

**STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL**

KB OPERATIONS I LLC)
)
Petitioner,)
)
v.)
)
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
)
Respondent)

Case No:

RECEIVED
AUG 01 2016
BY: _____

16 TR 153

PETITION

NOW COMES the Petitioner, KB OPERATIONS I LLC, (hereinafter “Petitioner”), by and through its attorneys, LOHMAN, NESCHIS & TOLITANO, and hereby Petitions this court for a redetermination of retail occupation tax assessments contained in the Notices of Tax Liability issued by the ILLINOIS DEPARTMENT OF REVENUE (“Department”) on September 12, 2012 for tax periods December 2011 and January 2012, and as the basis for Petitioner’s case alleges as follows:

JURISDICTION

1. Jurisdiction of the claims in this matter is granted on this Court pursuant to the Illinois Tax Tribunal Act of 2012, 35 ILCS 1010/1-45.

FACTS

2. During all relevant periods hereto, the Petitioner was an Illinois limited liability company (EIN #: 27-2132284) with its principal office located at 564 S. Washington Street, Suite 200, Naperville, IL 60540.

3. The Petitioner managed and operated five Jersey Mike franchise restaurants with locations in Glenview, Niles, Elmhurst, Wheaton, and Lombard.

4. The Petitioner sold the Niles, Elmhurst, Wheaton and Glenview locations in December 2011 and abandoned the Lombard location in December 2011.

5. The Petitioner did not file its final sales to return for December 2011 due to an oversight and did not file its January 2012 return since it did not generate any sales during that month.

6. In 2012, the Department estimated the Petitioner's taxable sales for December 2011 and January 2012 by averaging the monthly sales which were shown on sales tax return previously filed by the Petitioner.

7. As a result, the Department assessed retail occupation tax against the Petitioner in the amount of \$19,900 for December 2011 and \$19,900 for January 2012. Additionally, the Department assessed a late-payment penalty of \$1990 and late-filing penalty of \$250 for December 2011 and a late-payment penalty of \$1990 and late-filing penalty of \$250 for January 2012.

8. On September 12, 2012 the Department issued that following Notices of Tax Liability to the Petitioner: (a) Letter ID: CNXXXX7797519X40, (b) Letter ID: CNXXX185X4937287. See Exhibit A attached hereto.

9. The Petitioner did not file a Protest in connection with any of the Notices of Tax Liability.

10. On September 1, 2015, the Petitioner requested a discretionary hearing from the Department's Office of Administrative Hearings. On June 7, 2016, the Office of Administrative Hearings granted that request. See Exhibit B attached hereto.

COUNT I

1-10. Petitioner restates and incorporates herein paragraphs 1-10 above as paragraphs 1-10 of Count I.

11. The Department erred in its estimation of the Petitioner's taxable sales for December 2011.

12. The Petitioner did not operate all five stores for the full month of December 2011.

13. The Petitioner's taxable sales during December 2011 were lower than the taxable sales reported in previous months and used by the Department in its estimation of the Petitioner's taxable sales for December 2011. Thus, the Department's estimation of the Petitioner's sales tax liability for December 2011 is overstated.

14. The Petitioner's maintains books and records which evidences the actual taxable sales for December 2011.

15. The Petitioner's books and records for will support a lower sales tax liability for December 2011 than has been estimated by the Department for that period.

WHEREFORE, the Petitioner prays this Honorable Court redetermine the sales tax based on the actual sales figures and waive all interest and penalties for December 2011 and for any other relief this court deems just and proper.

COUNT II

1-15. Petitioner restates and incorporates herein paragraphs 1-15 above as paragraphs 1-15 of Count II.

16. The Department erred in imposing and assessing retail occupation tax on Petitioner for January 2012.

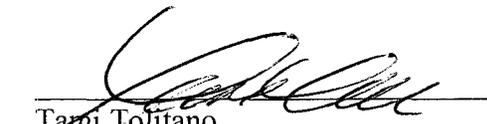
17. The Petitioner did not operate or generate any sales during January 2012.

18. The Petitioner maintains books and records which prove that it did not generate any sales whatsoever during January 2012.

WHEREFORE, the Petitioner prays that this Honorable Court determine that it is not subject to or liable for any retail occupation taxes, interest or penalties during January 2012 and for any other relief as this Court deems just and proper.

Respectfully Submitted,

LOHMAN, NESCHIS & TOLITANO


Tami Tolitano
One of the Attorneys for Taxpayer

Lohman, Neschis & Tolitano
2400 E. Devon, Suite 284
Des Plaines, IL 60018
Phone: (847) 635-7877
Fax: (847) 635-8777
TTOLITANO@LNT-LAW.COM



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

June 7, 2016

Tami Tolitano
Lohman Neschis & Tolitano LLC
O'Hare Lake Office Park
2400 E. Devon Avenue, Suite 284
Des Plaines, IL 60018

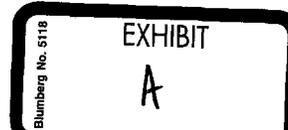
RE: Late Discretionary Hearing Granted – Tribunal Jurisdiction
KB Operations I LLC
(2) Notices of Tax Liability dated September 12, 2012
Account ID: 3989-5033
Letter ID: CNXXX185X4937287
CNXXXX7767519X40

Dear Ms. Tolitano:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for KB Operations I LLC regarding the above Notices. 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 Notices.

The amount of liabilities 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 D. Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton
Chief Administrative Law Judge

TDC:vs

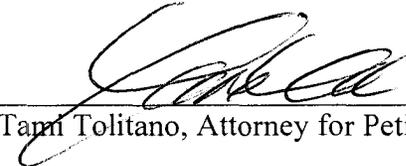
**STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL**

KB OPERATIONS I LLC)	
)	
Petitioner,)	
)	Case No:
v.)	
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	
Respondent)	

CERTIFICATE OF SERVICE

Illinois Independent Tax Tribunal
160 N. LaSalle St. Room N506
Chicago, Illinois 60601

I, Tami Tolitano, an attorney, certify under penalty of perjury, that on July 28, 2016, I caused a copy of the Petition, to be served on the above-named party by depositing the same in the U.S. Mail at 2400 E. Devon Ave., Des Plaines, IL 60018, with proper postage prepaid, addressed to the above-named party.

By: 

Tami Tolitano, Attorney for Petitioner

Tami Tolitano
Lohman Neschis & Tolitano, LLC
2400 E. Devon Ave., Suite 284
Des Plaines, IL 60018
Phone: (847) 635-7877
Fax: (847) 635-8777
TTOLITANO@LNT-LAW.COM