
STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

RDDG, Inc.

Petitioner

v.

Illinois Department of Revenue
Respondent

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Docket No.

RECEIVED
JUN 06 2014
BY: _____

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PETITION FOR REVIEW OF ASSESSMENT OF TAX LIABILITY

COMES NOW Petitioner, RDDG, Inc. (hereinafter "RGGD") an Illinois corporation by and through its undersigned counsel, for its petition for a review by the Independent Tax Tribunal of the Department of Revenue's Notice of Tax Liability issued to Petitioner and states as follows:

JURISDICTIONAL STATEMENT

The Independent Tax Tribunal has jurisdiction of this matter pursuant (35 ILCS 1010/1-45). Specifically, the Illinois Department of Revenue ("IDOR") has issued a notice of Tax Liability to Petitioner in an amount exceeding \$15,000.00.

PETITIONER

Petitioner, RDDG owns and operates a gasoline station and convenience store located at 2474 Thatcher Road, River Grove, Illinois 60174.

The business address of the Petitioner is 2474 Thatcher Road, River Grove, Illinois 60174 ("Retail Location").

The phone number of the Petitioner's representative, George NediyaKalayil is 847-910-1068.

The IBT Number issued to RDDG by the Department is 3428-4729.

FACTUAL BACKGROUND

1. IDOR has issued a Notice of Tax Liability to the Petitioner pertaining to the period of January 10, 2010 to June 30, 2012 (Exhibit A).

2. The day to day operations of the business were conducted by a manager who was responsible for the keeping of all daily records pertaining to the business operations of RDDG.

3. The manager ordered cigarettes on Petitioner's wholesale accounts and transferred the cigarettes to a different location not owned by Petitioner.

4. The manager was terminated and removed all sales documentation from the Retail Location.

5. In June 2013, the IDOR completed its audit the business records of RDDG for the purpose of determining whether RDDG had paid the full amount tax due under the Retailers Occupation Tax. The impetus for this audit was the rampant industrywide underreporting of sales taxes due from the sales of motor fuels.

I. RETAIL SALES PRICE FOR CIGARETTES UTILIZED BY IDOR WAS ARBITRARY AND CAPRICIOUS

6. During the audit the Department determined that RDDG had paid all sales taxes due on its sales of motor fuels.

7. While the actual sales documentation was unavailable, IDOR was able to compute sales data by verifying the gallons of fuel purchased and the amounts RDDG paid for the fuels from the wholesale distributor.

8. IDOR then referenced the published U.S. Energy Information Administration ("EIA") Midwest average sales price for motor fuels in Cook County, Illinois to insure that that reported sales price was at least equal to the average sales price of gasoline in Cook County, Illinois.

9. IDOR also audited the convenience store sales.

10. As with the with the motor fuel sales, the IDOR obtained the number of cigarettes purchased and the wholesale price paid for the cigarettes from the wholesale distributors.

11. There is no dispute regarding the number of cigarettes purchased or the wholesale sale price paid by RDDG for the cigarettes, but there is dispute whether all cigarettes purchased by Petitioner's manager were actually sold from the Retail Location.

12. While actual sales data was unavailable, IDOR was obligated to make a fair estimation of the cigarette sales generated during the audit period.

13. The Petitioner's mark-up on cigarettes was 6%, which IDOR's auditor could have verified during its audit by checking sales price of cigarettes at the location during the audit.

14. IDOR ignored the actual mark-up Petitioner charged for its cigarettes and based its assessment of tax liability on a 16% mark up.

15. Unlike the procedure followed in ascertaining the sales of motor fuels, IDOR did not base the markup it applied to cigarettes to any published independent industry data related to cook county sales.

16. IDOR, arbitrarily and capriciously assumed a mark-up on cigarettes of 16%, a percentage mark-up in excess of 10% points over the standard mark up being charged for cigarettes by the Petitioner.

II. IDOR's FAILURE TO TAKE INTO ACCOUNT CIGARETTES REMOVED FROM THE RETAIL LOCATION AND SOLD AT OTHER RETAIL OUTLETS NOT OWNED BY PETITIONER WAS IN ERROR

17. IDOR's refusal to take into account the cigarettes removed from the Premises which were not sold from the Retail Location, despite the fact that the terminated manager owned retail tobacco shops and, on information and belief, is himself, currently subject to IDOR scrutiny, was in error and inflated the retail sales upon which the IDOR assessment was based.

18. As a result of the inflated mark-up employed by IDOR and its failure to take into account that cigarettes delivered to Petitioner's Retail Location were removed from said Location to retail outlet owned by another, Petitioner received a Notice of Tax Liability for underreported the sales taxes due from the sale cigarettes in the amount of \$171,120.60, a Late Payment Penalty of \$34,224.00, a Negligence Penalty of \$34,224.00 and interest assessed in the amount of \$11,225.06.

18. The total Tax Liability assessed as of May 19, 2014 is \$250,793.66.

19. RGGD disputes and, hereby, protests the tax liability assessed by the Department in connection with the retail cigarette sales.

CLAIM FOR RELIEF

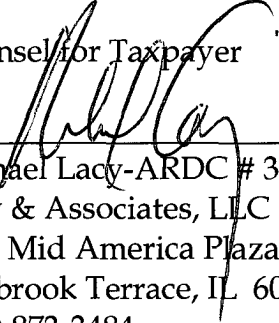
WHEREFORE, Petitioner, petitions this Tribunal to:

a.) modify IDOR's assessment of sales tax due based upon the actual mark-up charged by Petitioner for cigarettes or in the alternative, based upon a published industry mark-up for cigarettes in Cook County, Illinois, and

b.) modify IDOR's assessment to reflect the cigarettes which were removed from the Retail Location and sold elsewhere from a location not owned by Petitioner.

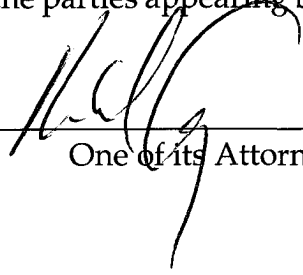
Date: June 6, 2014

Counsel for Taxpayer


Michael Lacy-ARDC # 3124551
Lacy & Associates, LLC
Two Mid America Plaza / Ste. 800
Oakbrook Terrace, IL 60181
(630) 873-3484
lacy@lacyassociates.com

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE THAT the undersigned attorney on this 6th day of June 2014 served a true and correct copy of RGGD, Inc.'s Petition for Review of the Assessed Tax Liability via hand delivery addressed to the parties appearing below with all fees prepaid.

By:  _____
One of its Attorneys

Michael Lacy #3124551
Two Mid America Plaza
Route 83 & 22nd Street, Suite 800
Oakbrook Terrace, Illinois 60181
Phone: 630- 873-3484

SERVICE LIST

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900 (7th floor of the Thompson Center)
Chicago, IL 60601

Exhibit A

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



_____ #BWNKMGV
#CNXX X147 8748 8962#
RGGD INC
ATTN: MICHAEL LACY
_____ 2 MID AMERICA PLZ STE 800
OAKBROOK TERRACE IL 60181-4727

May 19, 2014



Letter ID: CNXXX14787488962

Account ID: 3428-4729

We have audited your account for the reporting periods January 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	190,725.00	(19,604.40)	171,120.60
Late Payment Penalty Increase	34,224.00	0.00	34,224.00
Negligence Penalty	34,224.00	0.00	34,224.00
Interest	11,225.06	0.00	11,225.06
Assessment Total	\$270,398.06	(\$19,604.40)	\$250,793.66

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 contest 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 July 18, 2014. 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 instead, 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.

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.

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.

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

217 785-6579