

ILLINOIS INDEPENDENT TAX TRIBUNAL

CHINA HUT 3 INC., an Illinois Corp)
Petitioner,)
vs.)
ILLINOIS DEPARTMENT OF REVENUE)
Respondent.)

RECEIVED
AUG 21 2014
BY: _____

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PETITION

The Petitioner, China Hut 3, Inc., an Illinois Corporation hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify Notice of Tax Liability, 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

The Notice was issued by the Department on June 10, 2013 assessing 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 for taxable periods January 1, 2010 to April 30, 2012. A copy of the "Notice" is attached to this Petition.

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

1. 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.
2. 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

3. 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.

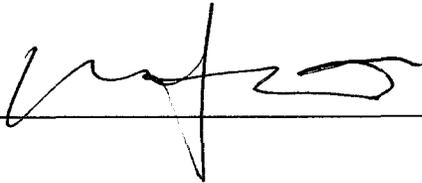
4. The Respondent made the following assumptions which was an error.
 - a. The Respondent incorrectly assumed that mark-up percentage was 3.50.
 - b. The Respondent improperly calculated sales from vendors invoices and bank statements.

- c. The Respondent improperly assumed all checks written as "Cash" or to himself were cost of goods sold.
5. 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.
6. 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:



James T. Hyun

Attorney at Law

550 W. Frontage Road, Suite 3785

Northfield, IL 60093

Tel: 847-501-2900

Email: jthyunlaw@gmail.com

Attorney Code. Cook 25800

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
Assessment Total	\$172,756.13	\$0.00	\$172,756.13

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

Final Notice of Tax Due
for Form ST-1, Sales and Use Tax and EB11 Surcharge Return



August 28, 2013 TDD 1 800 544-6304



Letter ID: CNXXX5X47496641

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

Account ID: 3965-5997
 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
Assessment Total	\$173,515.04	\$0.00	\$173,515.04

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) 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