

**STATE OF ILLINOIS  
INDEPENDENT TAX TRIBUNAL**

DIAMORA INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE )  
 )  
 Respondent. )

Case No.: 14 TT 246

FILED  
15 TT 20

**AMENDED PETITION**

NOW COMES Diamora Inc., (the “Petitioner”), by and through its attorneys, Fornaro Law, pursuant to Section 1-50 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1 *et seq.*) ( the “Act”) complains of the Illinois Department of Revenue (“IDOR” or “Department”) as follows:

**JURISDICTION**

1. This timely filed amended petition concerns notices that involve a tax assessment, including penalty and interest, in excess of \$15,000 under a tax law identified in Section 1-45 of the Act, therefore, the Tax Tribunal has jurisdiction over this amended petition. Copies of the notices are attached hereto as Exhibit A.

**PARTIES**

2. Petitioner, formerly an Illinois corporation, conducted business at 210 E. Galena Blvd, Aurora, Illinois 60505. Petitioner’s Tax Account ID is 3316-5785. A copy of Petitioner’s Notice granting Late Discretionary Hearing is attached hereto as Exhibit A.

3. IDOR is an agency of the Executive Department of the State of Illinois that is authorized to administer and enforce provisions of the Illinois Retailers’ Occupation Tax Act (“ROTA”), and the Illinois Use Tax Act. 20 ILCS 2505/2505-25 and 20 ILCS 2505/2505-90

## BACKGROUND

4. Petitioner, formerly doing business as Club Gala, was engaged in the restaurant and tavern business, and was so engaged during the tax periods at issue in this amended petition.

5. To generate a profit the Petitioner sold beverages and food at prices that were higher than its purchase cost.

6. Petitioner's cost for food and beverages varied and typically accounted for 30-50% of the sale price.

7. Petitioner occasionally purchased beer at retail prices, which reduced Petitioner's gross margin for such sales.

8. On information and belief, IDOR conducted an audit of the Petitioner's business in or around August 2012.

9. IDOR had access to the Petitioner's books and records. The audit included tax periods July 1, 2009 through December 31, 2011 ("Tax Periods").

10. On information and belief, IDOR's auditor corrected Petitioner's sales tax returns for the Tax Periods pursuant to Section 4 of the ROTA (35 ILCS 120/4). This section provides in pertinent part as follows:

...the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information.

11. On or about March 4, 2013 Petitioner was assessed a tax liability of \$45,993.27 (the "Liability").

12. On information and belief, IDOR determined Petitioner's tax liability by incorrectly calculating Petitioner's cost of goods sold at only 20% of the corresponding sale price.

13. On information and belief, IDOR assessed a fraud penalty on Petitioner based on its method of calculating gross receipts that far exceeded the actual gross receipts generated by the Petitioner, which resulted in an excessive tax liability.

### **COUNT I**

#### **IDOR's Calculation of Petitioner's Purported Tax Liability was Incorrect and not According to its Best Judgment and Information**

14. Petitioner restates and incorporates by reference paragraphs 1 through 13 of this Petition.

15. As previously noted, Section 4 of the ROTA requires that IDOR "...shall examine such return and shall, if necessary, correct such return according to its best judgment and information." 35 ILCS 120/4.

16. The auditor determined Petitioner's marked-up alcohol receipts by applying a multiplier of 5.2 to its alcohol purchases. The auditor did not make a distinction between various types of alcohol, such as beer and liquor.

17. Petitioner's actual marked-up alcohol receipts were based on a multiplier of 3.4, which generated actual receipts that were substantially lower than the amounts attributed to it by the auditor.

18. A reasonable review of Petitioner's vendor invoices relative to the corresponding sale price, which was reflected on its menu and confirmed by its point-of-sale receipts, should have sufficiently informed the auditor that the proper multiplier was 3.4 rather than the 5.2 that she applied.

19. IDOR's corrected returns, which were based on an incorrect method of calculating Petitioner's purported tax liability, were not produced with a minimum standard of reasonableness because the auditor did not use her best judgment based on the information

provided by Petitioner.

**WHEREFORE**, Petitioner prays that the Tax Tribunal find and enter an order that:

- (a.) the Liability, including penalty and interest, was incorrect and therefore must be abated.
- (b.) grants such further relief as the Tribunal deems just and appropriate.

**COUNT II**

**Petitioner’s Failure to Pay the Purported Additional Tax was due to Reasonable Cause**

20. Petitioner restates and incorporates by reference paragraphs 1 through 19 of this Petition.

21. Illinois law provides that penalties “shall not apply if the taxpayer shows that his failure to...pay tax at the required time was due to reasonable cause.” 35 ILCS 735/3-8.

22. Petitioner made a good faith effort to determine its obligation as reported on its sales tax reports.

23. Petitioner acted in good faith, and with reasonable cause; therefore, no penalty should be assessed against the Petitioner.

**WHEREFORE**, Petitioner prays that the Tax Tribunal find and enter an order that:

- (a.) the penalty assessed against the Petitioner was wrongly applied and should be abated.
- (b.) grants such further relief as the Tax Tribunal deems just and appropriate.

**COUNT III**

**Petitioner had no Intent to Defraud the Department**

24. Petitioner restates and incorporates by reference paragraphs 1 through 23 of this Petition.

25. The Illinois Uniform Penalty and Interest Act (the "UPIA") provides that:

if any return or amended return is filed with the intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

35 ILCS 735/3-6(a).

26. On information and belief, IDOR's auditor assessed a fraud penalty against the Petitioner based on the fact that IDOR's auditor applied a method of calculating gross receipts that resulted in a purported tax liability that far exceeded the actual gross receipts generated by Petitioner.

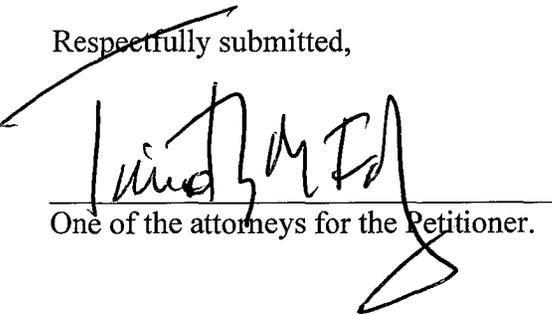
27. At no time, and in no way, did Petitioner intend to defraud the State of Illinois.

**WHEREFORE**, Petitioner prays that the Tax Tribunal find and enter an order that:

(a.) the fraud penalty assessed against the Petitioner was wrongly applied and should be abated.

(b.) grants such further relief as the Tax Tribunal deems just and appropriate.

Respectfully submitted,

  
One of the attorneys for the Petitioner.

FORNARO LAW  
1022 South LaGrange Road  
LaGrange, Illinois 60525  
708.639.4320 - Telephone  
708.390.0665 - Facsimile

**Exhibit A**

**Exhibit A**



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

October 21, 2014

Timothy F. Foley, EA  
Tax Relief Inc.  
1107 S. Mannheim Road, Suite 310  
Westchester, IL 60154

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
Diamora Inc.  
Account ID: 3316-5785  
Notice of Tax Liability (NTL)  
Letter ID: CNXXXX3279616968, dated March 4, 2013

Dear Mr. Foley:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Diamora Inc. regarding the above NTL. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for the above NTL.

The amount of liabilities at issue for this 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 late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) 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,

A handwritten signature in cursive script, appearing to read "Terry Charlton".

Terry D. Charlton  
Chief Administrative Law Judge

TDC:vs

# Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX XX32 7961 6968#  
DIAMORA INC  
ATTN: ELIZABETH TELLER/AILEEN CRUZ/LUIS  
HERNANDEZ  
305 W DOWNER PL  
AURORA IL 60506-5140

March 4, 2013



Letter ID: CNXXXX3279616968

Account ID: 3316-5785

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	26,176.00	0.00	26,176.00
Late Payment Penalty Increase	5,235.00	0.00	5,235.00
Fraud Penalty	13,088.00	0.00	13,088.00
Late Filing Penalty Increase	73.00	0.00	73.00
Interest	1,421.27	0.00	1,421.27
<b>Assessment Total</b>	<b>\$45,993.27</b>	<b>\$0.00</b>	<b>\$45,993.27</b>

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 **May 03, 2013**. 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

**STATE OF ILLINOIS  
ILLINOIS INDEPENDENT TAX TRIBUNAL**

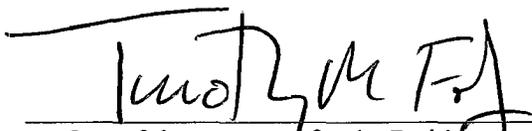
DIAMORA INC.,	)	
	)	
Petitioner,	)	
	)	Case No.: 14 TT 246
v.	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE	)	
	)	
Respondent.	)	

**NOTICE OF FILING OF AMENDED PETITION**

TO: Mr. Brain A. Hamer  
Director of the Illinois Department of Revenue  
100 West Randolph Street, Suite 7-500  
Chicago, Illinois 60601

**PLEASE TAKE NOTICE** that on January 30, 2015, Diamora Inc., through their counsel Fornaro Law, filed with the Clerk of the Illinois Independent Tax Tribunal, Cook County, Illinois, their Amended Petition, a copy of which is attached hereto and herewith served upon you.

Dated: January 30, 2015

  
\_\_\_\_\_  
One of the attorneys for the Petitioners

FORNARO LAW  
1022 South LaGrange Road  
LaGrange, Illinois 60525  
708.639.4320 - Telephone  
708.390.0665 - Facsimile  
Attorney No. 40511

**CERTIFICATE OF SERVICE**

I, Timothy M. Foley, an attorney, on oath state that on January 30, 2015, I served a copy of the foregoing Petition of the Taxpayer to the entity listed above, via first class mail by placing the same in the U.S. Postal Service located in LaGrange, Illinois on or before 5:00 p.m.

  
\_\_\_\_\_  
TIMOTHY M. FOLEY