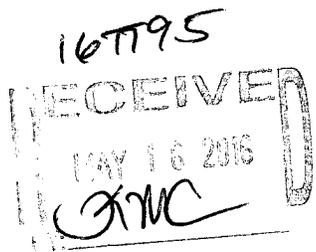


ILLINOIS INDEPENDENT
TAX TRIBUNAL

ROCKFORD FOOD & LIQUOR, INC.,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE,)
)
 Respondent.)

No.



PETITION

The Petitioner, ROCKFORD FOOD & LIQUOR INC., hereby 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 March 18, 2016 assessing in the amount of \$155,084.00 in tax, \$107,928.00 in penalties and \$9,967.89 in interest for taxable periods of January 1, 2012 through December 31, 2014, less payments/credits of \$1,760.00. A copy of the “Notice” is attached to this Petition. For reason(s) unknown to Petitioner’s counsel, another statement provided by the Department to the Petitioner indicates that only \$269,459.89 is “subject to protest”.

2. Petitioner is a corporation with its principal place of business in Rockford, Illinois.

3. It is located at c/o registered agent Saleh A. Thabet, 5512 Heidi Drive, Rockford, Illinois 61109, and its phone number is (815) 608-4051. The Taxpayer Account number is 3491-4056. The Taxpayer Identification Number is 20-0626038.

BACKGROUND AND RELEVANT FACTS

4. The Department conducted an audit of the Petitioner and determined that the Petitioner was liable for unpaid tax, late payment and fraud penalties.

APPLICABLE LAW

5. The Retailers' Occupation Tax Act is at 35 ILCS 120/1 et. seq.

6. The Uniform Penalty and Interest Act is at 35 ILCS 735/3-1 et. seq.

ERROR 1

7. The Department erroneously used an excessive markup rate during the audit of Petitioner thus overstating Petitioner's sales.

ERROR 2

8. The Department erroneously determined the amount of the late payment penalty based on its erroneously high determination of sales which was based on the Department's use of an excessive markup rate during the audit.

ERROR 3

9. The Department erroneously refused to adequately consider Petitioner's Z tapes during the audit.

ERROR 4

10. The Department erroneously determined Petitioner to be liable for the fraud penalty. Petitioner did not act with the intent to defraud. Consequently, Petitioner is not liable for the fraud penalty under Section 3-6 of the Uniform Penalty and Interest Act.

CONCLUSION AND RELIEF REQUESTED

11. The Department has erroneously assessed tax, interest thereon, and penalties against the Petitioner.

WHEREAS, Petitioner requests that the "Notice" be modified or canceled for the reasons contained herein.

Rockford Food & Liquor Inc.,

By: 

One of the Attorneys Representing Petitioner

Representatives:

Michael C. Whelan, ARDC no. 6195511
E. Thomas Ryder, ARDC no. 6278366
Whelan Law, LLC
2860 River Road, Suite 240
Des Plaines, IL 60018

Phone: (847) 298-9275
Email: mcwhelanlaw@yahoo.com

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X175 5659 92X1#
ROCKFORD FOOD & LIQUOR INC
ATTN: POA MICHAEL C. WHELAN
2860 S RIVER RD STE 240
DES PLAINES IL 60018-6088

March 18, 2016



Letter ID: CNXXX175565992X1

Account ID: 3491-4056

We have audited your account for the reporting periods January 01, 2012, through December-31, 2014. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	155,084.00	(1,760.00)	153,324.00
Late Payment Penalty Increase	30,665.00	0.00	30,665.00
Fraud Penalty	76,662.00	0.00	76,662.00
Late Filing Penalty Increase	601.00	0.00	601.00
Interest	9,967.89	0.00	9,967.89
Assessment Total	\$272,979.89	(\$1,760.00)	\$271,219.89

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 May 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

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 Nonfiling penalty for transaction return - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.