

("Auditing Period"). A copy of the Notice is attached hereto and incorporated herein as Exhibit A.

6. The Independent Tax Tribunal is vested with jurisdiction pursuant to 35 ILCS 1010/1-45 in that the amount of tax liability in question, exclusive of penalty and interest, is more than \$15,000.00.

BACKGROUND

7. Fairview is a convenience store that has been in business since July 2010.

8. Respondent conducted an audit of Fairview's returns for the reporting periods of July 1, 2011 through September 30, 2013.

9. As a result of the audit, Respondent concluded that Fairview had an unpaid assessment tax balance of \$107,673.23.

10. The tax balance is allocated as follows: 1) \$65,742.00 in taxes, 2) \$12,952.00 in late payment penalties, 3) \$32,380.00 fraud penalty and 4) \$2,774.23 in interest.

11. Respondent has credited Fairview \$6,175.00 for payments made.

12. Respondent has improperly calculated the taxes due.

13. Respondent improperly assessed the late penalty.

14. Respondent improperly assessed the fraud penalty.

15. Fairview seeks an abatement of the Notice for the reasons stated below.

COUNT I-FAIRVIEW PROPERLY CALCULATED ITS TAX DUE

16. Fairview incorporates herein by reference each and every allegation set forth in paragraphs 1-15 above.

17. Respondent has improperly calculated the taxes due for the Auditing Period.

18. The tax returns filed by Fairview for the Auditing Period accurately reflect the amount of taxes due to the Respondent.

WHEREFORE, Petitioner Parth159, Inc. d/b/a Fairview Liquor respectfully Requests that the Tax Tribunal enter an order that that the Illinois Department of Revenue improperly calculated the taxes due for the Auditing Period, that the amount reported by Fairview for the Auditing Period is the proper amount due, and for such other and further relief as the Tax Tribunal deems just and proper.

COUNT II- LATE PENALTIES MUST BE ABATED FOR REASONABLE CAUSE

19. Fairview incorporates herein by reference each and every allegation set forth in paragraphs 1-18 above.

20. In Illinois, penalties shall not be applied if the taxpayer shows that his failure to pay tax at the required time was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8.

21. Further, when considering whether to abate a penalty, the most important factor to consider is “the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400 (b).

22. A good faith effort is shown where the taxpayer exercised ordinary business care and prudence in determining and filing and paying his tax liability. 86 Ill. Admin. Code § 700.400 (c).

23. Fairview made a good faith effort to determine its proper tax liability and file and pay its liability in a timely fashion.

24. Fairview exercised ordinary business care and prudence in determining and filing and paying its liability in a timely fashion.

WHEREFORE, Petitioner Parth159, Inc. d/b/a Fairview Liquor respectfully Requests that the Tax Tribunal enter an order that any late penalties assessed by the Illinois Department of Revenue against Fairview be abated in full, and for such other and further relief as the Tax Tribunal deems just and proper.

COUNT III-FRAUD PENALTY MUST BE ABATED

25. Fairview incorporates herein by reference each and every allegation set forth in paragraphs 1-24 above.

26. The Notice issued to Fairview contained a \$32,380.00 fraud penalty.

27. Pursuant to Illinois statute 35 Ill. Comp. Stat. 735/3-6, if a return is filed with an intent to defraud, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

28. Fairview did not file the returns reviewed by Respondent during the Auditing Period with an intent to defraud.

29. Illinois law is clear that Respondent bears the burden to show fraud by clear and convincing evidence. Brown Specialty Co. v. Allphin, 75 Ill. App. 3d 845, 850, 394 N.E.2d 659, 663 (1979).

30. Respondent has not provided Fairview with any information it relies on to prove that Fairview filed its returns with an intent to defraud.

31. Because Respondent has not met its burden, the fraud penalty assessed against Fairview must be abated.

WHEREFORE, Petitioner Parth159 Inc. d/b/a Fairview Liquor respectfully Requests that the Tax Tribunal enter an order that any fraud penalties assessed by the Illinois Department of Revenue against Fairview be abated in full, and for such other and further relief as the Tax Tribunal deems just and proper.

WITZEL KANZLER
DIMMIT & KANZLER, LLC

By: 

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Fairview Liquor*

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX XX85 6277 2642#
PARTH159 INC
5329 N ILLINOIS ST
FAIRVIEW HTS IL 62208-3507

November 20, 2014



Letter ID: CNXXXX8562772642

Account ID: 3999-0486



We have audited your account for the reporting periods July 01, 2011, through September 30, 2013. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	65,742.00	(6,175.00)	59,567.00
Late Payment Penalty Increase	12,952.00	0.00	12,952.00
Fraud Penalty	32,380.00	0.00	32,380.00
Interest	2,774.23	0.00	2,774.23
Assessment Total	\$113,848.23	(\$6,175.00)	\$107,673.23

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.

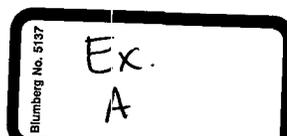
- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must 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 January 20, 2015. 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.

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

217 785-6579



Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 Nonfiling penalty for transaction return - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.