

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL.

DJ'S SPORTS BAR AND GRILL INC.)

Petitioner)

v.)

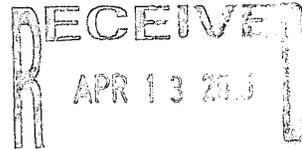
CONSTANCE BEARD in her official capacity as)

DIRECTOR OF THE ILLINOIS DEPARTMENT)

OF REVENUE, and the ILLINOIS DEPARTMENT)

OF REVENUE,)

Defendants.



BY: 1577 72

PETITION

Petitioner, DJ's Sports Bar and Grill Inc. ("Petitioner") by and through its attorney, Mansoor Ansari, complains of the Defendants, the Illinois Department of Revenue ("Department") and Constance Beard, Director of the Department ("Director Beard"), and alleges as follows:

1. Petitioner is an Illinois Corporation located at 14202 Cottage Grove, Dalton, IL, 60419 and can be reached at 708-307-9980.
2. Petitioner is represented by Mansoor Ansari located at 500 N. Michigan Avenue., Suite 600, Chicago, Illinois, 60611, who can be reached at 312-265-5626 or
3. Petitioner's Illinois business tax number is 3966-2020.
4. Petitioner was formed a Corporation on July 9th, 2009, to operate a restaurant and bar.
5. 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 ILCS5/5-15.
6. Director Beard is the current Director of the Department.
7. Director Beard is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the director of the Department. 20 ILCS 5/5-20.

NOTICE

8. On January 2nd, 2015, the Defendants issued one Notice of Tax Liability ("Notice") totaling tax, penalties and interest of \$32,137.99 for the period of March 31st, 2012. True and accurate copies of the Notices are attached hereto as Exhibit A.

JURISDICTION

9. 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.
10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45, and 1-50 of the Tribunal Act because Petitioner timely filed a protest with the Department's Office of Administrative hearings within 60 days of the Notices and elected to transfer the case to the Tribunal before May 10th, 2015.

BACKGROUND

11. Petitioner's business was created to operate a Bar serving liquor.
12. The Department audited the Petitioner's books and records for the Periods at Issue.
13. In addition to performing an audit of the Petitioner's sales, the Department's auditor also utilized a sample period and extrapolated those figures to the entire audit period.
14. The Department made several adjustments to Petitioner's sales and use tax returns that resulted in the assessed liability at issue.
15. The Department has not taken into account merchandise that has been deemed spoiled and not fit for resale for which the Petitioner has not attained a profit.
16. The Department has not taken into account merchandise that is given away for promotion at a 100% loss for each piece of merchandise, which accounts for 10% of all cost of goods purchased.
17. The Department used projected profitability, referred to as mark-ups, as being 75% higher than the actual profit margin.
18. The Department has levied burdensome penalties on the client's business as a result of the underreporting.
19. On February 26, 2015, Petitioner timely filed a request for a late discretionary hearing, specifically reserving the right to transfer the case from the IDOR to the Illinois Independent Tax tribunal. A true and accurate copy of Petitioner's protest is attached hereto as Exhibit B.

COUNT 1 – Improper method of calculating sales must not be used to determine liability.

20. Petitioner alleges that the sampling method cannot be used to extrapolate sales.
21. That the costs of goods sold vary and the sampling method yields a higher figure than the actual sale price.
22. That there are a substantial amount of returns to the Petitioner from their customers, for drinks that did not meet their standard for both taste and temperature – referred to as spoilage.

23. The Department has incorrectly used consumables such as napkins and other items not for resale to project values for

COUNT 2 – Penalties

24. Petitioner alleges that the penalties of \$8804.00 must not be applied.
25. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois sales tax on the full amount of assessment.
26. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

COUNT 3 – Mark-ups on products

27. The Department's determined percentage of mark-up on products is incorrect.
28. That the correct mark-up amount does not mirror that of the locality in which Petitioner's establishment is located.

COUNT 4 – Prior Audit

29. The Department alleges a "prior audit percentage," however, the Petitioner has never been audited by the IDOR.

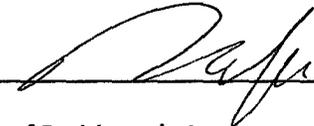
WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- a) Finds and declares that all penalties should be fully abated based on reasonable cause.
- b) Finds and declares that spoilage of store merchandise be determined to be 4%.
- c) Finds and declares that the mark-ups for alcohol should be determined to be 2.3%.
- d) Finds and declares that promotional items worth 10% of total purchases must be taken into account in determining the cost of goods sold.
- e) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of penalties on the notices; and
- f) Grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

DJ'S SPORTS BAR AND GRILL INC.

Petitioner

By: 

One of Petitioner's Attorneys

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Petition are true, accurate and correct.

By: *Devona Bolden*

Devona Bolden

Executive DJ's Sports Bar and Grill Inc.

Subscribed and sworn to before me

This 9th day of April, 2015.

Kathleen M Zielinski



Collection Action
Notice of Eligibility



6/15

EXHIBIT A

January 2, 2015



Letter ID: CNXXX134928616X7

#BWNKMGV
#CNXX X134 9286 16X7#
DJS SPORTS BAR & GRILL INCORPORATED
14202 COTTAGE GRV
DOLTON IL 60419

Taxpayer ID: 27-0728619

Public Listing of Delinquent Illinois Taxpayers
You must pay us \$32,137.99 immediately.

If you do not, you are eligible to be included on the public list we publish at tax.illinois.gov.

The following pages detail the items that you owe.

We are authorized by law (20 ILCS 2505/2505-425) to publicly disclose a list of taxpayers who are delinquent in payment of tax liabilities. The law allows the public disclosure of the names of taxpayers owing an amount greater than \$1,000.

The public list we publish will contain the following information:

- the taxpayer's name and address,
- for corporate taxpayers, the corporation's current president of record,
- the month and year of each tax liability,
- the delinquent tax types, and
- the amount of tax due.

Once disclosed on the list, a taxpayer's name will remain on the list for one year or until the delinquency is resolved. Each taxpayer has certain rights under the Taxpayer's Bill of Rights (see 20 ILCS 2520).

If you have any questions, please write or call our office weekdays 8:30 a.m. to 4:30 p.m.

LICENSING UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 64300
CHICAGO IL 60664-0300

12-814-7067
12-814-4045 fax

For information about
› how to pay
› how to file
› collection actions



Taxpayer Statement

EXHIBIT A



February 18, 2015



Letter ID: L1158502672

DJS SPORTS BAR & GRILL INCORPORATED
14202 COTTAGE GRV
DOLTON IL 60419

Taxpayer ID: 27-0728619
Total amount due: \$32,220.92

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: 3966-2020

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2012	25,342.00	8,804.00	1,942.92	-	(3,868.00)	32,220.92

OC

Retain this portion for your records.
Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: L1158502672
DJS SPORTS BAR & GRILL INCORPORATED

Total amount due: \$32,220.92
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 020661863845 731 123199 4 0000003222092



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

March 10, 2015

Devona Bolden
DJ's Sports Bar & Grill Incorporated
14202 Cottage Grove
Dolton, IL 60419

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
DJ's Sports Bar & Grill Incorporated
Account ID: 3966-2020
Notice of Tax Liability, dated May 22, 2014
Letter ID: CNXXXX29X5279681

Dear Ms. Bolden:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above Notice. 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 Notice.

The amount of liabilities 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".

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

TDC



Illinois Department of Revenue IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney.
Do not send this form separately.

Step 1: Complete the following taxpayer information

1 <u>DJ's Sports Bar & Grill, Inc.</u>	3 <u>14202 Cottage Grove</u>
Taxpayer's name	Taxpayer's street address
2 <u>27-0728619</u>	<u>Dalton</u> <u>IL</u> <u>60419</u>
Taxpayer's identification number(s)	City State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

MANSOOR ANSARI J.D. LL.M.

Name	Name	Name
ANSARI TAX LAW FIRM		
Name of firm	Name of firm	Name of firm
500 N MICHIGAN STE 600		
Street address	Street address	Street address
CHICAGO IL 60611		
City State ZIP	City State ZIP	City State ZIP
(312) 265-5626		
Daytime phone number	Daytime phone number	Daytime phone number
ma@myillinoisattorney.com		
E-mail address	E-mail address	E-mail address
SALES/USE 05-14		
Specific tax type Year or period	Specific tax type Year or period	Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above do not have the power to – Check only the items below you do not wish to grant.

- endorse or collect checks in payment of refunds.
- receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- execute consents extending the statutory period for assessments or collection of taxes.
- delegate authority or substitute another representative.
- file a protest to a proposed assessment.
- execute offers in compromise or settlement of tax liability.
- represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- obtain a private letter ruling on behalf of the taxpayer.
- perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

Name	Name	Name
Street address	Street address	Street address
City State ZIP	City State ZIP	City State ZIP
Daytime phone number	Daytime phone number	Daytime phone number
Date granted	Date granted	Date granted



Continued on Page 2

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

<u>Devona Balden</u> Name	_____ Name	_____ Name
<u>14202 Cottage Grove</u> Street address	_____ Street address	_____ Street address
<u>Dolton IL 60419</u> City State ZIP	_____ City State ZIP	_____ City State ZIP
() Daytime phone number	() Daytime phone number	() Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

_____ Taxpayer's signature	_____ Title, if applicable	_____ Date
<u>Devona Balden</u> If corporation or partnership, signature of officer or partner	<u>Secretary</u> Title, if applicable	<u>4-7-15</u> Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

- I declare that I am **not** currently under suspension or disbarment and that I am
- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 - duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 - enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

<u>ATTORNEY</u> Designation (attorney, C.P.A., enrolled agent)	<u>IL</u> Jurisdiction (state(s), etc.)	<u>Devona Balden</u> Signature	<u>4-7-15</u> Date
<u>ATTORNEY</u> Designation (attorney, C.P.A., enrolled agent)	<u>IL</u> Jurisdiction (state(s), etc.)	<u>[Signature]</u> Signature	<u>4-7-15</u> Date
_____ Designation (attorney, C.P.A., enrolled agent)	_____ Jurisdiction (state(s), etc.)	_____ Signature	_____ Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer
 _____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

_____ Signature of witness	_____ Date
_____ Signature of witness	_____ Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

_____ Signature of notary	_____ Date
------------------------------	---------------

Notary seal