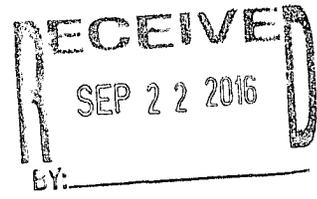


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

JET INC., )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 )  
 ) ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 ) Defendant. )

No.



1671192

**PETITION**

Petitioner, Jet Inc. (“Petitioner”), by and through its attorneys, The Law Office of James E. Dickett, Ltd, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 801 West Garfield Boulevard, Chicago, Illinois, 60621, and can be reached at 773-507-7162.
2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).
3. Petitioner’s Account ID is 2793-6775.
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. 20 ILCS 5/5-15.

## **NOTICE**

5. On November 22, 2013, the Department issued two (2) Notice of Tax Liability Letters (“Notice”) to Petitioner for a sales/use tax audit for the tax periods of January 1, 2007 to June 30, 2009, and July 1, 2009 to May 31, 2011. The Notices reflect tax in excess of \$15,000. The Notice for the tax periods January 1, 2007 to June 30, 2009 is attached hereto as Exhibit 1, and Petitioner’s Taxpayer Statement dated August 2, 2014 is attached as Exhibit 2 and lists both Notices (see 7. below).

## **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner obtained a late discretionary hearing from the Department dated August 24, 2016 (copy attached as Exhibit 3), and then timely filed this Petition within 60 days of the Department’s letter granting the late discretionary hearing for Petitioner.

## **BACKGROUND**

8. Petitioner is a petroleum retailer located in Chicago.

9. Defendants audited Petitioner’s books and records for the tax periods January 1, 2007 to May 31, 2011.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s purchases (i.e., gas and mini-mart items) by estimated industry standard selling prices of Petitioner’s products even though Petitioner maintained POS reports.

## COUNT I

### **Defendant's audit methodology overstates Petitioner's liability.**

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. On audit, the Department calculated a portion of the audit liability by multiplying Petitioner's purchases by estimated selling prices, but the average gas price used by the Department is overstated and the Department's computations for the mini-mart are overstated (especially with respect to low rate sales) based on Petitioner's POS reports.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and Petitioner's low rate sales were higher due to the location of the business.

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

- (a) enters judgment in favor of Petitioner and cancels the Notice; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice.

## COUNT II

### **All penalties should be abated based on reasonable cause.**

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed penalties based on the audit liability.

16. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(b).

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

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices.

20. Finally, the fraud penalty in this case is not warranted because the audit liability is severely overstated based on Petitioner's POS reports, so the actual audit tax liability is below the Department's threshold for imposition of the fraud penalty.

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

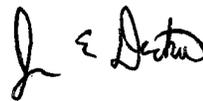
- (a) declares that all penalties should be abated based on reasonable cause; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way collect the amount of penalties due on the Notice.

Thank you for considering this Petition.

Respectfully submitted,

JET INC.,  
Petitioner

By:



\_\_\_\_\_  
One of Petitioner's Attorneys

Date:

9-16-16

James E. Dickett  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report

Exhibit 1



#8WVKMGV  
#CNXX XX77 X562 9126#  
JET INC  
GARFIELD SHELL  
801 W GARFIELD BLVD  
CHICAGO IL 60621-2201

November 22, 2013



Letter ID: CNXXXX77X5629126

Account ID: 2793-6775



We have audited your account for the reporting periods January 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	235,860.00	0.00	235,860.00
Late Payment Penalty Increase	47,172.00	0.00	47,172.00
Fraud Penalty	117,930.00	0.00	117,930.00
Interest	43,460.17	0.00	43,460.17
<b>Assessment Total</b>	<b>\$444,422.17</b>	<b>\$0.00</b>	<b>\$444,422.17</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 **January 21, 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

Exhibit 2

Taxpayer Statement



JET INC  
ATTN: ALLI ABBAS MAHBOOB  
505 N ASHLAND AVE  
CHICAGO IL 60622-8308

August 2, 2014  
Letter ID: L0520705504

Taxpayer ID: 38-4138494  
Total amount due: \$735,841.77

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.

Sales/Use Tax & E911 Surcharge					Account ID: 2793-8775	
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	260,323.00	165,867.95	48,445.38	-	(25,229.05)	449,407.28
31-May-2011	162,898.00	111,016.00	16,987.49	-	(4,447.00)	288,434.49

90C

Retain this portion for your records.

F-999148

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

Taxpayer Statement (R-12/08) (138)



Letter ID: L0520705504  
JET INC

Total amount due: \$735,841.77

Write the amount you are paying below.

Mail this voucher and your payment to:  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19035  
SPRINGFIELD IL 62794-9035

\$ \_\_\_\_\_  
Write your Taxpayer ID on your check.

000 006 016929020324 731 123199 7. 0000073584177



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

Exhibit 3

August 24, 2016

Law Office of James E. Dickett, Ltd.  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558

Re: **CONDITIONAL Late Discretionary Hearing Granted - Tribunal Jurisdiction**  
Jet Inc.  
Account ID: 2793-6775  
(2) Notices of Tax Liability (NTLs) dated November 22, 2013  
Letter ID: CNXXXX77X5629126 for Reporting Period 1/1/07 – 6/30/09  
Letter ID: CNXXX119258544X5 for Reporting Period 7/1/09 – 5/31/11

Dear Mr. Dickett:

The office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Jet Inc. regarding the above NTLs. The amount represented by those NTLs totals \$727,474.84. The Department's regulations provide that:

- d) In any case where the issue to be heard involves one or more assessed liabilities, approval of any application for review or rehearing may be conditioned upon the taxpayer's remittance to the Department, within 30 days of issuance of the notice, of a deposit of not more than 25% of the total liability incurred.

86 Ill. Admin. Code Sec. 200.175(d).

Under the provisions of subsection (d) of Section 200.175, I believe that it is appropriate to grant your request for a late discretionary hearing for the above NTLs conditioned upon the payment to the Department of the amount of \$50,000.00 within 30 days of issuance of this letter. If such payment is not made to the Department within 30 days of this letter, your request for a late discretionary hearing for Jet Inc. for the above NTLs will be considered denied without any further action on my part or the Department.

The amount of liability at issue for this protest exceeds the statutory amount for which the Department has jurisdiction. For late discretionary hearings that are granted 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 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.**

I recommend that you review the information provided on the Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton", written in a cursive style.

Terry D. Charlton  
Chief Administrative Law Judge

TDC

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



FIFTH THIRD BANK

IBT # 2793-6775

73-119  
421

26951256

TAX ID # 36-4136949

CASHIER'S CHECK

September 06, 2016

Pay to the  
Order of: Illinois department of revenue\*\*\*

\$\*\*\*\*\*50,000.00

Amount: FIFTY THOUSAND 00/100 US DOLLARS

Drawn on: Fifth Third Bank, Kentucky, Inc  
Lexington, KY

Transaction Number: 744234988  
Cost Center: 23319

Memo: Jet Inc  
Purchased by:

The purchase of a Surety Bond may be required before any Cashier's Check on this bank will be replaced or refunded in the event it is lost, misplaced, or stolen.

Authorized Signature

⑈ 26951256 ⑈ ⑆ 042101190 ⑆ 0082649400 ⑈

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK.

HOLD AT AN ANGLE TO SEE THE MARK WHEN CHECKING THE ENDORSEMENTS.

mailed  
9/12/16