

ILLINOIS INDEPENDENT TAX TRIBUNAL

Cabela's Retail IL, Inc. )
)
Petitioners, )
)
v. )
)
Illinois Department of Revenue, )
)
Respondent. )

No. 14 T 181

PETITION

The Petitioner, Cabela's Retail IL, Inc. ("Petitioner"), hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notices of Tax Liability ("NTLs") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

1. The Department issued NTLs on August 4, 2014 assessing \$465,287 in Retailers' Occupation Tax ("ROT") and Use Tax, \$258,603 in penalties and \$224,493.84 in interest for the reporting periods January 1, 2007 through June 30, 2009, and \$454,222 in ROT and Use Tax, \$91,152 in penalties and \$41,951.63 in interest for the reporting periods July 1, 2009 through December 31, 2011. Copies of the NTLs are attached to this Petition.

2. Petitioner is an Illinois corporation with its principal place of business at 5225 Prairie Stone Parkway, Hoffman Estates, IL 60192. All notices should be sent to its corporate parent in care of Jeff Ellwanger, Cabela's Retail, Inc., 1 Cabela Drive, Sidney, Nebraska, 69160-1001. The telephone number for Jeff Ellwanger, Director of Tax, is (308) 255-2125. The Taxpayer Account number is 3815-4560.

## **BACKGROUND AND RELEVANT FACTS**

3. Petitioner operates a Cabela's store at its Hoffman Estates location.
4. The Cabela's store is principally engaged in retailing of hunting, fishing, camping, shooting, and related outdoor recreation merchandise.
5. The Cabela's store has a "general store" area that sells, among other things, food for human consumption.
6. Petitioner also is the issuer of Cabela's gift cards.
7. Petitioner timely filed form ST-1s for all required months during the period of January 1, 2007 through December 31, 2011 (the "Period at Issue").
8. Petitioner included all of its taxable sales on the ST-1s that it filed for the Period at Issue.
9. During the Period at Issue, the State and local combined ROT rate applicable to the sale of food for human consumption in Hoffman Estates that is to be consumed off the premises where it is sold was 2.25% (the "Low Rate").
10. During the Period at Issue, the State and local combined ROT rate applicable to the sale in Hoffman Estates of general merchandise and the sale of food for human consumption that is to be consumed on the premises where it is sold was 9.5% (the "High Rate").
11. Petitioner collected and remitted ROT on its sales of various food items at the Low Rate.
12. On or about August 16, 2011, Petitioner purchased three tables and twelve chairs for its sitting area near the general store.
13. The Department audited the Petitioner for the Period at Issue and asserted that Petitioner failed to report \$4,541,988 of taxable sales on its ST-1s and that Petitioner's sales of food should have been taxed at the High Rate.

14. The Department also denied a total of \$2,524,457 of Petitioner's deductions for the Period at Issue.

15. The Department also made several adjustments to the returns filed for the Period at Issue relating to Petitioner's fixed assets. The Department applied an error percentage developed for the 2007 through 2009 fixed assets to estimate the liability for 2010 and 2011. The Department also asserted that Petitioner owed additional ROT in the amounts of \$167,972.70, \$80,664.90 and \$19,980.66 on several invoices from Quality Wood Designs, LLC.

16. The Department also assessed additional Use Tax on Petitioner's supplies in the amount of \$346,606.56 based on a three month supply sample.

#### **ERROR 1**

17. The Department erroneously asserted that Petitioner failed to report \$4,541,988 of taxable sales on its ST-1s or ST-556s for the Period at Issue. Petitioner reported all of its taxable sales on the ST-1s that it filed for the Period at Issue.

#### **ERROR 2**

18. Under the ROT, gross receipts from the sales of general merchandise in Hoffman Estates are subject to tax at the High Rate while sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) are subject to tax at the Low Rate.

19. The Department erroneously asserted that the table and chairs located in a sitting area near Petitioner's general store constituted a deli area and therefore the food items sold by Petitioner were for immediate consumption.

20. The Department erroneously assessed tax at the High Rate on Petitioner's sales of food.

21. Even if the Petitioner's table and chairs constituted a deli area, the table and chairs were not present before August 16, 2011, which is well into the Period at Issue and would require a significant adjustment of the proposed tax.

**ERROR 3**

22. The Department erroneously denied a total of \$2,524,457 of Petitioner's deductions for the Period at Issue.

**ERROR 4**

23. The Department erroneously adjusted Petitioner's fixed assets reported for the Period at Issue.

24. The Department erroneously applied an error percentage developed for the 2007 through 2009 fixed assets to estimate the liability for 2010 and 2011. The information to determine actual error rates for 2010 for 2011 was provided, but not used.

25. The Department erroneously assessed Use Tax in the amounts of \$167,972.70, \$80,664.90 and \$19,980.66 on several invoices from Quality Wood Designs, LLC. Petitioner paid South Dakota sales tax on the items purchased from Quality Wood Designs, LLC and is entitled to a credit for the amounts paid to South Dakota.

**ERROR 5**

26. The Department erroneously assessed additional Use Tax on Petitioner's supplies in the amount of \$346,606.56 based on an overly inflated three month supply sample.

**ERROR 6**

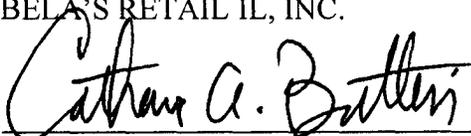
27. Late penalties do not apply if a taxpayer's late payment was "due to reasonable cause." 35 ILCS 735/3-8. The Department's regulation on reasonable cause looks to whether the taxpayer "made a good faith effort," which is demonstrated by the exercise of "ordinary business care and prudence" in view of "the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education." Ill. Admin. Code tit. 86, § 700.400(c).

28. Petitioner had reasonable cause for all of its filing positions such that penalties should not be imposed.

**CONCLUSION AND RELIEF REQUESTED**

WHEREAS, Petitioners request that the NTLs be canceled and/or modified for the reasons contained herein.

CABELA'S RETAIL IL, INC.

By:   
One of the Petitioner's Attorneys

Catherine A. Battin  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
312-984-3233  
cbattin@mwe.com  
Attorney No. 90539

DM\_US 55428932-2.036359.0019

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



\_\_\_\_\_ #BWNKMGV  
\_\_\_\_\_ #CNXX XX12 8359 9527#  
\_\_\_\_\_ CABELAS RETAIL IL INC  
\_\_\_\_\_ CABELAS  
\_\_\_\_\_ 1 CABELA DR  
\_\_\_\_\_ SIDNEY NE 69160-1001

August 4, 2014



Letter ID: CNXXXX1283599527

Account ID: 3815-4560



We have audited your account for the reporting periods January 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	667,526.00	(202,239.00)	465,287.00
Late Payment Penalty Increase	256,332.00	0.00	256,332.00
Late Filing Penalty Increase	2,271.00	0.00	2,271.00
Interest	224,493.84	0.00	224,493.84
<b>Assessment Total</b>	<b>\$1,150,622.84</b>	<b>(\$202,239.00)</b>	<b>\$948,383.84</b>

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 **October 03, 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](http://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](http://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

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



#BWNKMGV  
#CNXX X15X 51X7 68X3#  
CABELAS RETAIL IL INC  
CABELAS  
1 CABELA DR  
SIDNEY NE 69160-1001

August 4, 2014



Letter ID: CNXXX15X51X768X3

Account ID: 3815-4560



We have audited your account for the reporting periods July 01, 2009, through December 31, 2011. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	471,263.00	(17,041.00)	454,222.00
Late Payment Penalty Increase	91,152.00	0.00	91,152.00
Interest	42,195.00	(243.37)	41,951.63
<b>Assessment Total</b>	<b>\$604,610.00</b>	<b>(\$17,284.37)</b>	<b>\$587,325.63</b>

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.

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- 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 October 03, 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](http://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.
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