ILLINOIS INDEPENDENT
TAX TRIBUNAL

T. BELMONTE INC.	)	
	)	
Petitioner,	)	
	)	Case No:
v.	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE	)	
	)	
Respondent	)	

RECEIVED
AUG 12 2014
BY:
14T161

PETITION

NOW COMES the Petitioner, T. BELMONTE, (hereinafter "Petitioner"), by and through its attorneys, LOHMAN, NESCHIS & TOLITANO, and hereby Petitions the Illinois Independent Tax Tribunal for a redetermination of retail occupation tax assessments contained in the Notices of Tax Liability issued by the ILLINOIS DEPARTMENT OF REVENUE ("Department") on June 13, 2014 for tax periods January 1, 2011 through June 30, 2013, and as the basis for Petitioner's case alleges as follows:

FACTS

1. At all relevant times hereto, the Petitioner was an Illinois corporation with its principal place of business at 5336 W. Chicago Ave., Chicago, Illinois, 60651, phone number 630-728-8813.

2. The Petitioner's employer identification number is 36-3603870.

3. The Petitioner is a liquor store engaged in the business of selling at retail only liquor, soda, beer.

4. Sometime during 2013, the Department initiated retailer's occupation tax audit of the Petitioner's Sales Tax Returns, Forms ST-1, for the periods January 1, 2011 through June 30, 2013 (hereafter "Audit Period").

5. At the time of the audit, the taxpayer no longer maintained any of its cash register tapes for the Audit Period.

6. The Department estimated the Petitioner's taxable receipts for the Audit Period by estimating a markup and applying it to Petitioner's inventory purchases during that period.

7. The Department estimated the Petitioner's markup by comparing the actual cost of various bottles of liquor and beer from one month of 2011 and one month of 2012 and comparing it to the Petitioner's 2013 sales prices. The auditor then averaged its markup of each of those individual bottles, giving equal weight to each, and determined an overall beer markup of 39% ("Beer Markup") and an overall liquor markup of 26% ("Liquor Markup").

8. The Department reviewed all of the 2012 purchases and determined that 62% of the Petitioner's total dollar cost was for liquor and that 38% of the Petitioner's total liquor cost was for beer.

9. The Department then determined an overall alcohol markup to apply to both liquor and beer in the amount of 31% ("Overall Alcohol Markup"), by computing a weighted average of the Beer Markup of 39% and the Liquor Markup of 26% based upon the dollar cost percentages as referenced in paragraph 8 above.

10. The Petitioner maintained very low markups based upon being located in a very a very depressed area in the city of Chicago. Additionally, a neighboring and competing liquor store would regularly undercut Petitioner's prices which led to further price reductions by Petitioner.

11. The Department estimated the Petitioner's taxable receipts by applying the Overall Alcohol Markup of 31% to the higher of the Petitioner's cost of purchases reported on the EDA-20 forms or the Petitioner's cost of purchases reported by its vendors to the State of Illinois (" Estimated Taxable Receipts").

12. The Department compared the Estimated Taxable Receipts described in paragraph 11 above to the sales reported on the Forms ST-1 which Petitioner filed for the Audit Period. The Department applied the sales tax rate to the difference to determine the additional sales tax owed by Petitioner for the Audit Period.

13. Upon conclusion of the audit, the Department issued a Notice of Tax Liability, Letter ID: CNXXX1X285357769 ("Notice"). See Exhibit A attached hereto.

14. The Department made the several errors in its methodology of determining Taxable Receipts and erred in assessing a fraud penalty in this case.

ERROR I

15. In determining the markup on each individual bottle of liquor and beer, the Department used an incorrect selling price.

16. The Department compared the Petitioner's 2013 selling prices for its beer and liquor to the Petitioner's 2011 or 2012 cost for those same items.

17. The Petitioner's cost and/or selling prices of its beer and liquor increased over time so the Department's markup is overstated.

ERROR II

18. In determining the markup on each individual bottle of beer and liquor, the Department erred in assuming that the Petitioner received approximately two and one half (2 ½) cases of free liquor from its vendors each month.

ERROR III

19. In determining the Beer Markup and the Liquor Markup, the Department erred in giving equal weight in its averaging of the per bottle markup.

20. The Department's method erroneously assumes that the Petitioner sells an equal number of each sampled bottle during the course of the year.

ERROR VI

21. In determining the Overall Alcohol Markup, the Department erred in applying a weighted average to the Beer Markup and Liquor Markup based upon the Petitioner's cost for the beer and liquor.

22. The Petitioner's cost has no relationship to the quantity it sells and is not reflective of the proper allocation of sales between beer and liquor.

ERROR V

23. In determining Taxable Receipts, the Department erred in disallowing a reduction for theft and breakage.

24. The Petitioner lost some of its inventory to both theft and breakage during the audit period.

ERROR VI

25. The Department erred in assessing the Petitioner with a fraud penalty.

26. Under 35 ILCS 735/3-6, the Department must prove by clear and convincing evidence that the taxpayer filed its return(s) with an intent to defraud.

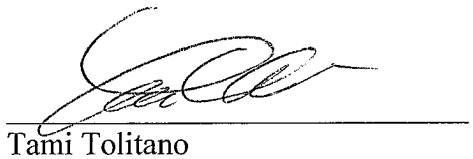
27. The evidence in this case does not support a finding that the Petitioner filed its Forms ST-1 for the Audit Period with an intent to defraud.

RELIEF REQUESTED

WHEREFORE, the Petitioner requests that the Notice be redetermined and modified for the reasons contained herein and for any other relief this court deems just and proper.

Respectfully Submitted,

LOHMAN, NESCHIS & TOLITANO



Tami Tolitano
One of the Attorneys for Taxpayer

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Fax: (847) 635-8777
TTOLITANO@LNT-LAW.COM

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

STATE OF
Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X1X2 8535 7769#
T BELMONTE INC
5336 W CHICAGO AVE
CHICAGO IL 60651-2857

June 13, 2014

Letter ID: CNXXX1X285357769

Account ID: 2079-7494

We have audited your account for the reporting periods January 01, 2011, through June 30, 2013. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	94,206.00	0.00	94,206.00
Late Payment Penalty Increase	18,841.00	0.00	18,841.00
Fraud Penalty	47,103.00	0.00	47,103.00
Late Filing Penalty Increase	316.00	0.00	316.00
Interest	2,864.40	0.00	2,864.40
Assessment Total	$163,330.40	$0.00	**$163,330.40**

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 **August 12, 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

Blumberg No. 5118 EXHIBIT A

Taxpayer Statement

STATE
Illinoi
DEPARTMENT OF REVEN
tax.illinois.g
1 800 732-88
217 782-33
TDD 1 800 544-53

June 13, 2014

#BWNKMGV
#CNXX XX37 38X4 XXX9#
T BELMONTE INC
5336 W CHICAGO AVE
CHICAGO IL 60651-2857

Letter ID: CNXXXX3738X4XXX9

Account ID: 2079-7494
Total amount due: $163,330.40

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 You have available credits of $206.00 **Account ID: 2079-749**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balanc
30-Jun-2013	100,133.00	66,260.00	2,864.40	-	(5,927.00)	163,330.4
• $163,330.40 of this amount is subject to protest.						
30-Apr-2014	8,294.00	-	-	-	(8,500.00)	(206.00

SOA

Retain this portion for your records.
P-000471 Fold and detach on perforation. Return bottom portion with your payment.

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

Letter ID: CNXXXX3738X4XXX9
T BELMONTE INC

Total amount due: $163,330.40

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

$163,330.40 is subject to protest.
Do not pay any Income Tax liability that you intend to protest.

ILLINOIS INDEPENDENT
TAX TRIBUNAL

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	)	
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CERTIFICATE OF SERVICE

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900 (7th Floor Thompson Center)
Chicago, IL 60601

I, Tami Tolitano, an attorney, certify under penalty of perjury, that on August 6, 2014, I caused a copy of the Petition, to be served on the above-named party by certified mail by depositing the same in the U.S. Mail at 2400 E. Devon Ave., Des Plaines, IL 60018, with proper postage prepaid, addressed to the above-named party.

By: _____
Tami Tolitano, Attorney for Petitioner

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Phone: (847) 635-7877
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TTOLITANO@LNT-LAW.COM