

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

C-U MERRY ANN'S DINER, INC.,)
 Petitioner,)
 v.) No. 14 TT 70
ILLINOIS DEPARTMENT OF) Judge Brian Barov
REVENUE,)
 Respondent.)

MOTION TO CONTINUE SETTING OF TRIAL DATE

COMES NOW the Petitioner, C-U Merry Ann's Diner, Inc., by and through its attorneys, Harrington & Tock LLC, and respectfully moves this Tribunal to continue Petitioner's Petition generally and to not set a trial date at this time and, in support thereof, states as follows:

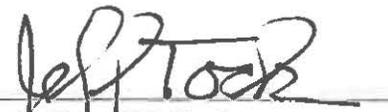
1. Petitioner was initially audited by Respondent for the time period August 15, 2010, through March, 2013.
2. As a result of said audit(s), Respondent claims that Petitioner under-reported sales and that, as a result, Petitioner owes Respondent for unpaid sales tax on unreported sales, plus late payment penalty, plus interest in the total amount of \$74,247.52 as of February 26, 2014.
3. Petitioner asserts that the alleged unreported sales were not sales at all; they were over-rings. Petitioner reviewed the daily z-tapes for over-rings and adjusted the daily summary z-tapes for such over-rings.
4. Respondent has refused to acknowledge the alleged sales as over-rings because Petitioner did not retain the twice daily z-tapes that would have confirmed such entries as over-rings.
5. Once Petitioner was informed by Respondent's auditor in approximately October of 2013 that Petitioner should retain all daily z-tapes, Petitioner retained all daily z-tapes thereafter.
6. On or about July 1, 2014, Petitioner changed from cash registers to an electronic data system whereby over-rings have been essentially eliminated.

7. On April 13, 2015, Petitioner was notified by Respondent that Respondent intended to audit Petitioner for the period April, 2013, through February, 2015, starting June 1, 2015. A copy of the Notice of Audit Initiation is attached hereto as Exhibit "A".
8. Petitioner believes the new audit will confirm Petitioner's assertion that the "unreported sales" claimed by Respondent in its initial audit are actually over-rings.
9. The findings of the Respondent as a result of a second audit of Petitioner on the issue of over-rings versus unreported sales and how the volume of actual sales (no over-rings) is supported by daily z-tapes from October of 2013 to July 2014 and the change from cash registers to electronic record keeping would be very relevant in support of Petitioner's assertion that the "unreported sales" claimed by Respondent are not sales at all.
10. Petitioner anticipates that the volume of sales made by Petitioner during the second audit period on a month-to-month basis will be comparable to the month-to-month actual sales (no over-rings) reported by Petitioner during the initial audit period.
11. Petitioner anticipates that Respondent will assert that all over-rings in the second audit period will be actual sales, not over-rings.
12. Petitioner anticipates that the key issue in the second audit will, once again, be over-rings versus unreported sales.
13. Rather than bifurcating this issue into two trials Petitioner suggests that the trial in this proceeding be delayed until the completion of the second audit when issues raised in the second audit can be combined with the issues raised in the first audit.

WHEREFORE, Petitioner prays that this Tribunal continue this matter generally until such time as Respondent completes its new audit of Petitioner,

Respondent publishes the results of the audit and submits those results to counsel for Petitioner.

C-U Merry Ann's Diner, Inc.,
Petitioner

By: 
Jeffrey W. Tock
Harrington & Tock LLC
Attorney for Petitioner

Prepared by:

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Notice of Audit Initiation
Sales, Use, and Excise Taxes and Fees



April 14, 2015



Letter ID: CNXXXX14X6784165

#BWNKMGV
#CNXX XX14 X678 4165#
C U MERRY-ANN'S DINER, INC
MERRY-ANN'S DINER
3307 LAKESHORE DR
CHAMPAIGN IL 61822-5205

Taxpayer ID: 27-1696028
Account ID: 4002-5918
Audit ID: A308559872
Return type: ST-1
Audit periods: 04/2013 - 02/2015



This letter confirms that on April 13, 2015, you were notified through our telephone conversation that an audit has been initiated on your Sales/Use Tax & E911 Surcharge for your account ID and periods shown above. As part of the audit process, we will perform compliance reviews for all other Illinois taxes administered by the Illinois Department of Revenue. The opening conference has been scheduled for June 1, 2015, at 8:30 A.M.

The following books and records are needed to start the examination:

- federal income tax returns, including RARs, amended returns, etc., for each tax year
- detailed financial statements
- general ledgers
- sales journals
- sales invoices
- purchase journals
- purchase invoices
- Balance sheets

Profit & Loss statements

Business credit card statements

Bank statements

Fixed asset purchases with invoices

Z-Tapes

[Auditor will discuss and answer questions regarding information requested]

Additional records and documentation may be requested as the examination proceeds.

Liabilities for periods whose returns are due on or after January 1, 2005, that were not paid prior to the audit initiation date, as shown above, will have a late payment penalty imposed of 15 percent. After the conclusion of this audit, if any liability is not paid and the audit report is not signed within 30 days of the date of the issuance of the audit report, this penalty will increase to 20 percent. The audit report constitutes an amended return for purposes of Section 3-3 of the Uniform Penalty and Interest Act.

For unpaid liabilities due prior to July 1, 2009, and which were eligible for amnesty under the Tax Delinquency Amnesty Act, penalty and interest imposed on the liability will generally be doubled.

We are enclosing, PIO-60, Illinois Audit Information, which explains general audit procedures and methods.

If you have any questions, please contact us using the information listed below.

Sincerely,



George Anagnostopoulos
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
P.O. BOX 19475
SPRINGFIELD IL 62794-9475

217 670-4096

Kevin Myerscough
Audit Supervisor
Phone: 217 836-6210

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of Petitioner's Motion to Continue Setting of Trial Date was sent by email to Illinois Independent Tax Tribunal at <ITT.TaxTribunal@illinois.gov> and by email to Mr. Coveny at <michael.coveny@illinois.gov> on May 19, 2015.

BY: 