IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.	)	
	)	
Petitioner,	)	
	)	
	)	No.
v.	)	
	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

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BY:

14 IT 250

PETITION

Petitioner, Belvidere Cash and Carry, Inc. ("Petitioner"), by and through its attorneys, Dale & Gensburg, P.C., for its Petition before the Illinois Independent Tax Tribunal (the "Tribunal") hereby complains of the Defendant, the Illinois Department of Revenue (the "Department"), and alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 4344 Sandy Hollow Road, Rockford, Illinois 61109, and can be reached at 779-368-0757.

2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg, and Michael W. Gutting of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or tcalandriello@dandgpc.com. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Michael W. Gutting can be reached at 312-263-2200 or mgutting@dandgpc.com.

3. Petitioner's Illinois Business Tax number is 4047-8327.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. See 20 ILCS 5/5-15.

NOTICES

Tobacco Products Tax

5. On March 3, 2014, the Department issued six (6) Notices of Tax Liability (the "NTLs") to Petitioner proposing to assess a total Tobacco Products Tax liability of $1,573,755.72 (including interest and penalties), covering the period October 1, 2011 through May 31, 2013 (the "period at issue"). The total liability consists of $903,153 in tax due, $640,833 in late payment and fraud penalties, and $19,768 in interest. A copy of the Department's Taxpayer Statement dated May 19, 2014 is attached hereto as **Exhibit A**.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the "Tribunal Act"), 35 ILCS 1010/1-1 *et seq*.

7. On October 31, 2014, the Department's Office of Administrative Hearings granted Petitioner's request for a late discretionary hearing. A copy of the Department's October 31, 2014 letter is attached hereto as **Exhibit B**.

8. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act, because Petitioner timely filed this petition within 60 days of the issuance of the Department's October 31, 2014 letter.

BACKGROUND

9. Petitioner is a wholesale tobacco distributer. The Department audited Petitioner's books and records for the period at issue.

10. The Tobacco Products Tax audit liability contained in the NTLs is based primarily on purported purchases made by the Petitioner.

COUNT I

Defendants' Audit Methodology Overstates Petitioner's Tobacco Products Tax Liability

11. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 10 above as and for this paragraph 11.

12. The Department erred in determining Petitioner's Tobacco Products Tax liability by failing to account for exempt sales. In addition, the Department erred in determining Petitioner's liability by overstating purchases made by Petitioner. The Department further erred by failing to take into account non tobacco product purchases.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the NTLs;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTLs; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All Failure to Pay Penalties should be Abated for Reasonable Cause

13. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 12 as and for this paragraph 13.

14. In its NTLs, the Department assessed late payment penalties in excess of $150,000.

15. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

16. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

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

18. Petitioner's failure to timely pay its Tobacco Products Tax liabilities (to the extent of any liabilities sustained by the Tribunal) during the period at issue was due to reasonable cause warranting abatement of the late payment penalties.

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

(a) Finds and declares that all late payment penalties should be abated for reasonable cause;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to pay penalties stated in the NTLs; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

All Fraud Penalties should be Abated

19. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 18 as and for this paragraph 19.

20. In its NTLs, the Department assessed fraud penalties in an amount in excess of $400,000.

21. Illinois law provides that a fraud penalty is applicable only where a return is filed with an intent to defraud. 35 ILCS 735/3-6. Illinois law further provides that intent to defraud will be inferred from conduct such as keeping a double act of books, making false entries or alterations, or false invoices or documents, destruction of books and records, concealment of assets or covering up sources of income, handling of one's affairs to avoid compiling records usual in the like kind, or any other conduct, the likely effect of which would be to mislead or conceal. 86 Ill. Adm. Code 700.330 (c).

22. Any understatement of Tobacco Products Tax determined to be owed by Petition was not attributable to fraud as Petitioner did not file its returns with an intent to defraud for the period in question, and any liability determined to exist was attributable to reasonable cause.

23. The Department's determination that Petitioner owed fraud penalties is not supported by fact or law.

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

(a) Finds and declares that all fraud penalties should be abated because there was no fraud and/or for reasonable cause;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the negligence penalties stated in the NTLs; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

BELVIDERE CASH AND CARRY, INC.,
Petitioner

By: _____
One of Petitioner's Attorneys

Anthony Calandriello, Esq.
Lane M. Gensburg, Esq.
Michael W. Gutting, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
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lgensburg@dandgpc.com
mgutting@dandgpc.com

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Final Notice of Tax Due

for Tobacco Products Tax

217 782-6045

#BWNKMGV
#CNXX X175 2778 X8X0#
BELVIDERE CASH AND CARRY INC
BELVIDERE CASH AND CARRY INC
4344 SANDY HOLLOW RD
ROCKFORD IL 61109-2506

May 19, 2014

Letter ID: CNXXX1752778X8X0

License No: TP-00018
Account ID: 40494748
Reporting Period: May 2013

The Notice of Tax Liability issued on March 3, 2014 is final. Any correspondence and/or amended figures received for this liability have been processed.

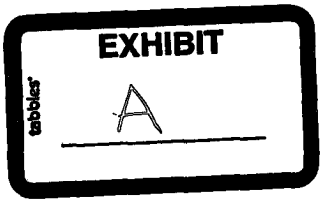
As a result we have assessed the amounts shown below.

To avoid cost of collection fees, additional penalties and interest for this assessment, you must pay on or before June 18, 2014.

Please use the voucher on the enclosed Taxpayer Statement to make your payment.

	Liability	Payments/Credit	Unpaid Balance
Tax	41,368.00	0.00	41,368.00
Fraud Penalty	20,684.00	0.00	20,684.00
Late Payment Penalty	8,274.00	0.00	8,274.00
Interest	472.20	0.00	472.20
Assessment Total	$70,798.20	$0.00	**$70,798.20**

For questions, visit our web site or call one of the numbers above.



IDOR-2P-BILL (R-12/13)

Taxpayer Statement

217 782-6045

May 19, 2014

Letter ID: CNXXX13X7748X643

#BWNKMGV
#CNXX X13X 7748 X643#
BELVIDERE CASH AND CARRY INC
BELVIDERE CASH AND CARRY INC
4344 SANDY HOLLOW RD
ROCKFORD IL 61109-2506

License No: TP-00018
Account ID: 40494748
Total amount due: $1,573,755.72

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Tobacco Products Tax — You have available credits of $4,878.00 — **License No: TP-00018**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2012	778,176.00	542,644.00	18,177.92	-	(3,690.00)	1,335,307.92
31-Jan-2013	36,299.00	22,575.00	368.23	-	(4,050.00)	55,192.23
28-Feb-2013	29,942.00	18,011.00	294.23	-	(4,212.00)	44,035.23
31-Mar-2013	30,204.20	18,751.38	294.69	-	(5,017.58)	44,232.69
30-Apr-2013	18,623.20	9,894.00	161.45	-	(4,489.20)	24,189.45
31-May-2013	45,965.20	28,958.00	472.20	-	(4,597.20)	70,798.20
10-Jun-2013	5,346.00	-	-	-	(10,224.00)	(4,878.00)

SOA

Retain this portion for your records.

P-000151 Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)

Letter ID: CNXXX13X7748X643
BELVIDERE CASH AND CARRY INC

Total amount due: $1,573,755.72

Write the amount you are paying below.

$_____.____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

000 006 016180032160 731 123199 3 0000157375572

JUN-13-2014 01:00 From:

RECEIVED
NOV 03 2014
DALE & GENSBURG, P.C

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

October 31. 2014

Anthony Calandriello
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, IL 60606

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Belvidere Cash and Carry, Inc.
Account ID: 40494748
6 Notices of Tax Liability (NTLs)
Letter ID: CNXXX19244X34245, dated March 3, 2014
Letter ID: CNXXXX85X6616XX2, dated March 3, 2014
Letter ID: CNXXX13875325128, dated March 3, 2014
Letter ID: CNXXX146235X6888, dated March 3, 2014
Letter ID: CNXXXX3886X88646, dated March 3, 2014
Letter ID: CNXXXX31379X6884, dated March 3, 2014

Dear Mr. Calandriello:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Belvidere Cash and Carry, Inc. regarding the above NTLs. 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 NTLs.

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.*

EXHIBIT
tabbies
B

The Tax Tribunal's website (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,

Terry D. Charlton
Chief Administrative Law Judge

TDC:vs

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	)	
Petitioner,	)	
	)	
	)	No.
v.	)	
	)	
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

TO: Illinois Independent Tax Tribunal
160 North La Salle Street, Room N506
Chicago, Illinois 60601

I, Anthony Calandriello, an attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Tuesday, December 23, 2014.

Anthony Calandriello

Anthony Calandriello, Esq.
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Michael W. Gutting, Esq.
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