

STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL

RECEIVED
DEC 11 2019
BY: _____

1877170

Date:

Account ID: 0952-7710

In Re:)
)
SMOKY JENNINGS CHEVROLET, INC.)
152 North Main Street, P. O. Box 199)
Palmyra, Illinois 62674-0199)
Telephone: (217) 753-8200)

Tax Identification No. 37-08174843
Tax Period: January 1, 2016 through
December 31, 2017
Sales Tax

PETITION OF PROTEST AND REQUEST FOR HEARING

NOW COMES SMOKY JENNINGS CHEVROLET, INC. (“Taxpayer”), by and through its attorneys, R. STEPHEN SCOTT, SCOTT & SCOTT, P.C., pursuant to the Illinois Independent Tax Tribunal Act and 86 Ill. Adm. Rule 5000.10, *et seq.*, and as and for its Petition of Protest and Request for Hearing, states as follows:

1. The Illinois Department of Revenue (the “Department”) conducted an audit of the Taxpayer’s sales tax transactions for the periods January 1, 2016 through December 31, 2017 at various times spanning a period from 2018 into 2019.
2. The Department issued various Sales Tax Transaction Audit Reports to Taxpayer during this period of time containing varying determinations of additional tax due while dealing with the same audit issues.
3. No Notice of Audit Tax Assessment or Liability was issued as a result of the audit. However, Forms EDA-556, Sales Tax Transaction Audit Reports, were issued September 17, 2019, purportedly as the final analysis of the Department of additional sales tax due from the Taxpayer.

4. Taxpayer determined to pay the computed additional sales taxes indicated on the Forms EDA-556, Sales Tax Transaction Audit Reports, within the time prescribed by the Tax Delinquency Amnesty Act to take advantage of the payment of any taxes eventually determined to be due without the payment of penalties and interest, although all of the matters set forth on the Sales Tax Transaction Audit Reports were not agreed.

5. Taxpayer objected to the additional sales taxes determined to be due by the Department as shown on one Form EDA-556, Sales Tax Transaction Audit Report, for the said audit period in regard to a claimed tax liability of \$46,713.44 under audit code "Vehicle / 74-106 Tax Type/Str", a copy of which report is attached hereto as **Exhibit A**.

6. Such Sales Tax Transaction Audit Report contains audit findings suggesting that so called "straw party transactions" were fully taxable as sales at retail.

7. The purported straw party transactions referred to the Taxpayer's use of its sales agents and owner to obtain end of model year rebates from General Motors ("GM") as the manufacturer of vehicles leaving new car inventory and which were then moved to Taxpayer's used car inventory.

8. The titles to all such straw party transaction vehicles were issued by GM in both the names of the Taxpayer's agents and the Taxpayer dealership. Such vehicles never left the inventory of the Taxpayer dealership until sold to customers.

9. The Taxpayer applied the end of model year rebates to reduce the dealership's cost of the inventory for sale at lower used car prices at later dates.

10. As shown in the Department's Form EDA-556, Sales Tax Transaction Audit Reports, attached as **Exhibit A**, the Department determined the full dealer cost of the end of model

year vehicles upon which rebates were received, a sum equal to \$747,415.00 during the audit period, was subject to retail occupation tax amounting to \$46,713.44, with interest thereon computed at \$5,745.90, for a total proposed overdue tax of \$52,459.00.

11. In its earlier August 5, 2019, proposed Form EDA-556, Sales Tax Transaction Audit Report, for the subject straw party transactions, the Department determined that only the manufacturer's end of model year rebate was subject to sales taxation to the Taxpayer dealership, with the exception of one vehicle (indicated as "Smoky Bar") for which the interim use exception had expired for the vehicle in the used car inventory. The Department's August 5, 2019, calculation, attached as **Exhibit B**, of additional taxable amounts was \$130,993.99 which would result in an additional sales/use tax of \$8,187.12.

12. When the vehicles in question were subsequently sold as used car inventory, tax was collected from customers and remitted to the Department.

13. The Department's determination of additional tax due on the so called straw party transactions results in a double taxation of vehicles sold only one time at retail from the Taxpayer's inventory.

14. The actions of Taxpayer are typical of automobile dealerships in Illinois for the purpose of moving end of model year unsold inventory to used car inventory, reducing the dealership's cost of such inventory by the manufacturer's rebates, for eventual sale at retail to customers at lower, used car prices.

Applicable Law

15. Pursuant to 35 ILCS 120/1, a "Sale at retail" is defined as any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or

consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration.

16. Pursuant to 86 Ill. Adm. Code 150.201 of the Illinois Administrative Code, a “Purchase at retail” means the acquisition of the ownership of, or title to, tangible personal property through a sale at retail.

17. Also pursuant to 86 Ill. Adm. Code 150.201, a “Purchaser” means anyone who, through a sale at retail, acquires the ownership of tangible personal property for a valuable consideration.

18. Further, pursuant to 86 Ill. Adm. Code 150.201, a “Retailer” means and includes every person engaged in the business of selling tangible personal property for use, and not for resale in any form.

19. Finally, pursuant to 86 Ill. Adm. Code 150.201, “Selling price” means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as provided in this definition, and services, but not including the value of or credit given for traded-in tangible personal property when the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. Pursuant to such definition, the cost of the property sold by the retailer is not taken into consideration for determining the sales price upon which retailer occupation tax is computed. Obviously, the retailer’s cost is determined by the retailer, and in this case, takes into account the retailer’s cost reduction due to manufacturer’s end of model year rebate.

20. Pursuant to 86 Ill. Adm. Code 150.306(a)(B)(ii), tangible personal property purchased by a retailer for resale and used by the retailer or his or her agents prior to its ultimate sale at retail is exempt from use, provided that the tangible personal property is of the same general type of property sold by the retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period, and provided further that the period of use or lease of the item by the retailer is less than twenty-four (24) months.

21. The Retailer Occupation Tax Act, like other taxing statutes, is to be strictly construed, and its language is not to be extended or enlarged by implication beyond its clear import, but in cases of doubt is construed most strongly against the government and in favor of the Taxpayer. *Chet's Vending Service, Inc. v. Department of Revenue*, 71 Ill. 2d 38, 15 Ill. Dec. 860, 374 N.E.2d 468 (Ill. 1978); *Jewel Cos. v. Department of Revenue*, 58 Ill. App. 3d 393, 15 Ill. Dec. 950, 374 N.E.2d 733, (Ill. App. Ct. 1st Dist. 1978).

Errors

22. The Department erroneously computed sales tax on the full dealer cost of automobiles for which dealer obtained end of model year rebates from the manufacturer even though no such sales were sales at retail as defined under the Retailer Occupation Tax Act and Department Regulations.

23. The Department's calculation of additional tax due on the purported straw party transactions results in the imposition of double sales taxes paid on but one sale at retail from Taxpayer dealership's inventory.


24. The Department erroneously calculated Sales/Use taxes for used car inventory qualifying for the interim use exception.

Conclusion and Relief Requested

For the foregoing reasons, Taxpayer, SMOKY JENNINGS CHEVROLET, INC., prays the Independent Tax Tribunal find a refund is due to the Taxpayer for the overpaid tax paid during the Tax Delinquency Amnesty Act's amnesty period in the amount of \$46,713.44 as erroneously calculated by the Department.

Respectfully submitted,

SMOKY JENNINGS CHEVROLET, INC.,

By: 

R. Stephen Scott,
Scott & Scott, P.C., its Attorneys
Agent Under Power of Attorney

PREPARED BY:

R. Stephen Scott (02533391)
SCOTT & SCOTT, P.C.
Attorneys at Law
611 East Monroe Street, Suite 200
Springfield, Illinois 62701
Telephone: (217) 753-8200
Email: rss@scottscottlaw.com



Illinois Department of Revenue

EDA-556

Sales Tax Transaction Audit Report

Rev 01 Form 118

Account ID 0952-7710
Business name SMOKY JENNINGS CHEVROLET INC
Business address PO BOX 199 PALMYRA, IL 62674-0199

Processing period 01/01/2016 - 12/31/2017
Interest through (issue) date 09/16/2019
Earliest statute date 09/30/2019
Audit period 01/01/2016 - 12/31/2017
Location code 059 0019 0 001

Step 1: Taxes due per audit

The line numbers in Step 1 of this report mirror those on Form ST-556.

Table with 4 columns: Line number, Description, Line number, Amount. Includes rows for Chicago Sales, Non-Chicago Sales, Total tax due, MED fee, Net tax due, Excess tax collected, and Total tax due (Add Lines 8 and 11.).

Step 2: Penalty and interest due

Table with 4 columns: Line number, Description, Line number, Amount. Includes rows for Penalty (Late-filing, Negligence, Fraud, Late-payment) and Interest on tax.

Step 3: Amount due or overpaid

Table with 4 columns: Line number, Description, Line number, Amount. Includes row for Total due or overpaid (Add Lines 12 and 16.).

Step 4: Read and sign below

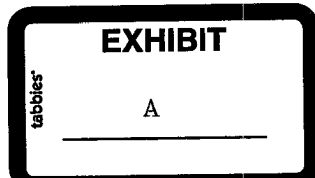
Under penalties of perjury, I state that I have examined this report and, to the best of my knowledge, it is true, correct, and complete. By signing this report, I waive the right to seek review by the Informal Conference Board.

Taxpayer's signature: Linda A. Haskett
Auditor's signature: Revenue Auditor
Date: 9/17/19

Official use only. Do not write below this line.

Late-payment penalty (prior to 12/03) 0
Late-payment penalty interest 0
Tier 2 late-filing penalty
Tier 2 late-filing penalty interest

Total audit payments
Audit ID number A1225628672
Date received
AL EL NF MA AD
Remittance amount





Illinois Department of Revenue
Sales Tax Audit System
Schedule 1 - Summary Analysis

Date: 09/17/2019

Time: 09:42:17

Page: 1

IBT: 0952-7710

Taxpayer: SMOKY JENNINGS CHEVROLET INC

Auditor: Chad Estes

<u>Item Description</u>	<u>Tax Type/Str Codes</u>	<u>Exception Amount</u>	<u>Rate</u>	<u>Tax Amount</u>	<u>Tax Paid</u>	<u>Net Tax Due</u>	<u>Total</u>
Non-Chicago Vehicle Sales Tax Transactions	Vehicle / 74-106	\$747,415.00	06.25%	\$46,713.44	\$0.00	\$46,713.44	\$46,713.44
							<hr/>
					Total Additional Tax		\$46,713.44

Smoky Jennings Chevrolet
 ST556 Audit
 A1225628672
 1/2016-12/2017

9/17/2019
 CCE

Sale Locaion	Date of Sale	Date of Delivery	ST556 #	VIN#	Gross Sale	Secondary Purchaser		Year Model	Manuf	Model
					p/ST556	First Name	Second Name			
Palmyra	12/05/2016	12/13/2016	88947961-4	1G1YT2D6	99973	RICK	THOROMAN	2016	CHEVROLET	CORVETTE
Palmyra	03/15/2017	03/22/2017	89295605-3	1G1YK2D7	67054	RICK	THOROMAN	2016	CHEVROLET	CORVETTE
Palmyra	02/01/2016	02/10/2016	87840836-8	1G1PC5SB2	20745	JARROD	POWELL	2014	CHEVROLET	CRUZE
Palmyra	10/03/2016	10/11/2016	88733954-7	1G1BE5SM	23456	PERRY	YATES	2016	CHEVROLET	CRUZE
Palmyra	04/03/2017	04/12/2017	89370904-8	3G1BE5SM	21836	CHRISTIAN	RELLER	2017	CHEVROLET	CRUZE
Palmyra	04/21/2016	05/06/2016	88126661-3	2G1115SLX	24148	DOUGLAS	BROWN	2015	CHEVROLET	IMPALA
Palmyra	09/02/2016	09/15/2016	88624902-8	2G1125S35	32859	RICK	THOROMAN	2014	CHEVROLET	IMPALA
Palmyra	02/01/2016	02/10/2016	87847868-4	3GCUKREC	43020	JAMES	BARR	2016	CHEVROLET	SILVERADO
Palmyra	08/11/2016	08/22/2016	88539556-6	3GCUKREC	41000	ABBY	FRITZ	2016	CHEVROLET	SILVERADO
Palmyra	08/31/2016	09/15/2016	88625008-3	3GCUKSEJ	51240	CHRISTOPHER	MORGAN	2016	CHEVROLET	SILVERADO
Palmyra	09/02/2016	09/15/2016	88625251-9	1GC1KVE8	54445	RICK	THOROMAN	2016	CHEVROLET	SILVERADO
Palmyra	11/01/2016	11/09/2016	88833492-7	1GC1KWE8	59429	PERRY	YATES	2016	CHEVROLET	SILVERADO
Palmyra	06/06/2017	06/07/2017	89605110-9	3GCUKSEC	45204	KOLLIN	KELTNER	2017	CHEVROLET	SILVERADO
Palmyra	08/31/2017	09/08/2017	89946463-0	1GNEVJKW	46789	MELINDA	THOROMAN	2018	CHEVROLET	TRAVERSE
Palmyra	09/01/2017	09/01/2017	58722376-9	1GC1KXEY	64007	RICK	THOROMAN	2017	CHEVROLET	
Palmyra	11/14/2017	11/17/2017	90188719-0	3GCUKTEJ	52210	ROGER	JENNINGS	2017	CHEVROLET	SILVERADO

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Illinois Department of Revenue

Sales Tax Audit System

Schedule 2-A Interest Computation

Date: 09/17/2019

Time: 09:43:22

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Taxpayer: SMOKY JENNINGS CHEVROLET INC IBT: 0952-7710 Audit Period: 01/01/2016 through 12/31/2017
Tax Type: VEHICLE Interest Thru Date: 09/16/2019 Detail Liability: \$46,713.44 Average Liability: \$0.00

Auditor: Chad Estes

<u>Date</u>	<u>Detail Liability</u>	<u>Average Liability</u>	<u>Prepayment</u>	<u>Total Liability</u>	<u>Rate</u>	<u>Interest</u>
02/01/2016	\$3,985.31	\$0.00	\$0.00	\$3,985.31	15.6246	\$622.69
04/21/2016	\$1,509.25	\$0.00	\$0.00	\$1,509.25	14.9688	\$225.92
08/11/2016	\$2,562.50	\$0.00	\$0.00	\$2,562.50	13.8814	\$355.71
08/31/2016	\$3,202.50	\$0.00	\$0.00	\$3,202.50	13.6628	\$437.55
09/02/2016	\$5,456.50	\$0.00	\$0.00	\$5,456.50	13.6409	\$744.32
10/03/2016	\$1,466.00	\$0.00	\$0.00	\$1,466.00	13.3021	\$195.01
11/01/2016	\$3,714.31	\$0.00	\$0.00	\$3,714.31	12.9852	\$482.31
12/05/2016	\$6,248.31	\$0.00	\$0.00	\$6,248.31	12.6136	\$788.14
03/15/2017	\$4,190.88	\$0.00	\$0.00	\$4,190.88	11.5179	\$482.70
04/03/2017	\$1,364.75	\$0.00	\$0.00	\$1,364.75	11.3097	\$154.35
06/06/2017	\$2,825.25	\$0.00	\$0.00	\$2,825.25	10.6083	\$299.71
08/31/2017	\$2,924.31	\$0.00	\$0.00	\$2,924.31	9.6658	\$282.66
09/01/2017	\$4,000.44	\$0.00	\$0.00	\$4,000.44	9.6549	\$386.24
11/14/2017	\$3,263.13	\$0.00	\$0.00	\$3,263.13	8.8439	\$288.59
Total:	\$46,713.44	\$0.00	\$0.00	\$46,713.44		\$5,745.90



Illinois Department of Revenue

Sales Tax Audit System

Global Taxable Exceptions Detailed Report / All Codes Sorted by Date

Date: 09/17/2019

Time: 09:38:34

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Taxpayer: SMOKY JENNINGS CHEVROLET INC

IBT #: 0952-7710

Audit Period: 01/01/2016 through 12/31/2017

Auditor: Chad Estes

<u>Date</u>	<u>Doc #</u>	<u>Name</u>	<u>Description</u>	<u>Reason Questioned</u>	<u>Amount Taxable</u>
Tax Code: 74	Exam Type: 106				
02/01/2016	468319	SMOKY/POWELL	2014 Chevrolet Cruze	ROT on unagreed balance	\$20,745.00
02/01/2016	104757	SMOKY/BARR	2016 Chevrolet Silverado	ROT on unagreed balance	\$43,020.00
04/21/2016	246115	SMOKY/BROWN	2015 Chevrolet Impala	ROT on unagreed balance	\$24,148.00
08/11/2016	106460	SMOKY/FRITZ	2016 Chevrolet Silverado	ROT on unagreed balance	\$41,000.00
08/31/2016	272614	SMOKY/MORGAN	2016 Chevrolet Silverado	ROT on unagreed balance	\$51,240.00
09/02/2016	151618	SMOKY/THOROMAN	2014 Chevrolet Impala	ROT on unagreed balance	\$32,859.00
09/02/2016	127068	SMOKY/THOROMAN	2016 Chevrolet Silverado	ROT on unagreed balance	\$54,445.00
10/03/2016	324766	SMOKY/YATES	2016 Chevrolet Cruze	ROT on unagreed balance	\$23,456.00
11/01/2016	280836	SMOKY/YATES	2016 Chevrolet Silverado	ROT on unagreed balance	\$59,429.00
12/05/2016	611487	SMOKY/THOROMAN	2016 Chevrolet Corvette	ROT on unagreed balance	\$99,973.00
03/15/2017	1G1YK2D74G510272	SMOKY/THOROMAN	2016 Chevrolet Corvette	ROT on unagreed balance	\$67,054.00
04/03/2017	3G1BE5SM6HS5587	SMOKY/RELLER	2017 Chevrolet Cruze	ROT on unagreed balance	\$21,836.00
06/06/2017	311177	SMOKY/KELTNER	2017 Chevrolet Silverado	ROT on unagreed balance	\$45,204.00
08/31/2017	1GNEVJKW2JJ11625	SMOKY/THOROMAN	2018 Chevrolet Traverse	ROT on unagreed balance	\$46,789.00
09/01/2017	1GC1KXEY2HF2348	SMOKY/THOROMAN	2017 Chevrolet Silverado	ROT on unagreed balance	\$64,007.00
11/14/2017	167149	SMOKY/JENNINGS	2017 Chevrolet Silverado	ROT on unagreed balance	\$52,210.00
Total for Exam Type: 106					\$747,415.00
Total for Tax Code: 74 - Non-Chicago Vehicle Sales Tax Transactions					\$747,415.00
Totals for Examination:					\$747,415.00



Illinois Department of Revenue
Sales Tax Audit System
Global Taxable Exceptions Detailed Report / All Codes Sorted by Date

Date: 08/05/2019
Time: 10:09:23
Page: 1

Taxpayer: SMOKY JENNINGS CHEVROLET INC

IBT #: 0952-7710 Audit Period: 01/01/2016 through 12/31/2017

Auditor: Linda Hosteller

<u>Date</u>	<u>Doc #</u>	<u>Name</u>	<u>Description</u>	<u>Reason Questioned</u>	<u>Amount Taxable</u>
Tax Code: 74 Exam Type: 106					
02/01/2016	468319	SMOKY/POWELL	2014 Chevrolet Cruze	excess mile over 16K	\$1,494.49
02/01/2016	104757	SMOKY/BARR	2016 Chevrolet Silverado	exceeds 24 months	\$44,392.03
04/21/2016	246115	SMOKY/BROWN	2015 Chevrolet Impala	rebate due on straw	\$6,396.18
08/11/2016	106460	SMOKY/FRITZ	2016 Chevrolet Silverado	rebate due on straw	\$1,500.00
08/31/2016	272614	SMOKY/LORGAN	2016 Chevrolet Silverado	16,065 miles when sold	\$5,000.00
09/02/2016	151618	SMOKY/THOROMAN	2014 Chevrolet Impala	in excess of 11k	\$1,500.00
09/02/2016	127068	SMOKY/THOROMAN	2016 Chevrolet Silverado	rebate due on straw	\$8,580.57
10/03/2016	324766	SMOKY/YATES	2016 Chevrolet Cruze	rebate due on straw	\$4,053.60
11/01/2016	280836	SMOKY/YATES	2016 Chevrolet Silverado	rebate due on straw	\$8,756.91
12/05/2016	611487	SMOKY/THOROMAN	2015 Chevrolet Corvette	rebate due on straw	\$10,741.50
03/15/2017	1G1YK2D74G510272	SMOKY/THOROMAN	2016 Chevrolet Corvette	rebate due on straw	\$10,135.66
04/03/2017	3G1BE5SM16HS5587	SMOKY/RELLER	2017 Chevrolet Cruze	rebate due on straw	\$3,000.00
06/06/2017	311177	SMOKY/KELTNER	2017 Chevrolet Silverado	rebate due on straw	\$5,000.00
08/31/2017	1GNEVJKW2JJ11625	SMOKY/THOROMAN	2018 Chevrolet Traverse	rebate due on straw	\$3,445.97
09/01/2017	1GC1KXEY2HF2348	SMOKY/THOROMAN	2017 Chevrolet Silverado	rebate due on straw	\$8,682.72
11/14/2017	167149	SMOKY/JENNINGS	2017 Chevrolet Silverado	over 24k miles when sold	\$5,314.36
Total for Exam Type: 106					\$130,993.99
Tax Code: 74 Exam Type: 110					
01/15/2016	F392	Strawn	chrome handles	s/b in taxable base	\$300.00
01/25/2016	F461	Larch	accessories	s/b in taxable base	\$3,900.00
01/25/2016	G163	Passalacqua	accessories	s/b in taxable base	\$400.00
01/26/2016	F636	Garrett	shields/step/mat	s/b in taxable base	\$1,010.00
01/29/2016	G194	Wilson	vent visor/mudflaps	s/b in taxable base	\$1,000.00
02/01/2016	G187	Jamison	bra	s/b in taxable base	\$625.00
02/06/2016	G175	Richardson	accessories	s/b in taxable base	\$400.00
03/14/2016	G162	Sims	assist steps	s/b in taxable base	\$750.00
03/14/2016	G237	Quinn	mats/kit	s/b in taxable base	\$1,048.95
03/24/2016	609377	JOHN WRIGHT	2016 Chevrolet Corvette	Clear Bra not taxed	\$4,500.00

