

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

7123 W Higgins Rd Corp d/b/a
Teasers Pub

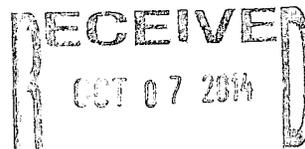
Petitioner,

v.

Illinois Department of Revenue

Respondent.

Case No.



14TT185

PETITION

The Petitioner, 7123 W Higgins Rr Corp, d/b/a Teasers Pub (“Teasers”), through its attorneys THE LAW OFFICE OF JUDI SMITH, LLC, hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Tax Liability (“Notice”) issued by the Illinois Department of Revenue (“Department”) for the reasons stated below:

INTRODUCTION

1. The Notice was issued by the Department on September 8, 2014, assessing \$74,718 in Retailers Occupational Tax, \$14,944 as late payment penalty, \$12,084 as a negligence penalty, and \$3,309.46 in interest for the taxable periods July 1, 2010 through December 31, 2012. A copy of the notice is attached.
2. Petitioner is a corporation with it principal place of business in Chicago, Illinois.

3. Petitioner is located at 7123 W Higgins Ave, Chicago, Illinois 60656.
4. The Taxpayer Account Number is 0045-7541.

BACKGROUND AND RELEVANT FACTS

5. Teasers Pub is a late night bar in Chicago.
6. At all relevant times, Mr. Thomas Hickey was the owner of Teasers.
7. At all relevant times Mr. Thomas Hickey generally worked at the bar from 1:30 pm until 8:00 pm and his son Christopher Hickey worked at the bar from 8:00 pm until close at 4:00 am or 5:00 am.
8. Thomas and Christopher jointly made operational decisions concerning the
9. Teasers timely filed all ST-1 returns during the periods at issue.
10. Teasers was equipped with old cash registers that did not have the capability to create “z-tapes.”
11. On or about April 16, 2013, the Department issued a Notice of Audit and subsequently audited the taxpayer’s records.
12. The Department obtained from Teasers and other sources invoices and other documents from which to determine the quantity and pricing of goods sold by teasers.

ERROR I - TIMING OF PRICE INCREASE

13. The Department requested that Teasers supply the Department with a list of prices that Teasers charged its patrons for various drinks, cigarettes and food items so that the Department could determine gross sales and from that the amount of the sales tax due.

14. During the period under audit, Teasers increased its prices, so Teasers provided two price lists.
15. Revenue Agent Rudy Bujak interviewed Thomas Hickey. During the interview, Mr. Bujak asked Thomas when the second price list went into effect and Thomas initially told Mr. Bujak that the increased prices went into effect in February of 2012.
16. However, when Thomas was talking with Christopher after the interview with Mr. Bujak, Christopher reminded Thomas that while they had intended to put the new price list in place in February they did not because they were afraid of the competition from Rosemont.
17. Christopher reminded Thomas that they agreed to put the new prices into effect on the week of “Black Wednesday” of 2012.
18. Black Wednesday is a notoriously big day for bars in Chicago because the college students return home for the Thanksgiving holiday break on Black Wednesday and patronize the bars¹.
19. Black Wednesday of 2012 was Thursday, November 21, 2012.
20. Thomas contacted Mr. Bujak and notified him that the price increase actually went in to effect in November and not February as previously stated.
21. Mr. Bujak declined to change the date of the price increase in his calculations.

¹ <http://www.suntimes.com/news/metro/8885464-418/bars-students-gear-up-for-black-wednesday.html#.VDHCNr7zfOU>

22. Additionally, after Thomas obtained present counsel for representation, Christopher searched and found in his desk drawer a note that he had written to himself about the agreed upon date for the price increase. Christopher provided that to counsel.
23. Counsel contacted Mr. Bujak and his supervisor, Ms. Elizabeth Comiano with the documentary evidence. Again, the Department declined to consider the changed testimony or the document.
24. Other than Thomas' initial statement, the Department has no evidence to place the date of the price increase in February 2012.
25. The Department's reliance on Thomas' initial statement regarding the date of the price increase is not reasonable.

WHEREFORE the Petitioner requests that Notice be modified in accordance with the reasons stated herein.

ERROR II - INCORRECT AMOUNTS USED FOR SPILLAGE

26. Once the Department determined the amount of goods that were purchased, the Department then proceeded to calculate the amount sold by dividing the amount purchased by the size of the serving. For example, if the good in question was a shot of whiskey, the department would calculate the total ounces of whiskey available and then divide the amount available by the ounces in a shot.
27. However, when pouring drinks bartenders frequently "free pour" – that is pour the liquor without using a shot glass to measure. This leads to beverages that frequently contain more ounces than the perfect shot. Also, when pouring, such as in beer from the

tap, bartenders spill some of the product. Further wait staff give drinks away. All of these instances give rise to “spillage.”

28. Spillage reduces the amount of servings that are obtained from a given number of ounces.

Reduced number of servings reduces gross sales and sales tax due.

29. The department used a spillage rate of 2% for liquor and 4% for beer.

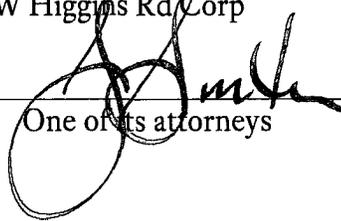
30. However, the Department regularly allows 10% spillage based on its accumulated experience in auditing cash businesses

31. Furthermore, the auditor did not perform any pour tests or use any other basis for the Department’s determination of the amount of spillage to allocate. The spillage amount is unreasonable and arbitrary.

32. As a result, the Department’s determination of the number of drinks sold by Teasers during the audit period is unreasonably large.

WHEREFORE the Petitioner requests that Notice be modified in accordance with the reasons stated herein.

Respectfully submitted
7123 W Higgins Rd Corp

By: 
One of its attorneys

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Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX XX15 6689 12X6#
7123 W HIGGINS RD CORP
TEASERS PUB
7123 W HIGGINS AVE
CHICAGO IL 60656-1903

September 8, 2014



Letter ID: CNXXXX15668912X6

Account ID: 0045-7541



We have audited your account for the reporting periods July 01, 2010, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	74,718.00	0.00	74,718.00
Late Payment Penalty Increase	14,944.00	0.00	14,944.00
Negligence Penalty	12,084.00	0.00	12,084.00
Interest	3,309.46	0.00	3,309.46
Assessment Total	\$105,055.46	\$0.00	\$105,055.46

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 November 07, 2014. Submit your protest on Form AH-1, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-1 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