER & CO (JOEL POLAKOW)  
1751 LAKE COOK RD STE 400  
DEERFIELD IL 60015-5286

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: 3268-8776

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2012	321,086.00	68,926.12	30,765.98	-	(7,491.12)	413,286.98

• \$413,286.98 of this amount is subject to protest.

SOA

Retain this portion for your records.

P-000046

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

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



Letter ID: CNXXXX1158414240  
CENTURION SERVICE GROUP

Total amount due: \$413,286.98

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

\$413,286.98 is subject to protest.

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

000 006 004094549280 731 123179 2 0000041328698



**Illinois Department of Revenue**  
Informal Conference Board  
Louise Calvert, Administrator  
100 West Randolph Street, 7-286  
Chicago, Illinois 60601  
Phone: 312 814-1722  
Fax: 312-814-1402

**RE:           Docket #:       14-0215**  
**Taxpayer:     Centurion Service Group LLC**  
**Audit ID #:   A549861376**  
**IBT #:        3268-8776**

**ACTION DECISION**

The Informal Conference Board has reviewed the Illinois Department of Revenue Audit Bureau's proposed adjustments in this matter and, based upon information supplied during the review process, finds that some of the proposed adjustments should be revised. These adjustments are in addition to those already made by the auditor during the Informal Conference Board process. No change is to be made to the remaining proposed adjustments.

The Audit Bureau is instructed to make the following adjustments:

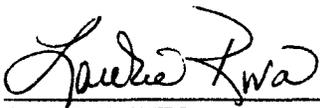
- Sales to Buyer #5028 – Premier Ophthalmic, Buyer #5093 – JD Imaging, Buyer #5022 – Global Key, and Buyer #5038 – State of the Art Medical are to be allowed.
- The Taxpayer has thirty (30) days from the date of the Action Decision to present documentation showing that items sold qualify for taxation at the medical appliance rate.
- Within the thirty days allowed above, the Taxpayer may present, for auditor review, any information tied to specific questioned transactions to support its claim of "other evidence".

The Taxpayer's assertion that adequate disclosure of principals existed at the time of the auction is rejected as insufficiently documented.

The Audit Bureau is instructed to conclude and process the audit in a manner consistent with this decision.

Taxpayer Request for Audit Adjustments Granted in Part.

  
\_\_\_\_\_  
**DEBRA M. BOGGESS**  
**MEMBER, INFORMAL CONFERENCE BOARD**

  
\_\_\_\_\_  
**LAURIE RIVA**  
**MEMBER, INFORMAL CONFERENCE BOARD**

\_\_\_\_\_  
**BRIAN WOLFBERG**  
**MEMBER, INFORMAL CONFERENCE BOARD**

8-9-15  
\_\_\_\_\_  
**DATE ENTERED**

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 2nd day of March, 2016.

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

A handwritten signature in black ink, reading "David C. Hulse", is written over a horizontal line. The signature is cursive and includes a large, sweeping initial "D".