IN THE ILLINOIS INDENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

S & H TOBACCO INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

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BY:

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PETITION

S & H Tobacco 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 2744 11th Street, Rockford, Illinois, 61109, and can be reached at 815-608-5493.

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.

3. Petitioner's Taxpayer (Account) ID is 3951-9211.

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 May 12, 2016, the Department issued a Notice of Tax Liability letter to Petitioner ("Notice") for a sales/use tax audit for the tax periods of July 1, 2012 to June 30, 2015. The Notice reflects $99,410 in tax liability, plus penalties and interest. 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 tobacco store located in Rockford, Illinois.

9. Defendants audited Petitioner's books and records for the tax periods July 1, 2012 to June 30, 2015.

10. The audit liability contained in the Notice is based on projections whereby the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, and at least one of the vendors provided purchase amounts far in excess of the actual invoices/purchases during the audit tax periods.

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 calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, and at least one of the vendors provided purchase amounts in excess of the actual invoices/purchases during the audit tax periods.

13. By applying such audit methodology, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and also because Petitioner's purchases were less than the amounts used by the Department to calculate the audit tax liability.

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

(a) enters judgment in favor or Petitioner and against the Defendant and cancels the Notice; and

(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.

COUNT II

All penalties should be abated based on reasonable cause.

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 when it reasonably determined its sales and use tax liability during the audit period and did not use estimated selling prices nor did it use overstated purchases, so the audit tax liability as corrected will no longer warrant imposition of the fraud penalty as well.

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.

Thank you for considering this Petition.

Respectfully submitted,

S & H Tobacco Inc.,
Petitioner

By: _____
One of Petitioner's Attorneys

Date: 5-25-16

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

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

Exhibit 1

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX X177 X333 5848#
S & H TOBACCO INC
ATTN: SAMIR
2744 11TH ST
ROCKFORD IL 61109-1204

May 12, 2016

Letter ID: CNXXX177X3335848

Account ID: 3951-9211

We have audited your account for the reporting periods July 01, 2012, through June 30, 2015. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	99,410.00	(475.00)	98,935.00
Late Payment Penalty Increase	19,790.00	0.00	19,790.00
Fraud Penalty	49,475.00	0.00	49,475.00
Late Filing Penalty Increase	98.00	0.00	98.00
Interest	6,407.71	0.00	6,407.71
Assessment Total	$175,180.71	($475.00)	**$174,705.71**

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 **July 11, 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