

**STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL**

SALVADORE MORALES)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE)
)
 Respondent.)

Case No.: _____

15 11 20
1

PETITION

NOW COMES Salvadore Morales (the “Petitioner”), by and through his 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 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 petition. Copies of the notices are attached hereto as Exhibits A.

PARTIES

2. Petitioner was formerly President and shareholder of Diamora, Inc. (“Diamora”). Petitioner resides at 2840 McDuffee Circle, North Aurora, Illinois 60542. His tax identification number is xxx-xx-1193. A copy of Petitioner’s notice is attached hereto as Exhibit A.

3. IDOR is an agency of the Executive Department of the State of Illinois that is authorized, among other functions, 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

BACKGROUND

4. Diamora, 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 petition.

5. As previously noted, Petitioner was an officer of Diamora and one of its shareholders during the periods at issue in this petition.

6. Petitioner did not manage the day-to-day operations of the business.

7. On information and belief, IDOR conducted an audit of Diamora in or around August 2012.

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

9. On information and belief, IDOR's auditor corrected Diamora'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.

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

11. On information and belief, IDOR's auditor assessed a fraud penalty against Diamora based on the auditor's method of calculating gross receipts that far exceeded the actual gross receipts earned by Diamora, which resulted in an excessive tax liability.

12. Diamora has filed with the Tax Tribunal an amended petition, wherein it is challenging IDOR's assessment of the Liability.¹

13. On or about May 6, 2014 the Petitioner, as shareholder of Diamora, was personally assessed the Liability.

COUNT I

Petitioner's Assessed Liability must be Abated because IDOR's Calculation of Diamora's Purported Tax Liability was Incorrect

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

15. As previously noted, Petitioner was personally assessed the Liability based on his role as officer and shareholder of Diamora.

16. 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.

17. The auditor determined Diamora'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.

18. Diamora'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.

19. A reasonable review of Diamora's vendor invoices, which identified its cost of goods sold, 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

¹ Diamora, Inc. v. Illinois Department of Revenue, Case No. 14 TT 246

proper multiplier was 3.4 rather than the 5.2 that she applied.

20. 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

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

22. 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.

23. Petitioner, as an officer of Diamora, made a good faith effort to determine Diamora's sales tax obligations as reported on its sales tax reports.

24. As previously noted, Petitioner did not manage the day-to-day business. He relied on key employees to accurately report the monthly sales generated by Diamora, which he then provided to Diamora's accountant.

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

26. Petitioner did not willfully fail to pay Diamora's sales tax obligations and

therefore he should not be held liable for unpaid sales tax penalties and interest.

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

27. Petitioner restates and incorporates by reference paragraphs 1 through 26 of this Petition.

28. 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).

29. On information and belief, IDOR's auditor assessed a fraud penalty against Diamora 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 Diamora.

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

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

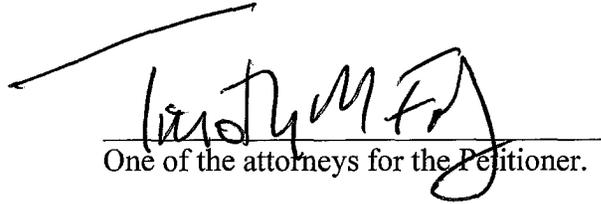
WHEREFORE, Petitioner prays that the Tax Tribunal find and enter an order that:

- (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: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**
Salvadore Morales
Account ID: 3316-5785 (Diamora Inc.)
Notice of Penalty Liability ID: 1880759
Letter ID: L2095780576, dated May 6, 2014
Notice of Penalty Liability (1002D) ID: 341077
Letter ID: L1750794976, dated May 6, 2014

Dear Mr. Foley:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing for the above Collection Actions. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Collection Actions. However, the amount of liability at issue for the 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 protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that**

a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal. See Subsection (a)(3) 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

Collection Action

Assessment and Notice of Intent



[Handwritten initials]
[Handwritten signature]

May 6, 2014



Letter ID: L2095780576

SALVADOR MORALES
2840 MC DUFFEE CIR
NORTH AURORA IL 60542-2031

Taxpayer ID: XXX-XX-1193

NPL Penalty ID: 1880759



DIAMORA INC
210 E GALENA BLVD
AURORA, IL 60505-3416

We have determined you are personally liable for a penalty of \$48,038.86.

The penalty is equal to the amount of unpaid liability of DIAMORA INC, due to your status as a responsible officer, partner, or individual of DIAMORA INC.

This law (35 ILCS 735/3-7) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$48,038.86. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this liability 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 July 5, 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.
- 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 the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

BETH WINTER
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
BOX 19035
SPRINGFIELD IL 62794-9035

For information about
› how to pay
› submitting proof
› collection actions

Turn page

217 782-9904 ext. 31606
217 785-2635 fax

DDR-5P-NPL (R-11/13)

Collection Action
Assessment and Notice of Intent



May 6, 2014



Letter ID: L2095780576

SALVADOR MORALES
2840 MC DUFFEE CIR
NORTH AURORA IL 60542-2031

Taxpayer ID: XXX-XX-1193
NPL Penalty ID: 1880759



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: 3316-5785

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2011	26,176.00	18,496.00	2,341.25	-	(285.00)	46,728.25
31-Oct-2012	646.00	94.60	8.64	-	-	749.24
31-Dec-2012	404.00	70.40	3.99	-	-	478.39
28-Feb-2013	475.00	40.14	0.14	-	(467.00)	48.28
31-Mar-2013	347.00	34.70	-	-	(347.00)	34.70

IDOR-5P-NPL (R-11/13)

Retain this portion for your records.

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

Collection Action

(R-12/08) (136)



Letter ID: L2095780576
SALVADOR MORALES

Total amount due: \$48,038.86

Write the amount you are paying below.

\$ _____

Write your Taxpayer ID on your check.

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

000 006 011144032964 731 123199 7 0000004803886

**STATE OF ILLINOIS
ILLINOIS INDEPENDENT TAX TRIBUNAL**

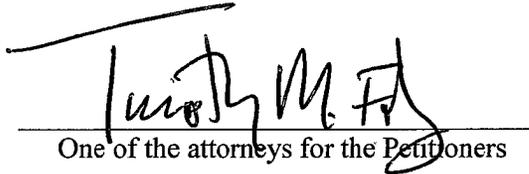
SALVADORE MORALES.,)
)
Petitioner,)
) Case No.:
v.)
)
ILLINOIS DEPARTMENT OF REVENUE)
)
Respondent.)

NOTICE OF FILING OF 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, Salvador Morales., through his counsel Fornaro Law, filed with the Clerk of the Illinois Independent Tax Tribunal, Cook County, Illinois, his Petition, a copy of which is attached hereto and herewith served upon you.

Dated: January 30, 2015

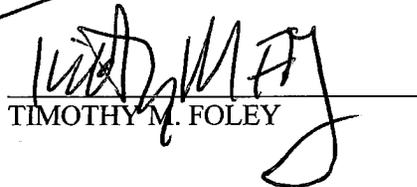


One of the attorneys for the Petitioners

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