

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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CHINA HUT 3 INC., an Illinois Corp )

Petitioner, )

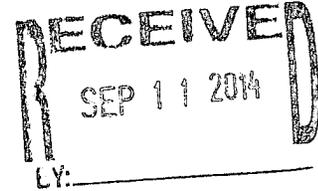
vs. )

ILLINOIS DEPARTMENT OF REVENUE )

Respondent. )

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) CASE NO. 14 TT 164

) JUDGE BRIAN F. BAROV

**AMENDED PETITION**

The Petitioner, China Hut 3, Inc., an Illinois Corporation by and through their attorney, James T. Hyun pursuant to Illinois Tax Tribunal Adopted Rules Title 86 Chapter V Section 5000.310 (c) files the amended petition to the Illinois Independent Tax Tribunal to review and reverse and/or modify Notice of Tax Liability (3), Notice of Claim Notice of Penalty Liability, Notice of Deficiency (hereby called "Notice") and an Order granting late discretionary hearing issued by the Illinois Department of Revenue ("Department") for the reasons stated below:

**INTRODUCTION**

1. On June 10, 2013, The Notice (in three separate notices) was issued by the Department on June 10, 2013.

2. The first Notice dated June 10, 2013, assessed 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 for taxable periods January 1, 2010 to April 30, 2012. (Attached)

3. The second Notice under Letter ID: L1332763488 assessed 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 reporting period of June 1, 2012 through June 30, 2012. (Attached)

4. The third Notice under Letter ID L0795892576 assessed the amount of \$3,049.00 in taxes; \$610.00 in late payment penalty increase; \$610 in negligence penalty totaling \$4,269.00 for the reporting periods of May 1, 2012 to May 31, 2012. (Attached)

5. The late discretionary hearing was granted on July 2, 2014 by Judge Terry D. Charlton. (Attached)

6. The Petitioner filed a petition within the required time with the Illinois Independent Tax Tribunal on August 21, 2014.

7. Petitioner is a corporation with its place of business in 7100 N. Clark Street, Chicago, IL 60626-2408. Its telephone number is 312-636-6823. The Petitioner is represented by James T. Hyun, Attorney at Law whose contact number is 847-501-2900. The Taxpayer Account Number is 3965-5997.

## BACKGROUND AND RELEVANT FACTS

8. The Petitioner filed a return and sales tax return for taxable period on the follow dates

Year 2010 on or prior to March 15, 2011.

Year 2011 on or prior to March 15, 2012.

Year 2012 on or prior to March 15, 2013.

In addition, all monthly sales tax returns were filed before the due date of the following month.

9. On June 10, 2013, the Respondent has conducted an audit for a period of January 1, 2010 to April 30, 2012 on the Petitioner.

## ERRORS

10. The Respondent committed an error in the audit in that it utilized.

### Error #1

The Respondent when conducting the audit for those aforementioned tax years utilized a markup percentage of 3.50 as the basis of the calculation. A standard and normal process is calculated in the range of 2.50 to 2.70 percent.

### Error#2

The Petitioner had a old POS system to manage and calculate the sales tax and daily sales for the business. At the time of the audit, the company that sold the POS system was no longer in business operation. There was no one from the company to give us any technical support during the time of the

audit. The auditor simply without giving us the opportunity, rejected all of the POS system daily sales report and calculated the sales from the vendor's invoices (EDA-20) and bank statements.

Error #3

The Respondent assumed that all checks written by the Petition as "Cash" or to himself were counted as cost of goods sold which resulted in gross mark-up of the sales during the audit period.

11. The Respondent made the following assumptions which was an error.
  - a. The Respondent incorrectly assumed that mark-up percentage was 3.50.
  - b. The Respondent improperly calculated sales from vendors invoices and bank statements.
  - c. The Respondent improperly assumed all checks written as "Cash" or to himself were cost of goods sold.

12. The Petitioner was not negligent in their assessment in that they had made a good faith and diligent efforts to explain all aforementioned errors outlined from 1 to 3.

13. The Petitioner is seeking the following relief.
  - a. The mark up of goods be calculated at 2.50 to 2.70 instead of 3.50.
  - b. Checks written as "cash" or the owners be not counted as cost of goods sold.
  - c. Waive all late payment penalty, negligent penalty and interest associated with this tax periods.

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

CHINA HUT 3 INC., An Illinois Corporation

BY:

A handwritten signature in black ink, appearing to be 'J. Hyun', is written over a horizontal line.

James T. Hyun, Attorney at Law

550 W. Frontage Road, Suite 3785

Northfield, IL 60093

Tel: 847-501-2900: Email: jthyunlaw@gmail.com ARDC: 6203220

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX X163 45X5 X560#  
CHINA HUT 3 INC  
7100 N CLARK ST  
CHICAGO IL 60626-2408

June 10, 2013



Letter ID: L0510859104

Account ID: 3965-5997



We have audited your account for the reporting periods January 01, 2010; through April 30, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	119,915.00	0.00	119,915.00
Late Payment Penalty Increase	23,983.00	0.00	23,983.00
Negligence Penalty	23,983.00	0.00	23,983.00
Interest	4,875.13	0.00	4,875.13
<b>Assessment Total</b>	<b>\$172,756.13</b>	<b>\$0.00</b>	<b>\$172,756.13</b>

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **August 09, 2013**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report



\_\_\_\_\_  
#BWNKMGV  
#CNXX XX32 6958 1768#  
CHINA HUT 3 INC  
7100 N CLARK ST  
\_\_\_\_\_  
CHICAGO IL 60626-2408

June 10, 2013



Letter ID: L1332763488

Account ID: 3965-5997



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

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	3,049.00	0.00	3,049.00
Late Payment Penalty Increase	610.00	0.00	610.00
Negligence Penalty	610.00	0.00	610.00
<b>Assessment Total</b>	<b>\$4,269.00</b>	<b>\$0.00</b>	<b>\$4,269.00</b>

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **August 09, 2013**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

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TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report



June 10, 2013



Letter ID: L0795892576

Account ID: 3965-5997

#BWNKMGV  
#CNXX XX63 9975 3280#  
CHINA HUT 3 INC  
7100 N CLARK ST  
CHICAGO IL 60626-2408



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

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	3,049.00	0.00	3,049.00
Late Payment Penalty Increase	610.00	0.00	610.00
Negligence Penalty	610.00	0.00	610.00
<b>Assessment Total</b>	<b>\$4,269.00</b>	<b>\$0.00</b>	<b>\$4,269.00</b>

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **August 09, 2013**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

**Notice of Proposed Liability  
for Sales, Use, and Excise Taxes and Fees**



March 8, 2013



Letter ID: L0533934176

CHINA HUT 3 INC  
7100 N CLARK ST  
CHICAGO IL 60626-2408

Taxpayer ID: 27-0515232  
Account ID: 3965-5997  
Audit ID: A1884445952  
Return type: ST-1  
Audit periods: 01/2010 - 06/2012



We have audited your account and have determined that there is additional liability due.

Tax	\$126,013.00
Penalty	\$50,406.00
Interest	\$3,990.00
Total	<u>\$180,399.00</u>

Our calculations, periods covered, and other explanations resulting in the determination are attached for your review.

If you agree with the tax amount as shown, contact the auditor at the phone number shown below for further instructions. Please note, if you sign the Audit Report, you waive the right to seek review by the Informal Conference Board.

If you do not agree with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice and mail it, along with a copy of the auditor's work papers and a copy of this notice, to:

INFORMAL CONFERENCE BOARD  
100 W RANDOLPH SUITE 7-341  
CHICAGO IL 60601

If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.

Sincerely,

Denise Berry  
Revenue Auditor III

ILLINOIS DEPARTMENT OF REVENUE  
9511 HARRISON STREET, DP-A  
DES PLAINES, IL 60016

847 636-7382  
847 636-7382 cell  
847 294-4246 fax

**Final Notice of Tax Due**  
**for Form ST-1, Sales and Use Tax and E911 Surcharge Return**



August 28, 2013 TDD 1 800 644-6304



Letter ID: CNXXXX5X47496641

#BWVKMGV  
 #CNXX XX5X 4749 6641#  
 CHINA HUT 3 INC  
 7100 N CLARK ST.  
 CHICAGO IL 60626-2408

Account ID: 3865-5997  
 Reporting Period: April 2012



The Notice of Tax Liability issued on June 10, 2013 is final. Any correspondence and/or amended figures received for this liability have been processed.

As a result we have assessed the amounts shown below.

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before September 25, 2013.

Please use the voucher on the enclosed Taxpayer Statement to make your payment.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	119,915.00	0.00	119,915.00
Late Payment Penalty Increase	23,983.00	0.00	23,983.00
Negligence Penalty	23,983.00	0.00	23,983.00
Interest	5,634.04	0.00	5,634.04
<b>Assessment Total</b>	<b>\$173,515.04</b>	<b>\$0.00</b>	<b>\$173,515.04</b>

For questions, visit our web site or call one of the numbers above.



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

July 2, 2014

James T. Hyun  
Hyun Law Group  
550 W. Frontage Rd, Suite 3785  
Northfield, IL 60093

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
China Hut 3 Inc.,  
Account ID: 3965-5997  
3 Notice of Tax Liability (“NTLs”)  
Letter ID: L0510859104, dated June 10, 2013  
Letter ID: L0795892576, dated June 10, 2013  
Letter ID: L1332763488, dated June 10, 2013

Dear Mr. Hyun:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for China Hut 3 Inc. regarding the above NTLs. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for China Hut 3 Inc. for the above NTLs.

The amount of liability at issue for the protests for this taxpayer exceed the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal’s website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal’s rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the**

**Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,



Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC