

NOTICE

5. On May 28, 2014, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods April 1, 2010 to June 30, 2012. The Notice reflects \$55,390 in tax due, \$10,263 in late payment penalties, \$9,474 in negligence penalties, \$24 in late file penalties, \$3,810 in interest, and payments/credit of \$4,076, for a total assessment balance of \$74,885. The Notice is attached hereto as Exhibit 1.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because: (a) Petitioner timely filed an Illinois Department of Revenue Administrative Hearings Division protest within 60 days of the Notice; (b) the Department dismissed the protest for lack of jurisdiction (copy attached) but provided 60 days to file this Petition with the Tax Tribunal; and (c) Petitioner timely filed this Petition within 60 days from the Department’s letter.

BACKGROUND

8. Petitioner is located in Antioch, Illinois (far north suburbs).

9. Defendant audited Petitioner’s books and records for the tax periods April 1, 2010 to June 30, 2012.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s purchases by estimated industry standard selling prices of Petitioner’s products despite the fact that the Petitioner provided cash register Z tapes, and the audit liability also did not factor in the changes to Petitioner’s inventory during the audit period.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices.

13. By applying such estimated prices to Petitioner's purchases during the audit period, and also by not allowing for increases in the Petitioner's inventory during the audit period, the Department drastically and unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and all of the Petitioner's inventory purchases during the audit period were not sold.

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

- (a) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice.

COUNT II

All penalties should be abated based on reasonable cause.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed multiple penalties.

16. Illinois law provides that late payment penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine and pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).

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

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated prices.

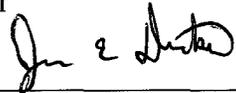
WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that all penalties should be fully abated based on reasonable cause; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice.

Thank you for considering this Petition.

Respectfully submitted,

Antioch Country Store Inc.,
Petitioner

By: 
One of Petitioner's Attorneys

Date: 9/16/14

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)



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

July 23, 2014

Antioch Country Store Inc.
25238 W. Route 173
Antioch, IL 60002

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**

Antioch Country Store Inc.
Account ID: 3921-8597
Letter ID: CNXXX17X7X44X647
Notice of Tax Liability (NTL) dated May 28, 2014

Dear Antioch Country Store Inc.:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing for the above Notice. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Notice. However, the amount of assessment at issue for the 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 protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) 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:vs

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

Exhibit 1



#BWNKMGV
#CNXX X17X 7X44 X647#
ANTIOCH COUNTRY STORE INC
25238 W ROUTE 173
ANTIOCH IL 60002

May 28, 2014



Letter ID: CNXXX17X7X44X647

Account ID: 3921-8597

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

	Liability	Payments/Credit	Unpaid Balance
Tax	55,390.00	(4,076.00)	51,314.00
Late Payment Penalty Increase	10,263.00	0.00	10,263.00
Negligence Penalty	9,474.00	0.00	9,474.00
Late Filing Penalty Increase	24.00	0.00	24.00
Interest	3,809.93	0.00	3,809.93
Assessment Total	\$78,960.93	(\$4,076.00)	\$74,884.93

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 July 28, 2014. 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 to satisfy your liability.

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