

3. On June 5, 2019, Petitioner filed a Request for Late Discretionary Hearing with the Department's Chief Administrative Law Judge.

4. Petitioner was granted its request in a letter dated June 10, 2019. A copy of that letter is attached as Exhibit B.

5. Petitioner's place of business is located at 7646 W. 159th Street, Orland Park, Illinois, 60462, and may be contacted at Lloyd Financial Services, telephone number (708) 532-1122.

BACKGROUND AND RELEVANT FACTS

6. Petitioner is a licensed provider of prescription items, including nebulizers and breast pumps. It is accredited by the Joint Commission on Accreditation of Health Care Organizations.

7. Petitioner's sales are made up of nebulizers and breast pumps, and approximately 70% of its sales are to Medicaid enrolled patients.

8. Until approximately four or five years ago, all reimbursements were coming directly from the State of Illinois.

9. At that time, the State began contracting with insurance companies (referred to as "Medicaid HMOs") to handle the processing of Medicaid claims.

10. Petitioner has continued to treat the Medicaid HMO sales as exempt because patients must be approved for Medicaid and show their Medicaid card to be covered. Its patients are Medicaid patients.

11. Further, Medicaid HMO's sign a contract with the State to act as an agent for the State.

APPLICABLE LAW

12. The Illinois Administrative Code imposes sales tax on upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption (86 Il. Admin. Code 130.101, Retailers' Occupation Tax).

13. Exceptions are also contained in the Code. Section 130.120, states:

"The tax does not apply to receipts from sales...

(i) that are made to any governmental body (see Section 130.2080 of this Part)."

14. Section 130.2080 states that sales of tangible personal property made to a governmental body (federal, state, local) are exempt from Retailer Occupation Tax.

ERRORS

15. The Department erred in proposing assessments against Petitioner in the amount of \$210,528.72.

16. The Department erred in assessing penalties against Petitioner based on reasonable cause, and accordingly, overstating any potential liability for Petitioner.

17. Further, Petitioner disagrees with the amount of the tax shown due on the Notice and demands an accounting of any alleged balances due.

CONCLUSION AND RELIEF REQUESTED

18. Petitioner requests that no assessment be made against it for the periods at issue in the Department's Notice of Tax Liability, dated January 22, 2019.

WHEREFORE, Petitioner requests that the Notice be canceled for the reasons contained herein.

MIDWEST MEDICAL EQUIPMENT
SOLUTIONS, INC.

By: 

Kathleen M. Lach
One of its Attorneys

Representative:

Kathleen M. Lach
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161 North Clark Street
Suite 4200
Chicago, IL 60601
(312) 876-6660
Kathleen.Lach@saul.com
Bar No.: 6243316
35177037.1
837751-00001

Notice of Tax Liability



#BWNKMGV
#CNXX XX73 7233 2XX6#
MIDWEST MEDICAL EQUIPMENT SOLUTIONS INC
NEB MEDICAL SERVICES
19015 S JODI RD STE A
MOKENA IL 60448-8534

January 22, 2019



Letter ID: CNXXXX7372332XX6

Account ID: 5516-2861
Reporting period: December 31, 2017

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 01, 2016, through December 31, 2017, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

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 protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

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.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	163,819.00	0.00	163,819.00
Late Payment Penalty Increase	32,965.00	0.00	32,965.00
Interest	13,744.72	0.00	13,744.72
Assessment Total	\$210,528.72	\$0.00	\$210,528.72

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.

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

217 785-6579

EXHIBIT A

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 a 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.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1, *et seq.*

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns. For those under bankruptcy protection this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Explanation of Penalties and Fees

For more detailed information, see Publication 103, Penalties and Interest for Illinois taxes.

Are penalties ever abated?

If you were unable to either timely pay the required amount of payments, pay the tax you owe 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. A bad check or negligence penalty may also be waived 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. A fraud penalty or cost of collection fee cannot be waived.

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. Interest cannot be waived.

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.

Late-payment penalty for underpayment of estimated or accelerated tax due - You owe this penalty if you were required to make estimated or accelerated tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.

Late-payment penalty for regular tax payments - You owe this penalty if you did not pay the tax you owed by the due date of the payment or the original due date of the return.

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.

Bad check penalty - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

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.

Fraud penalty - You owe this penalty if any part of a deficiency is due to fraud.

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

Protest Rights

If you do not agree, you may protest 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 March 25, 2019. 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, 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.



**Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

June 10, 2019

Kathleen M. Lach
Saul Ewing Arnstein & Lehr LLP
161 North Clark, Suite 4200
Chicago, IL 60601

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Midwest Medical Equipment Solutions, Inc.
Account ID: 5516-2861
Notice of Tax Liability, dated January 22, 2019
Letter ID: CNXXXX7372332XX6

Dear Ms. Lach:

The office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing on behalf of Midwest Medical Equipment Solutions, Inc. regarding the above Notice of Tax Liability. 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 of Tax Liability.

The amount of liability at issue for this protest exceeds the statutory amount for which the Department has jurisdiction. For late discretionary hearings that are granted 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 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.

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".

Terry D. Charlton
Chief Administrative Law Judge

TDC

EXHIBIT B