

NOTICE

5. On November 14, 2013, Petitioner received a Notice of Tax Liability (“Notice”) for the tax periods April 1, 2010 through June 30, 2012. The Notice reflects \$96,545 in tax due, as well as \$19,308 in penalties and \$4,661.55 in interest, for an assessment total of \$120,514.55. The Notice is attached hereto as Exhibit A.

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 timely filed this Petition within 60 days of the Notice.

BACKGROUND

8. Petitioner is engaged in the business of truck tire sales and service.

9. Defendant audited Petitioner’s books and records for the tax periods April 1, 2010 to June 30, 2012.

10. The audit liability contained in the Notice is based in part on the Defendant imposing tax on Petitioner’s tire scrap fees which are optional to customers who buy new tires.

11. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on a portion of the Petitioner’s invoices related to Federal Excise Tax which was separately stated.

12. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on commissions paid by Petitioner to an independent salesperson.

13. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on several of Petitioner’s sales tax exempt customers.

COUNT I

Petitioner's tire scrap fees should not be included in the audit liability.

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

15. Petitioner charges a service fee to customers who want to dispose ("scrap") their old tires regardless of whether the customers purchased new tires.

16. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

17. The State of Illinois does not impose sales tax on the sale at retail in Illinois of services.

18. Contrary to the Department's determination, Petitioner's tire scrap fees are not subject to Illinois sales tax.

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

- (a) finds and declares that Petitioner's tire scrap fees are not subject to Illinois sales tax;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

COUNT II

Petitioner's charges related to Federal excise tax should not be included in the audit liability.

19. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 18, inclusive, hereinabove.

20. Some of Petitioner's invoices contain separately stated charges for Federal excise tax related to the tires.

21. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

22. Contrary to the Department's determination, Petitioner's charges for Federal excise tax are not subject to Illinois sales tax because such charges are not tangible personal property.

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

- (a) finds and declares that Petitioner's charges for Federal excise tax are not subject to Illinois sales tax;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

COUNT III

Petitioner's charges related to commissions should not be included in the audit liability.

23. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 22, inclusive, hereinabove.

24. The Department's audit liability contains taxable exceptions related to payments made by the Petitioner to an independent contractor for sales commissions.

25. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

26. Contrary to the Department's determination, Petitioner's paid sales commissions are not subject to Illinois sales tax because such charges are not tangible personal property.

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

- (a) finds and declares that Petitioner's sales commissions are not subject to Illinois sales tax;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

COUNT IV

Petitioner's sales to sales tax exempt customers should not be included in the audit liability.

27. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 26, inclusive, hereinabove.

28. The Department's audit liability contains taxable exceptions related to sales to sales tax exempt customers including exempt organizations, out-of-state customers, and sales for resale.

29. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

30. Contrary to the Department's determination, Petitioner's sales to sales tax exempt customers are not subject to Illinois sales tax because such sales are not sales at retail.

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

- (a) finds and declares that Petitioner's sales to sales tax exempt customers are not subject to Illinois sales tax;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

COUNT V

All penalties should be abated based on reasonable cause.

31. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 30, inclusive, hereinabove.

32. In its Notice, the Department assessed late payment penalties in the amount of \$19,308.

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

34. 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 700.400(b).

35. 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).

36. The Petitioner exercised prudence in preparing its sales tax returns and never collected sales tax on any of the audit exceptions.

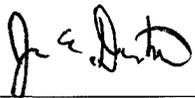
WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is liable for the late payment penalties contained in the Notice based on reasonable cause;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendant and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

Thank you for considering this Petition.

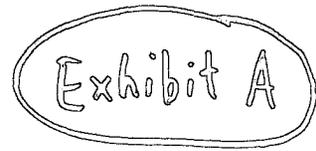
Respectfully submitted,

Commercial Tire Service Inc.,
Petitioner

By: 
One of Petitioner's Attorneys

Date: 4/8/14

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200



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



#BWNKMGV
#CNXX X152 X955 6164#
COMMERCIAL TIRE SERVICES, INC
ATTN: POA-CRAY, KAISER LTD
1901 S MEYERS RD STE 230
OAKBROOK TERRACE IL 60181-5206

November 14, 2013



Letter ID: CNXXX152X9556164

Account ID: 2158-0561

We have audited your account for the reporting periods April 01, 2010, through June 30, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	96,545.00	0.00	96,545.00
Late Payment Penalty Increase	19,308.00	0.00	19,308.00
Interest	4,661.55	0.00	4,661.55
Assessment Total	\$120,514.55	\$0.00	\$120,514.55

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 13, 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