

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

CHINA HUT 3, INC.,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-164
)	
THE ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Respondent.)	

JOINT PRE-TRIAL ORDER

This matter having come before the court for pretrial conference, and James T. Hyun, having appeared as counsel for the Petitioner and Ashley Hayes Forte having appeared as counsel for the Department, the following actions were taken:

A. JURISDICTION

The Illinois Independent Tax Tribunal has jurisdiction over this matter pursuant to 35 ILCS 1010/1-45.

B. TRIAL ATTORNEYS

The Petitioner is represented by James T. Hyun.

Phone No.: (773)720-2500
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550 W. Frontage Road, Suite 3530
Northfield, IL 60093
Email: jthyunlaw@gmail.com

The Respondent is represented by Ashley Hayes Forte.

Phone: (312) 814-3514
Address: Illinois Department of Revenue
100 W. Randolph Street, 7th Floor

Chicago, IL 60601.
Email: Ashley.forte@illinois.gov

C. HEARING LENGTH:

The approximate time for the hearing is about two (2) hours.

D. STIPULATIONS AND UNCONTESTED FACTS

1. The Retailers' Occupation Tax ("ROT") audit of Petitioner was initiated by the Illinois Department of Revenue auditor Ms. Denise Berry on or about October 11, 2012.
2. During the time of audit, Hilbert Moy, a certified public account ("CPA") had a power of attorney on behalf of the Petitioner which was effective November 1, 2012.
3. The audit tax period is from January 1, 2010 to June 30, 2012.
4. The total ROT audit periods in the Notice of Tax Liability ("NTL") contested matter are from January 1, 2010 to June 30, 2012.
5. The Petitioner's Illinois business tax number is 3965-5997.
6. On June 10, 2013, the Respondent issued a NTL in the amount of \$119,915.00 in taxes; \$23,983.00 in late payment penalty increase; \$23,983.00 in negligence penalty; and \$4,875.13 in interest.
7. On June 10, 2013, in addition to the above, the Respondent issued an NTL in the amount of \$3,049.00 in taxes; \$610.00 in late payment penalty increase, \$610.00 in negligence penalty totaling \$4,269.00 for the period of June 1, 2012 through June 30, 2012.
8. Due to the fact that Petitioner did not have access to information system(s) to manage and calculate the sales tax and daily sales for the business, the auditor used an alternative method to determine the gross receipts. The method involved vendor invoices and bank statements.
9. The Department utilized a markup percentage of 3.50.

E. WITNESS DESCRIPTION LISTS

Petitioner’s Witnesses:

Witnesses Who Will Be Called	Contemplated Testimony
Wen X. Zhao	Mr. Wen X. Zhao is the president of China Hut 3, Inc. and the daily operator of the said business. He is in charge of day-to-day with all aspects of the business.
Hilbert Moy- CPA	Mr. Moy has been preparing, reviewing and filing all of the tax returns including business and personal on behalf of the Petitioner since the existence of its business. Mr. Moy also had a power of attorney since November 1, 2012 and represented the Petitioner during the audit process.

Witnesses May Be Called	Contemplated Testimony
Independent CPA	May testify to industrial markup percentage is calculated in the range of 2.50 to 2.70 percent.
Denise Berry as an adverse witness	As an adverse witness, Ms. Berry will testify as to the procedures and conclusions of the audit.

Respondent’s Witnesses:

Witnesses Who Will Be Called	Contemplated Testimony
Denise Barry- Department Auditor	If called to testify, Ms. Berry will testify as to the procedure followed during the audit and the additional tax liability determined as a result of the audit.

Witnesses May Be Called	Contemplated Testimony

F. EXHIBITS AND EXHIBIT CHARTS

Petitioner's Exhibit Chart

Exhibit Number	Date of Exhibit/Document	Description of Exhibit	Exhibit's Relevance	Objection to Exhibit (Y/N)	Explanation of Objection
TP # 1		2010-2012 Personal Income Tax Returns, both State and Federal, for Wen X. Zhao Date of Filings: 2010 Tax Returns: April 26, 2011; 2011 Tax Returns: October 11, 2012; 2012 Tax Returns: June 1, 2013	To show income received from China Hut 3, Inc.	Yes	Unsubstantiated Salary and Draw (no verifying W-2, 940/941 Payroll returns and amount claimed as draw does not match China Hut 3 distributions to owner.)
TP # 2		2010, 2011, 2012 Tax Returns for China Hut 3, Inc. Date of Filings: 2010: April 27, 2011; 2011: November 19, 2012; 2012:	To show income paid out to Wen X. Zhao	Yes	Unsubstantiated Salary and Draw (no verifying W-2, 940/941 Payroll returns and amount claimed as draw does not match China Hut 3 distributions to owner.)

		June 7, 2013			
TP # 3		Bank Records of Cathay Bank	To show cancelled checks and statements confirming income paid out to Wen X. Zha	Yes	Incomplete copy of bank records - - missing pages

Respondent's Exhibit Chart

Exhibit Number	Date of Exhibit/Document	Description of Exhibit	Exhibit's Relevance	Objection to Exhibit (Y/N)	Explanation of Objection
DOR # 1	June 10, 2013	Notice of Tax Liability Issued to Petitioner	Establishes Respondent's <i>Prima Facie</i> case under 35 ILCS 105/4	No	n/a
DOR # 2	n/a	Audit Narrative & EDC 5	Describes the auditor's process and conclusions reached in assessing additional taxable gross receipts	No	n/a
DOR # 3	Various	Audit schedules & all other documents included in the audit file not already listed as part of DOR # 1 or DOR # 2	Supports the auditor's process and conclusions reached in assessing additional taxable gross receipts	No	No

G. MOTIONS IN LIMINE

Petitioner has no motions in limine.

Respondent has no motions in limine.