

ILLINOIS INDEPENDENT TAX TRIBUNAL

M W AUTOBODY & REPAIR, INC.

Petitioner,

Vs.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.



BY: _____

(677170)

NOW COMES the Petitioner, **M W AUTOBODY & REPAIR, INC.** by and through its attorneys, **THE LAW OFFICES OF ROBINS & ASSOCIATES, LLC.** and hereby petitions the Illinois Independent Tax Tribunal to review and reverse and or modify the Notice of Tax Liability dated December 15, 2015 for the period of July 1, 2011 through December 31, 2014 and as reason therefore, states as follows:

INTRODUCTION

1. The Notice was issued by the Department on December 15, 2015 for the years July 1, 2011 through December 31, 2014. A copy of said notice is attached hereto and marked as "Petitioner's Exhibit A".
2. Said Notice assessed Sales Tax Liability in the amount of \$47,571.00 leaving an unpaid balance of \$44,808.00.
3. Said Notice assessed a Late Payment Penalty Increase in the amount of \$10,358.00 leaving an unpaid balance of an even amount.
4. Said Notice assessed a Late Filing Penalty Increase in the amount of \$25,093.00 leaving an unpaid balance of an even amount.
5. Said Notice assessed Interest in the amount of \$2,938.95 leaving an unpaid balance of an even amount.
6. The petitioner is an Illinois corporation with its principal place of business located at 6313 S. Archer Rd., Summit, Illinois 60501; with its telephone number (708) 856-2296; The Taxpayer Account Number is: 5521-3928.

BACKGROUND AND RELEVANT FACTS

7. The petitioner timely filed its Illinois Sales Tax Returns for the periods of July 1, 2011 through December 31, 2014.
8. Thereafter, the petitioner became the subject of an audit by the Illinois Department of Revenue.
9. The petitioner operates a business that purchases used cars at auction in the State of Illinois, repairs them if needed and then re-sells them to individuals and other wholesalers, who are sometimes Illinois residents and sometimes out of state residents.
10. The petitioner became the subject of an audit which did not reveal any failure to report sales or pay taxes, but accused the petitioner of failing to file ST-556 returns and levied huge penalties in the amount of \$85,960.95.

ERRORS

11. The petitioner states that the Illinois Department of Revenue committed the following errors:
 - A. The taxpayer is not required to file an ST-556 when selling vehicles to another wholesaler, and should not have been assessed tax and penalty in these instances.
 - B. The taxpayer should not have to be assessed tax and penalties on sales tax that should have been collected because the buyer lived in a reciprocal state, but proved to have been actually paid in their home state. The auditor should not have disallowed competent evidence that the buyers actually paid the tax in their home state.
 - C. The tax liability was issued improperly because it was issued prior to the audit being closed and while the investigation was ongoing. Furthermore, it was never communicated to the accountant handling the audit.
 - D. The taxpayer was never allowed to properly contest the auditors findings.

CONCLUSION AND RELIEF REQUESTED

The petitioner requests that this Honorable Tribunal find that the Illinois Department of Revenue applied an incorrect audit approach to arrive at its assessment and that the assessment and notice be modified or cancelled for the reasons stated herein.

Respectfully submitted,

ROBINS & ASSOCIATES, LLC.

By: */s/ Michael J. Robins, Esq.*

Michael J. Robins, Esq.

Michael J. Robins, Esq.
Robins & Associates, LLC
33 N. Dearborn, Suite 502
Chicago, IL 60602
Firm ID: 47339
(312) 641-9500
Mjr@robinslaw.net

Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



#BWNKMGV
 #CNXX XX44 8X12 56X4#
 M W AUTO BODY & REPAIR INC
 M W AUTO SALE
 6313 S ARCHER RD
 SUMMIT IL 60501-1823

December 15, 2015



Letter ID: CNXXXX448X1256X4

Account ID: 5521-3928



We have audited your account for the reporting period **01-Jul-2011 through 31-Dec-2014**. As a result, we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	47,571.00	(2,763.00)	44,808.00
Late Payment Penalty Increase	10,358.00	0.00	10,358.00
Late Filing Penalty Increase	25,093.00	0.00	25,093.00
Interest	2,938.95	0.00	2,938.95
Assessment Total	\$85,960.95	(\$2,763.00)	\$83,197.95

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 **February 13, 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.

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



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

April 25, 2016

Michael J. Robins, Esq.
Robins & Associates LLC
33 N. Dearborn Street, Suite 502
Chicago, IL 60602

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
M W Autobody & Repair Inc.
Notice of Tax Liability dated December 15, 2015
Taxpayer ID: 5521-3928
Reporting Period: July 1, 2011 – Dec. 31, 2014

Dear Mr. Robins:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding M W Autobody & Repair, Inc., and the above notice. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for the above notice.

The amount of liability at issue for this protest exceeds 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,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton
Chief Administrative Law Judge

TDC:vs