

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

DIAMOND WHOLESALE GROUP, INC.,)

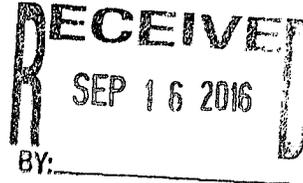
Petitioner,)

No.)

v.)

ILLINOIS DEPARTMENT OF REVENUE,)

Respondent.)



NOTICE OF FILING

16 71190

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on September 1st, 2016, I filed the attached Petition with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street, room N506, Chicago, Illinois 60601 a copy of which is served upon you.

Respectfully submitted,

Michael J. Levinsohn
Attorney for the Defendant
734 N. Wells St
Chicago, IL 60654
(312) 919-0200

CERTIFICATE OF SERVICE

I, the undersigned 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 on September 1st, 2016 before 5 p.m.

s/ Michael J. Levinsohn

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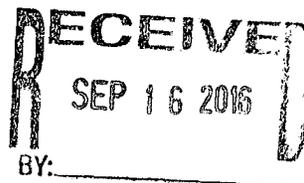
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16 TR 6

PETITION

Petitioner, Diamond Wholesale Group, Inc., by its attorney, Levinsohn & Associates, for it's Petition before the Illinois Independent Tax Tribunal hereby complains of the Respondent, Illinois Department of Revenue and alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 7252 W. 87th Street, Bridgeview, Illinois 60455-1822, and can be reached at (708) 539-4549.
2. Petitioner is represented by attorney Michael Levinsohn of Levinsohn & Associates located at 734 N. Wells Street, Chicago, Illinois 60654. Michael Levinsohn can be reached at (312) 919-0200 and mlevinsohn@dmdchicago.com.
3. Petitioner's Illinois Business Tax number is 5574-6349 and its License number is TP-97596.
4. The Department is an agency of the Executive Department of the State of Illinois and is tasked with the enforcement and administration of Illinois tax law. 20 ILCS 5/5-15.

NOTICES

5. On July 19, 2016, the Department issued a Notice of Tax Liability (“NTL”) to the Petitioner assessing a total Tobacco Products Tax liability of \$164,191.93 (including interest and penalties), covering the reporting periods May 1, 2013 through June 30, 2015. The total liability consists of \$112,299.00 in tax due, \$22,460.00 for a negligence penalty, \$22,460.00 for a late payment penalty, \$190.00 in late filing penalty increase, and interest in the amount of \$6,782.93. A copy of the NTL is attached and marked as Exhibit A.

JURISDICTION

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

7. 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 NTL.

BACKGROUND

8. Petitioner is an Illinois licensed tobacco products wholesaler. The Department audited Petitioner’s books and records for Tobacco Products Tax for the period starting May 1, 2013 through June 30, 2015.

9. The Department did not provide any documentation with regard to the May 1, 2013 to June 30, 2015 time period to justify its assessment of taxes, penalties and interest.

10. The Petitioner has properly paid his Tobacco Products Tax (“TPT”) liability during the period in question.

COUNT I

**The Department Improperly
Assessed Petitioner Taxes, Penalties, and Interest**

11. The Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 10.

12. The Department erred in determining the Petitioners TPT liability, liability for penalties and for interest.

WHEREFORE, Petitioner prays that the Tribunal:

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

(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 NTL; and

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

Count II

All Penalties Should be Abated for Reasonable Cause

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

14. In its NTL, the Department assessed penalties and interest totaling \$45,110.00.

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. 35 ILCS 735/3-8.

16. Illinois law provides that penalties for negligence should not be imposed if a taxpayer shows that his failure to comply was due to reasonable cause. 35 ILCS 735/3-5(c).

17. The most important factor to be considered in making a determination to abate a late payment penalty, late filing penalty, and negligence 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. 86 Ill. Admin. Code 700.400(b).

18. 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. 86 Ill. Admin. Code 700.400(c).

19. Petitioner's failure to timely file and pay its tax liability (to the extent of any liabilities sustained by the Tribunal) during the period at issue was due to reasonable cause warranting abatement of the negligence penalty, late payment penalty, and late filing penalty increase.

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

- (a) Finds and declares that all penalties should be abated for reasonable cause;
- (b) Enjoins the Department from taking any action to assess, liens, levy, offset, or in any other way prosecute and collect the amount of the penalties stated in the NTL; and

Notice of Tax Liability
for Form TP-1A, Tobacco Products Tax Audit Return



217 782-6045

#BWNKMGV
#CNXX XX36 X869 9688#
DIAMOND WHOLESALE GROUP INC
DIAMOND WHOLESALE GROUP INC
ATTN: RABEIH SAID
7252 W 87TH ST
BRIDGEVIEW IL 60455-1822

July 19, 2016



Letter ID: CNXXXX36X8699688

License No: TP-97596
Account ID: 55746349



We have audited your account for the reporting periods May 01 2013 through June 30, 2015. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	112,299.00	0.00	112,299.00
Negligence Penalty	22,460.00	0.00	22,460.00
Late Payment Penalty	22,460.00	0.00	22,460.00
Late Filing Penalty Increase	190.00	0.00	190.00
Interest	6,782.93	0.00	6,782.93
Assessment Total	\$164,191.93	\$0.00	\$164,191.93

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 September 19, 2016. 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). 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), 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.

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

217 785-6579

EXHIBIT A