

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

PRIME BAR CHICAGO LLC)

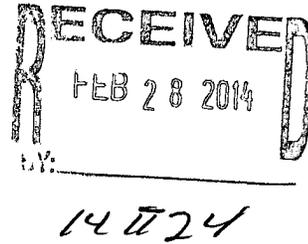
Petitioner,)

v.)

ILLINOIS DEPARTMENT OF REVENUE,)

Respondent.)

No.)



PETITION

Petitioner, Prime Bar Chicago LLC, by its attorney Schain, Burney, Banks & Kenny, Ltd., petitions this Tribunal as follows;

A. The name, address, and telephone number of the petitioner is:

Prime Bar Chicago LLC
1840 Pickwick Lane
Glenview, Illinois 60026-1307

B. The name, address, telephone number and email address of the petitioner's representatives are:

Kevin Wolfberg, Esq.
Patrick J. McGuire, Esq.
Schain, Burney, Banks & Kenny Ltd.
70 W. Madison Street, Suite 4500
Chicago, IL 60602
Ph. 312.345.5700
kwolfberg@sbbklaw.com
pmcguire@sbbklaw.com

C. The taxpayer's identification number is:

TIN# 27-0752712
IBT: 3966-4902

D. A copy of the Statutory Notice at issue is attached hereto as **Exhibit A**.

E. The years or periods involved are:

Tax Year(s): January 1, 2010 through June 30, 2012.

F. **Statement of Claim:**

1. **Petitioner operates a restaurant and bar in Chicago, Illinois.**
2. **As part of its business, petitioner purchases food, drinks, and other supplies.**
3. **Petitioner sells to the general public some, but not all, of the food, drinks, and other supplies it purchases.**
4. **It is usual and customary in the restaurant industry to “mark up” the cost of food and drinks purchased so that a restaurant can realize a profit.**
5. **Petitioner applies a “mark up” in varying percentages to the food and drinks it sells.**
6. **For example, petitioner typically marks up the cost of food by a percentage ranging from A% to B% (redacted to protect confidential information) and drinks by a percentage ranging from X% to Y% (redacted to protect confidential information).**
7. **The cost of the different types of foods and drinks petitioner purchases vary widely and can constitute 50% or more of the sale price of the item.**
8. **On or before October 9, 2013, petitioner was audited by the Illinois Department of Revenue for the tax year(s) January 1, 2010 through June 30, 2012.**
9. **During the course of the audit, representatives of the Illinois Department of Revenue used incorrect methods and formulas to determine petitioner’s tax liability.**
10. **Specifically, representatives of the Illinois Department of Revenue determined petitioner’s tax liability by wrongfully calculating that petitioner’s cost for all of the food and drinks it sold accounted for just 20% of the sale price of all items without regard to the actual cost paid by petitioner for various items or differences in the percentage mark ups petitioner applied to various items.**
11. **The Illinois Department of Revenue’s use of an across-the-board, 20% cost factor to determine petitioner’s tax liability was contrary to the facts and generally accepted accounting procedures for the restaurant industry.**

- 12. The Illinois Department of Revenue's use of an across-the-board, 20% cost factor to determine petitioner's tax liability was wrong, unreasonable, and arbitrary.**
- 13. As a result of the Illinois Department of Revenue's wrongful audit procedures, petitioner was assessed an incorrect and inflated tax liability.**
- 14. Petitioner timely filed a protest to the Illinois Department of Revenue's audit results and requested an administrative hearing for this matter. A copy of the timely filed protest and request for administrative hearing is attached hereto as Exhibit B.**
- 15. Thereafter, on January 17, 2014, the Illinois Department of Revenue dismissed the protest due to lack of jurisdiction stating 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." A copy of the Department's Protest Dismissal Due to Lack of Jurisdiction is attached hereto as Exhibit C.**
- 16. Accordingly, this petition is timely and petitioner is entitled to the relief sought herein.**

G. The relief sought by the petitioner is:

Petitioner seeks a nullification of the audit performed by the Illinois Department of Revenue; a re-assessment of petitioner's potential tax liability using generally accepted accounting standards for the restaurant industry; and such other and further relief that this Tribunal deems equitable and just.

Kevin Wolfberg, Esq.
Patrick J. McGuire, Esq.
Schain, Burney, Banks & Kenny, Ltd.
70 West Madison Street, Suite 4500
Chicago, Illinois 60602
(312) 345-5700
Attorney Number: 46538
pmguire@sbbklaw.com

Respectfully submitted,



One of Petitioner's Attorneys

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



November 14, 2013



Letter ID: CNXXXX4849X78724

#BWNKMGV
#CNXXXX48 49X7 8724#
PRIME BAR CHICAGO LLC
1840 PICKWICK LN
GLENVIEW IL 60026-1307

Account ID: 3966-4902



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

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	284,000.00	0.00	284,000.00
Late Payment Penalty Increase	56,800.00	0.00	56,800.00
Negligence Penalty	56,800.00	0.00	56,800.00
Late Filing Penalty Increase	1,850.00	0.00	1,850.00
Interest	14,149.31	0.00	14,149.31
Assessment Total	\$413,599.31	\$0.00	\$413,599.31

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **January 13, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579



January 10, 2014

VIA CERTIFIED MAIL AND HAND DELIVERY

Mr. Terry Charlton
Chief Administrative Law Judge
Office of Administrative Hearings
Illinois Department of Revenue
100 West Randolph Street
Chicago, IL 60601

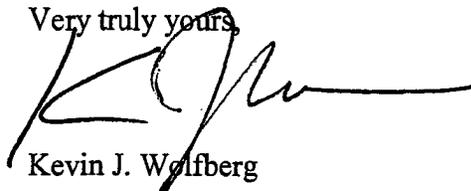
Re: Notice of Tax Liability – Prime Bar Chicago LLC
Letter ID CNXXXXX4849X78724
IBT: 3966-4902

Dear Mr. Charlton:

I am writing on behalf of Prime Bar Chicago LLC (“Taxpayer”) to protest the Notice of Tax Liability (Letter ID CNXXXXX4849X78724) dated November 14, 2013, and request an administrative hearing for this matter. Enclosed please find a copy of this Notice of Tax Liability. Taxpayer does not agree with the audit results with respect to the auditor’s calculation of taxable sales during the audit period in question.

Please call me at (312) 345-5720 if you have any questions.

Very truly yours,



Kevin J. Wolfberg

KJW:pfw
Enclosure



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

January 17, 2014

Kevin J. Wolfberg
Schain Burney Banks & Kenny Ltd.
70 W. Madison Street, Suite 4500
Chicago, IL 60602

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Prime Bar Chicago LLC
Account ID: 3966-4902
Notice of Tax Liability (“NTL”)
Letter ID: CNXXXX4849X78724, dated November 14, 2013

Dear Mr. Wolfberg:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing on behalf of the above client. 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 NTL. However, the amount of liability at issue for the protest exceeds the statutory amount (\$15,000, exclusive of 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 client’s 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 draft proposed rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal’s draft proposed 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 __.310

Pleadings” of the Tax Tribunal’s draft proposed 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 Charlton". The signature is fluid and cursive, with the first name "Terry" being more prominent than the last name "Charlton".

Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC