

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

UD INC., )  
 )  
 ) Petitioner, )  
 )  
 v. ) No. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 ) Defendant. )

RECEIVED  
MAY 03 2016  
16TT 83

**PETITION**

UD Inc. (“Petitioner”), by and through its attorneys, The Law Office of James E. Dickett, Ltd., complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 334 Saint Paul Boulevard, Carol Stream, Illinois, 60188, and can be reached at 847-909-3798.
2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).
3. Petitioner’s Taxpayer Account ID is 40616347.
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.

## NOTICE

5. On April 18, 2016, the Department issued a Notice of Tax Liability letter for Form RC-28, Cigarette Revenue Audit Report (“Notice”) to Petitioner for an audit of the tax periods October 30, 2011 to August 31, 2013. The Notice reflects \$427,722 in tax due, \$213,246 in fraud penalty, \$85,544 in late payment penalty, and \$29,851 in interest, for a total of \$756,363. The Notice is attached hereto as Exhibit 1.

## JURISDICTION

6. 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.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

## BACKGROUND

8. Petitioner is a cigarette wholesaler with customers located throughout the country.

9. Defendants audited Petitioner’s books and records for the tax periods October 30, 2010 to August 31, 2013.

10. The audit liability contained in the Notice is based on the Department disallowing the interstate sales exemption for cigarettes sold to two (2) out of state customers located in Indiana and Missouri, even though Petitioner provided documentation to the Department that corroborated all of the interstate sales at issue in the Notice.

## COUNT I

### Defendant’s audit methodology overstates Petitioner’s liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. On audit, the Department disallowed multiple interstate sales even though Petitioner provided documentation to substantiate the interstate sales exemption.

13. By disallowing Petitioner's interstate sales exemption during the audit tax periods, the Department unreasonably inflated Petitioner's audit liability.

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

- (a) enters judgment in favor of Petitioner and cancels the Notice;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) grants such further relief as the Tribunal deems appropriate.

## **COUNT II**

### **All penalties should be abated based on reasonable cause and other factors.**

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed penalties based on the audit liability.

16. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(b).

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

19. Petitioner exercised ordinary business care and prudence during the audit tax periods because Petitioner maintained documentation to support all of its interstate sales.

20. Finally, the fraud penalty is improper because it is based solely on the large amount of tax due and also because there is no intent to defraud since Petitioner maintained and provided interstate sales documentation to the Department during the audit.

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

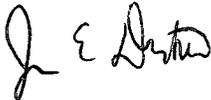
- (a) finds and declares that all penalties should be fully abated based on reasonable cause and other factors;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Thank you for considering this Petition.

Respectfully submitted,

UD Inc.,  
Petitioner

By:



One of Petitioner's Attorneys

Date:

4/28/16

James E. Dickett  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)  
Email: [jdickett@aol.com](mailto:jdickett@aol.com)

Exhibit 1

**Notice of Tax Liability**  
for Form RC-28, Cigarette Revenue Audit Report



217 782-6045

#BWNKMGV  
#CNXX XX47 8338 32X5#  
UD INC  
UD INC  
334 SAINT PAUL BLVD  
CAROL STREAM IL 60188-1852

April 18, 2016



Letter ID: CNXXX47833832X5

License No: C-02227  
Account ID: 40616347



We have audited your account for the reporting periods October 30, 2011, through August 31, 2013. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	427,722.00	0.00	427,722.00
Fraud Penalty	213,246.00	0.00	213,246.00
Late Payment Penalty	85,544.00	0.00	85,544.00
Interest	29,850.58	0.00	29,850.58
<b>Assessment Total</b>	<b>\$756,362.58</b>	<b>\$0.00</b>	<b>\$756,362.58</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 \$16,000, 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 17, 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