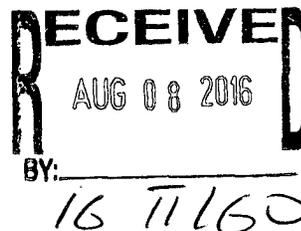


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

CHICAGO AUTO SOURCE, INC. )  
 )  
 Petitioner, )  
 )  
 )  
 v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendant. )

No.



**PETITION**

Petitioner, Chicago Auto Source, Inc. (“Petitioner”), by and through its attorneys, Dale & Gensburg, P.C., for its Petition before the Illinois Independent Tax Tribunal (the “Tribunal”) hereby complains of the Defendant, the Illinois Department of Revenue (the “Department”), and alleges as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 6520 South Western Avenue, Chicago, Illinois 60636-2411, and can be reached at 708-923-1813.
2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg and Anne J. Kim of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or [tcalandriello@dandgpc.com](mailto:tcalandriello@dandgpc.com). Lane M. Gensburg can be reached at 312-263-2200 or [lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com). Anne J. Kim can be reached at 312-263-2200 or [akim@dandgpc.com](mailto:akim@dandgpc.com).
3. Petitioner’s Illinois Business Tax number is 5566-8755.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. See 20 ILCS 5/5-15.

### **NOTICES**

#### **Retailers Occupation/Use Tax**

5. On June 10, 2016, the Department issued a Notice of Tax Liability (the “NTL”) to Petitioner assessing a total Retailers Occupation Tax/Use Tax (“ROT”) liability of \$123,560.49 (including interest and penalties), covering the period April 15, 2011 through November 27, 2013 (the “period at issue”). The total liability consists of \$21,646 in tax due, \$38,723 in “Excess Tax Collected,” \$51,968 in late payment penalties, \$9,052 in late filing penalties, and \$2,171.49 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

### **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the “Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*

7. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the issuance of the NTL.

### **BACKGROUND**

8. Petitioner owns and operates a used auto dealership. The Department audited Petitioner’s books and records for sales tax for the period at issue.

9. The liability contained in the NTL is based on the Department’s review of a sample size of 41 of Petitioner’s automobile transaction files (“Deal Jackets”) and projection of

the average tax underpayment, tax overpayment, and number of late filing and late payment occurrences therein out over the period at issue.

**COUNT I**

**The Department's Audit Methodology Overstates Petitioner's Tax Liability, Penalties and Interest**

10. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 9 above as and for this paragraph 10.

11. The Department erred in determining Petitioner's ROT liability, liability for Excess Tax Collected, penalties and interest by virtue of the following: (i) the Department used an improper sample in calculating additional tax and penalties owed; (ii) the Department failed to review available Petitioner records; and (iii) the Department failed to consider that Petitioner's customer base almost exclusively uses secondary financing for the purchase of vehicles, causing a delay in the funding of automobile purchases.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the NTL;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTL; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

**COUNT II**

**Petitioner was Improperly Excluded From Participating in the Audit**

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11 as and for this paragraph 12.

13. The Department's Form PIO-60 "Illinois Audit Information" provides that a taxpayer may represent itself in the audit, or may be represented by an employee, accountant, attorney, or any other person whom the taxpayer has authorized to represent it before the Department.

14. Petitioner is an Illinois corporation that at all relevant times has been 100 percent owned by Abdo Halawa. However, on information and belief Mr. Halawa was not made aware of the Department's audit of the period at issue until shortly before the Department reached the end of the audit. On information and belief, the Department consulted and conferred with several of Petitioner's employees throughout the course of the audit, but did not obtain authorization to do so from Mr. Halawa in the form of an executed Form IL-2848 Power of Attorney or any other confirmation that such employees were authorized to represent Petitioner in the audit, and such employees were in fact not authorized to do so. Because Petitioner was deprived of a meaningful opportunity to participate in the audit, the NTL should be vacated.

WHEREFORE, Petitioner prays that the Tribunal:

(d) Enters judgment in favor of Petitioner and against the Department and cancels the NTL;

(e) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTL; and

(f) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

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### COUNT III

#### All Penalties should be Abated for Reasonable Cause

15. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 14 as and for this paragraph 15.

16. In its NTL, the Department assessed failure to file and pay penalties totaling \$61,020.

17. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

18. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

19. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. See 86 Ill. Admin. Code 700.400(c).

20. Petitioner's failure to timely file and pay its tax liabilities (to the extent of any liabilities sustained by the Tribunal) during the period at issue was due to reasonable cause warranting abatement of the late filing and payment penalties.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) Finds and declares that all late filing and payment penalties should be abated for reasonable cause;

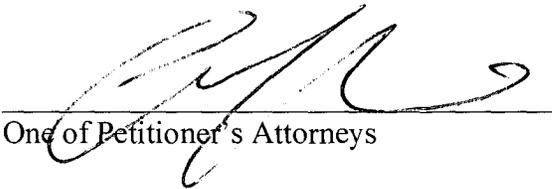
(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to pay penalties stated in the NTL; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

CHICAGO AUTO SOURCE, INC.  
Petitioner

By:

  
One of Petitioner's Attorneys

Anthony Calandriello, Esq.  
Lane M. Gensburg, Esq.  
Anne J. Kim, Esq.  
Dale & Gensburg, P.C.  
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[tcalandriello@dandgpc.com](mailto:tcalandriello@dandgpc.com)  
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[akim@dandgpc.com](mailto:akim@dandgpc.com)

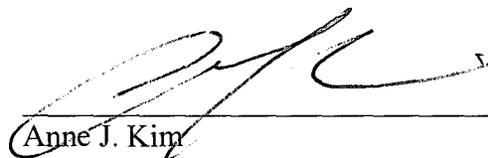
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CHICAGO AUTO SOURCE, INC.,	)	
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Petitioner,	)	
	)	
	)	No.
v.	)	
	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

TO: Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph Street, 7-900  
Chicago, IL 60601

I, Anne J. Kim, an attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Monday, August 8, 2016.

  
\_\_\_\_\_  
Anne J. Kim

Anthony Calandriello, Esq.  
Lane M. Gensburg, Esq.  
Anne J. Kim, Esq.  
Dale & Gensburg, P.C.  
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[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
[akim@dandgpc.com](mailto:akim@dandgpc.com)

# Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



#BWNKMGV  
#CNXX XX52 3789 2XX8#  
CHICAGO AUTO SOURCE INC  
ATTN: POA DALE & GENSBURG, PC (ANTHONY CALANDRIELLO)  
200 W ADAMS ST STE 2425  
CHICAGO IL 60606-5251

June 10, 2016



Letter ID: CNXXXX5237892XX8

Account ID: 5566-8755

We have audited your account for the reporting period April 15, 2011 through November 27, 2013. As a result, we have assessed the amounts shown below.

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

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 August 09, 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.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	21,646.00	0.00	21,646.00
Excess Tax	38,723.00	0.00	38,723.00
Late Payment Penalty Increase	51,968.00	0.00	51,968.00
Late Filing Penalty Increase	9,052.00	0.00	9,052.00
Interest	2,171.49	0.00	2,171.49
Assessment Total	\$123,560.49	\$0.00	\$123,560.49

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



## Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

**Late-filing or nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.

**Late-payment penalty for underpayment of estimated, quarterly, semi-weekly, or monthly tax** - You owe this penalty if you were required to make these payments and failed to do so, or if you failed to pay the required amount by the payment due date.

**Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.

**Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.

**Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.

**Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.

**Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

**Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.

**Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

**100 percent interest penalty** - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

**Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

**Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return and do not file a processable transaction return (ST-556, Sales Tax Transaction Return or ST-556-LSE, Transaction Return for Leases) by the due date, and that transaction return, if it had been properly filed, would not have resulted in the imposition of a tax.

### Motor Fuel Violation penalties

**IFTA penalty** - You owe this penalty if you receive a citation for operating a qualified motor vehicle in Illinois

- without a valid IFTA license and without properly displaying the required decals;
- without a valid Illinois Single-Trip Permit; or
- without a 30-day IFTA temporary permit.

**Dyed Diesel penalty** - You owe this penalty if you receive a citation for

- failing to display the required notice,
- operating a licensed motor vehicle that has dyed diesel within its ordinary fuel tanks; or
- selling or attempting to sell dyed diesel for highway use.

### Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. A bad check or negligence penalty may be waived due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations. A fraud penalty or cost of collection fee cannot be waived.

### How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax. Interest cannot be waived.

**Sales and Excise Taxes and Fees** - for certain tax periods interest may also accrue on penalties. Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

**IFTA Interest** - Prior to July 1, 2013, interest is calculated at the rate of one percent per month or fraction of the month until paid. Effective July 1, 2013, interest is calculated at an annual rate of 2 percent above the underpayment rate established under Internal Revenue Code Section 6621(a)(2) and will accrue at 1/12 the annual rate per month or fraction of the month until paid in full. The rate will be adjusted each January 1.

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.