

ILLINOIS INDEPENDENT
TAX TRIBUNAL

DENNIS PROSIO d/b/a FRANK'S PIZZERIA,)

Petitioner,)

v.)

ILLINOIS DEPARTMENT OF REVENUE,)

Respondent.)

No.



PETITION

Petitioner, Dennis Prosio d/b/a Frank's Pizzeria, by his attorneys, petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Tax Liability ("Notice") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

1. The Notice was issued by the Department on January 20, 2016 assessing in the amount of \$63,944.00 in tax, \$44,813.00 in penalties and \$5,683.26 in interest for taxable periods January 1, 2011 through March 31, 2013 ("Tax Period"). A copy of the Notice is attached hereto as **Exhibit 1**.

2. Petitioner is an individual and sole proprietor of Frank's Pizzeria, which has its principal place of business Chicago, Illinois.

3. It is located at 6506 W. Belmont Ave, Chicago, IL 60634-3925 and its telephone number is 773-283-2564. The taxpayer account number is 0107-4490.

BACKGROUND

4. Petitioner is a restaurant that provides dining and catering services.
5. Due to competition in the market, Petitioner must offer large quantities of inventory and labor at a low price point in order to generate business.
6. As a result, Petitioner reports low sales in relation to the inventory purchased and labor expended.
7. The Illinois Department of Revenue (“Department”) recently audited Petitioner for sales and use tax for the Tax Period.
8. Department’s audit did not rely on Petitioner’s books and records.
9. According to Department’s letter dated January 28, 2016, the audit relied on proposed tax returns using a sales methodology (“Methodology”). A copy of the letter is attached hereto as **Exhibit 2**.
10. The Methodology significantly overstates Petitioner’s gross receipts.

APPLICABLE LAW

11. The Retailers' Occupation Tax Act and section 130.805 of the Illinois Administrative Code state what records must be kept by taxpayers.

12. Section 7 of the Retailers' Occupation Tax Act provides:

Every person engaged in the business of selling tangible personal property at retail in this State shall keep *records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale*, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. . . . The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. . . .

35 ILCS 120/7. (Emphasis added).

13. Section 130.805 of the Illinois Administrative Code states:

Where a taxpayer's business consists exclusively of the sale of tangible personal property at retail, the following records will be deemed by the Department to constitute a minimum for the purposes of the [Retailers' Occupation Tax] Act:

- a) Cash register tapes and other data which will provide a daily record of the gross amount of *sales*.
- b) A record of the amount of merchandise purchased. To fulfill this requirement, copies of all vendors' invoices and taxpayers' copies of purchase orders must be retained serially and in sequence as to date.
- c) A true and complete inventory of the value of stock on hand taken at least once each year.

86 Ill. Admin. Code 130.805 (2000). (Emphasis added).

ERROR

14. Department did not rely on Petitioner's books and records relating to sales information to perform the audit. Instead, Department used a methodology based on Petitioner's purchases, which incorrectly applied an inflated mark-up percentage to complete the audit.

CONCLUSION

Petitioner, Dennis Pro시오 d/b/a Frank's Pizzeria, seeks nullification and/or modification of the Notice of Tax Liability and such other and further relief as is just and equitable.

Nicholas Standiford (ARDC# 6315763)
Kevin Wolfberg (ARDC# 6257694)
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DENNIS PROSIO d/b/a FRANK'S
PIZZERIA,

By:



One of His Attorneys

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X163 91X4 6568#
DENNIS PROSIO
FRANKS PIZZERIA
6506 W BELMONT AVE
CHICAGO IL 60634-3925

January 20, 2016



Letter ID: CNXXX16391X46568

Account ID: 0107-4490



We have audited your account for the reporting periods January 01, 2011 through March 31, 2013. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	63,944.00	0.00	63,944.00
Late Payment Penalty Increase	12,789.00	0.00	12,789.00
Fraud Penalty	31,972.00	0.00	31,972.00
Late Filing Penalty Increase	52.00	0.00	52.00
Interest	5,683.26	0.00	5,683.26
Assessment Total	\$114,440.26	\$0.00	\$114,440.26

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 21, 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





January 28, 2016



Letter ID: CNXXX12474X59685

#BWNKMGV
#CNXX X124 74X5 9685#
DENNIS PROSIO
6506 W BELMONT AVE
CHICAGO IL 60634-3925

Taxpayer ID: XXX-XX-1321
Account ID: P19818790
Audit ID: A2016509952
Return type: IL-1040
Audit periods: 01/2011 - 12/2012



On December 3, 2015 you were issued a Notice of Audit Initiation requesting that you file the required Illinois Amended Individual Income Tax Returns (form IL-1040-X) for the 2011 and 2012 tax years. As of the date of this correspondence, the required returns have not been received.

Enclosed are the Auditor's Reports which reflects the Department's proposed liabilities for these tax years. The Schedule C worksheet figures and the Adjusted Gross income reflected on these returns is a result of the the ROT (Sales Tax) audit A1703233536 completed on September 16, 2015. This included the underreported receipts that were found in the ROT audit covering tax years 1/2011-12/2012.

Please review the enclosed reports. If you are in agreement with the figures, please contact the auditor at the email address: Sarah.Fair@illinois.gov or telephone number shown below. If we do not receive a response, we will issue you a Notice of Proposed Deficiency for the amount of the proposed adjustment plus applicable penalties and interest. At that time, you will have the right to request a review of the proposed liability by the Informal Conference Board (ICB) (20 ILCS 2505-610).

A response by February 29, 2016 is being requested. Failure to respond will result in the assessment of tax, penalty and interest based on the best information available as allowed under Section 904(b) of the Illinois Income Tax Act.

Sincerely,

Sarah Fair
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19020
SPRINGFIELD IL 62794-9020

217 557-5685
217 785-3251 fax

Sarah.Fair@illinois.gov

Enclosures: EDA-24, EDA-70, Work papers

