

BACKGROUND

4. The Petitioner operates a gas station, with a convenience store, car wash, and other customer services.

5. Petitioner filed timely sales tax returns (ST-1s) for the periods under review.

6. The audit was initiated as a follow-up audit to the original audit for tax periods January 1, 2007, through March 31, 2009.

7. The proposed adjustments in the original audit are at issue before the Illinois Department of Revenue, Administrative Hearings Division.

8. Petitioner was granted leave to file this Petition under the provisions for “late discretionary hearing” in a letter issued by the Department, dated January 23, 2015, attached as Exhibit C.

9. The contested adjustments center on two issues: the high-low computation of tax for convenience store items, and the formula for computation of tax on gasoline.

APPLICABLE LAW

10. Section 35 ILCS 120/2 of the Illinois Code imposes a tax on the retail sale of tangible personal property.

11. The tax on items, such as items sold at a convenience store including food, soft drinks and candy, is determined pursuant to 86 Ill. Adm. Code §130.310.

12. The tax on gasoline is determined pursuant to 35 ILCS 505/2.

13. Late payment penalties may be abated, or not asserted, based on reasonable cause. *Kroger Co. v. Department of Revenue*, 284 Ill.App.3d at 484, 220 Ill. Dec. 566, 673 N.E.2d 710 (Ill. App. 1 Dist., 1996). The existence of reasonable cause justifying abatement of a penalty is a factual determination made on a case-by-case basis. *Id.*

ERRORS

14. The Department erred in its proposed adjustments to tax for convenience store items, based on "high-low" computations

15. The Department erred in its proposed adjustment to gasoline tax based on a revised computation formula.

16. The Department erred in proposing penalty assessments against the Petitioner for late payment of tax.

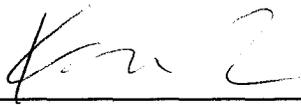
CONCLUSION AND RELIEF REQUESTED

17. Petitioner believes that its ST-1s were accurate as originally filed.

18. Petitioner requests that no adjustments be made on its account for the periods at issue.

WHEREFORE, Petitioner requests that the Notices be modified or canceled for the reasons contained herein.

HARVEY'S CORNER, LLC

By: 

Kathleen M. Lach
One of its Attorneys

Representative:

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Chicago, IL 60606
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Bar No.: 6243316

112303674.1

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



#BWNKMGV
 #CNXX XXX9 5X82 8487#
 HARVEYS CORNER LLC
 18300 CICERO AVE
 CNTRY CLB HLS IL 60478-5201

May 8, 2014



Letter ID: CNXXXXX95X828487

Account ID: 3622-1211



We have audited your account for the reporting periods July 01, 2009, through September 30, 2011. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	17,580.00	0.00	17,580.00
Late Payment Penalty increase	3,516.00	0.00	3,516.00
Interest	1,626.23	0.00	1,626.23
Assessment Total	\$22,722.23	\$0.00	\$22,722.23

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 July 07, 2014. 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

217 765-6579

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



#BWNKMGV
 #CNXX XX6X 996X 16X4#
 HARVEYS CORNER LLC
 18300 CICERO AVE
 CNTRY CLB HLS IL 60478-5201

May 8, 2014



Letter ID: CNXXXX6X996X16X4

Account ID: 3622-1211



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

	Liability	Payments/Credit	Unpaid Balance
Tax	2,286.00	0.00	2,286.00
Late Payment Penalty Increase	914.00	0.00	914.00
Interest	715.64	0.00	715.64
Assessment Total	\$3,915.64	\$0.00	\$3,915.64

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 July 07, 2014. 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

217 785-6379



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

January 23, 2015

Berton I. Goldstein, CPA
1500 Skokie Boulevard #430
Northbrook, IL 60062

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Harvey's Corner, LLC.
Account ID: 3622-1211
2 Notices of Tax Liability (NTLs) dated May 8, 2014
Letter ID: CNXXXXX6X996X16X4
Letter ID: CNXXXXX95X828487

Dear Mr. Goldstein:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing 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 liability 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.*

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,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC