

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

TAXPAYER’S MOTION FOR THE ISSUANCE OF SUBPOENAS DUCES TECUM

NOW COMES Petitioner, BELVIDERE CASH AND CARRY INC. (the “Petitioner”), by and through its attorneys, Dale & Gensburg, P.C., and pursuant to Section 1-60 of the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010/1-60, and Section 5000.335 of the Illinois Administrative Code, 86 Ill.Adm.Code 5000.335, moves for the issuance of five (5) Subpoenas Duces Tecum upon the following entities: (1) Midwest Wholesale LLC; (2) Maruti Wholesale Enterprises, Inc.; (3) Harvard Distributing; (4) Pulaski Discount Inc.; and (5) N Ali Enterprises Inc. (together, the “Vendors”), copies of which are attached hereto as **Exhibit A**.

1. The Petitioner is an Illinois wholesaler of primarily tobacco products. The Illinois Department of Revenue (the “Department”) conducted a Tobacco Products Tax Audit of the Petitioner covering the period July 1, 2011 through May 31, 2013 and issued Notices of Tax Liability on March 3, 2014 proposing to assess the Petitioner tobacco products tax (with interest and penalties) totaling \$1,573,755.72.

2. The proposed tobacco products tax liability is in part premised on purported tobacco products purchased by the Petitioner from the Vendors as reported on the Vendors’ Illinois Form TP-12s (“TP-12(s)”), which purported purchases were in excess of the price of

tobacco products sold reported by the Petitioner on its Illinois Form TP-1s (“TP-1(s)”) filed in connection with the audit period.

3. On October 31, 2014, the Department’s Office of Administrative Hearings granted Petitioner’s request for a late discretionary hearing.

4. The Petitioner thereafter timely filed its petition before the Illinois Independent Tax Tribunal on December 23, 2014 (the “Petition”). In its Petition, the Petitioner submitted that the Department’s determination of tobacco products purchased by the Petitioner was overstated.

5. A copy of the audit file was produced by the Department to the Petitioner’s counsel on or about February 11, 2015.

6. The Department has stated that it obtained the Petitioner’s purchase information from the Vendors’ TP-12s, which however were not included in the audit file. Notwithstanding same, the TP-12s provide only summary information of the Vendors’ alleged exempt sales and do not require the actual sales invoices to be attached. Moreover, it does not appear that all of the invoices or receipts were produced during the audit to verify or authenticate the information contained in the Vendors’ TP-12s. Finally, the Vendors may be in possession of other documentation relevant to the Petitioner’s tobacco products tax liability, such as exemption certificates, correspondence, and sales records.

7. The Petitioner therefore wishes to issue the Subpoenas Duces Tecum attached hereto as **Exhibit A** to the Vendors requesting the production of certain documentation, including invoices and receipts that would substantiate the Petitioner’s alleged purchases of tobacco products reported on the Vendors’ TP-12s.

8. Counsel for the Department Ashley Forte has represented to counsel for the Petitioner that the Department has no objection to the issuance of the five (5) Subpoenas Duces Tecum requested herein.

WHEREFORE, the Petitioner respectfully requests the issuance of the five (5) Subpoenas Duces Tecum to the Vendors.

Respectfully Submitted,

BELVIDERE CASH AND CARRY, INC.

By: 

One of its Attorneys

Anthony Calandriello, Esq.
DALE & GENSBURG, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T-(312) 263-2200
F-(312) 263-2242
Email-tcalandriello@dandgpc.com
Attorney No. 31490

P:\Clients\Belvidere Cash and Carry, Inc\Motion for Issuance of Subpoena Duces Tecum.doc

EXHIBIT A

SUBPOENA DUCES TECUM

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Belvidere Cash and Carry Inc.

Plaintiff/Petitioner

v.

Illinois Department of Revenue

Defendant/Respondent

No. 14-TT-250

SUBPOENA IN A CIVIL MATTER (For Testimony and/or Documents)

To: Pulaski Discount Inc., Attn: Custodian of Records
4159 W. Montrose Avenue
Chicago, IL 60641

- 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable...
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at:
3. YOU ARE COMMANDED to mail the following documents in your possession or control to Dale & Gensburg, P.C. Attn: Anthony Calandriello at 200 West Adams Street, Suite 2425, Chicago, IL 60606, on or before May, 2015 at 10:00 a.m. (THIS IS FOR RECORDS ONLY. THERE WILL BE NO ORAL INTERROGATORIES.): Please see attached.

Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

- 1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows:

Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

- 2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by (Name of Recording Device Operator)

3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 31490 Pro Se 99500

Name: Dale & Gensburg, P.C.

Issued by: Signature

Atty. for: Belvidere Cash and Carry Inc.

Address: 200 West Adams Street, Suite 2425

Attorney

City/State/Zip: Chicago, Illinois 60606

Clerk of Court

Telephone: 312-263-2200

Date:

- I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to Pulaski Discount Inc. by certified mail, return receipt requested (Receipt #) on , 2015. I paid the witness \$ for witness and mileage fees.

- I served this subpoena by handing a copy to on . I paid the witness \$ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ATTACHMENT TO SUBPOENAS DUCES TECUM

You are commanded to provide the following documents:

All documents in any way relating to purchases made by Belvidere Cash and Carry Inc. from Pulaski Discount Inc. during the period October 1, 2011 through May 31, 2013, including, but not limited to, invoices, receipts, order forms, bank records, shipping records, bank deposit slips, checks, reports, accounting records of any kind, exemption certificates, correspondence, notes, memoranda, calendar or diary entries, Illinois Department of Revenue Forms TP-12 "Products Sold to Other Distributors/Wholesalers" (including all schedules and attachments), and all other documents.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Belvidere Cash and Carry Inc.

Plaintiff/Petitioner

v.

Illinois Department of Revenue

Defendant/Respondent

No. 14-TT-250

SUBPOENA IN A CIVIL MATTER (For Testimony and/or Documents)

To: Midwest Wholesale LLC, Attn: Custodian of Records
635 Cooper Court #A
Schaumburg, IL 60173

- 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable ...
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: ...
3. YOU ARE COMMANDED to mail the following documents in your possession or control to Dale & Gensburg, P.C. Attn: Anthony Calandriello ...

Description continued on attached page(s). YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent: 1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows:

- Description continued on attached page(s). (A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)
2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by ...
3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 31490 Pro Se 99500
Name: Dale & Gensburg, P.C.
Atty. for: Belvidere Cash and Carry Inc.
Address: 200 West Adams Street, Suite 2425
City/State/Zip: Chicago, Illinois 60606
Telephone: 312-263-2200

Issued by: Signature
Attorney
Clerk of Court
Date:

- I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to Midwest Wholesale LLC by certified mail, return receipt requested (Receipt #) on , 2015. I paid the witness \$ for witness and mileage fees.
I served this subpoena by handing a copy to on . I paid the witness \$ for witness and mileage fees.

(Signature of Server) (Print Name)
DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ATTACHMENT TO SUBPOENAS DUCES TECUM

You are commanded to provide the following documents:

All documents in any way relating to purchases made by Belvidere Cash and Carry Inc. from Midwest Wholesale LLC during the period October 1, 2011 through May 31, 2013, including, but not limited to, invoices, receipts, order forms, bank records, shipping records, bank deposit slips, checks, reports, accounting records of any kind, exemption certificates, correspondence, notes, memoranda, calendar or diary entries, Illinois Department of Revenue Forms TP-12 "Products Sold to Other Distributors/Wholesalers" (including all schedules and attachments), and all other documents.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Belvidere Cash and Carry Inc.

Plaintiff/Petitioner

v.

Illinois Department of Revenue

Defendant/Respondent

No. 14-TT-250

SUBPOENA IN A CIVIL MATTER (For Testimony and/or Documents)

To: Maruti Wholesale Enterprises, Inc., Attn: Custodian of Records
27 Prairie Pointe Lane
Streamwood, IL 60107

- 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable ...
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: ...
3. YOU ARE COMMANDED to mail the following documents in your possession or control to Dale & Gensburg, P.C. Attn: Anthony Calandriello ...

Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

- 1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows:

Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

- 2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by ...
3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 31490 Pro Se 99500

Name: Dale & Gensburg, P.C.

Issued by: Signature

Atty. for: Belvidere Cash and Carry Inc.

Attorney

Address: 200 West Adams Street, Suite 2425

Clerk of Court

City/State/Zip: Chicago, Illinois 60606

Telephone: 312-263-2200

Date:

- I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to Maruti Wholesale Enterprises, Inc. by certified mail, return receipt requested (Receipt # ...) on ..., 2015.
I paid the witness \$... for witness and mileage fees.
I served this subpoena by handing a copy to ... on ...
I paid the witness \$... for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ATTACHMENT TO SUBPOENAS DUCES TECUM

You are commanded to provide the following documents:

All documents in any way relating to purchases made by Belvidere Cash and Carry Inc. from Maruti Wholesale Enterprises, Inc. during the period October 1, 2011 through May 31, 2013, including, but not limited to, invoices, receipts, order forms, bank records, shipping records, bank deposit slips, checks, reports, accounting records of any kind, exemption certificates, correspondence, notes, memoranda, calendar or diary entries, Illinois Department of Revenue Forms TP-12 "Products Sold to Other Distributors/Wholesalers" (including all schedules and attachments), and all other documents.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Belvidere Cash and Carry Inc.

Plaintiff/Petitioner

v.

Illinois Department of Revenue

Defendant/Respondent

No. 14-TT-250

SUBPOENA IN A CIVIL MATTER (For Testimony and/or Documents)

To: Harvard Distributing, Attn: Custodian of Records
1010 McHenry Avenue
Woodstock, IL 60098

- 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable ... in Room ... Illinois on ... at ... m.
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: ... in Room ... Illinois on ... at ... m.
3. YOU ARE COMMANDED to mail the following documents in your possession or control to Dale & Gensburg, P.C. Attn: Anthony Calandriello at 200 West Adams Street, Suite 2425, Chicago, IL 60606, on or before May, 2015 at 10:00 a. m. (THIS IS FOR RECORDS ONLY. THERE WILL BE NO ORAL INTERROGATORIES.) Please see attached.

Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows:

Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by (Name of Recording Device Operator)

3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 31490 Pro Se 99500

Name: Dale & Gensburg, P.C.

Issued by: Signature

Atty. for: Belvidere Cash and Carry Inc.

Attorney

Address: 200 West Adams Street, Suite 2425

Clerk of Court

City/State/Zip: Chicago, Illinois 60606

Telephone: 312-263-2200

Date:

I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to Harvard Distributing by certified mail, return receipt requested (Receipt #) on , 2015.

I paid the witness \$ for witness and mileage fees.

I served this subpoena by handing a copy to on .

I paid the witness \$ for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ATTACHMENT TO SUBPOENAS DUCES TECUM

You are commanded to provide the following documents:

All documents in any way relating to purchases made by Belvidere Cash and Carry Inc. from Harvard Distributing during the period October 1, 2011 through May 31, 2013, including, but not limited to, invoices, receipts, order forms, bank records, shipping records, bank deposit slips, checks, reports, accounting records of any kind, exemption certificates, correspondence, notes, memoranda, calendar or diary entries, Illinois Department of Revenue Forms TP-12 "Products Sold to Other Distributors/Wholesalers" (including all schedules and attachments), and all other documents.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Belvidere Cash and Carry Inc.

Plaintiff/Petitioner

v.

Illinois Department of Revenue

Defendant/Respondent

No. 14-TT-250

SUBPOENA IN A CIVIL MATTER (For Testimony and/or Documents)

To: N. Ali Enterprises Inc., Attn: Custodian of Records
31W280 Diehl Road
Naperville, IL 60563

- 1. YOU ARE COMMANDED to appear to give your testimony before the Honorable ...
2. YOU ARE COMMANDED to appear and give your deposition testimony before a Notary Public at: ...
3. YOU ARE COMMANDED to mail the following documents in your possession or control to Dale & Gensburg, P.C. Attn: Anthony Calandriello ...

Description continued on attached page(s).

YOUR FAILURE TO RESPOND TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Notice to Deponent:

1. The deponent is a public or private corporation, partnership, association, or governmental agency. The matter(s) on which examination is requested are as follows:

Description continued on attached page(s).

(A nonparty organization has a duty to designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. Ill. Sup. Ct. Rule 206.)

2. The deponent's testimony will be recorded by use of an audio-visual recording device, operated by ...

3. No discovery deposition of any party or witnesses shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of the parties or by order upon showing that good cause warrants a lengthier examination. Ill. Sup. Ct. Rule 206(d).

Atty. No. 31490 Pro Se 99500

Name: Dale & Gensburg, P.C.

Issued by: Signature

Atty. for: Belvidere Cash and Carry Inc.

Address: 200 West Adams Street, Suite 2425

Attorney

City/State/Zip: Chicago, Illinois 60606

Clerk of Court

Telephone: 312-263-2200

Date:

I served this subpoena by mailing a copy, as required by Ill. Sup. Ct. Rules 11, 12 and 204(a)(2), to N. Ali Enterprises Inc. by certified mail, return receipt requested (Receipt # ...) on ..., 2015. I paid the witness \$... for witness and mileage fees.

I served this subpoena by handing a copy to ... on ... I paid the witness \$... for witness and mileage fees.

(Signature of Server)

(Print Name)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

BELVIDERE CASH AND CARRY, INC.)	
)	
Petitioner,)	
	)	14 TT 250
v.)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ATTACHMENT TO SUBPOENAS DUCES TECUM

You are commanded to provide the following documents:

All documents in any way relating to purchases made by Belvidere Cash and Carry Inc. from N. Ali Enterprises Inc. during the period October 1, 2011 through May 31, 2013, including, but not limited to, invoices, receipts, order forms, bank records, shipping records, bank deposit slips, checks, reports, accounting records of any kind, exemption certificates, correspondence, notes, memoranda, calendar or diary entries, Illinois Department of Revenue Forms TP-12 "Products Sold to Other Distributors/Wholesalers" (including all schedules and attachments), and all other documents.

CERTIFICATE OF SERVICE

I, Anthony Calandriello, an attorney, certify that I caused a copy of Taxpayer's Motion for the Issuance of Subpoena Duces Tecum, a copy of which is attached, to be served upon the person set forth in the attached Notice of Motion, on the 27th day of April, 2015 by electronic mail to:

Ashley.forte@illinois.gov
Illinois Department of Revenue
Attn: Ashley Forte, Esq.
100 West Randolph Street, 7th Floor
Chicago, Illinois 60601



Anthony Calandriello

Anthony Calandriello, Esq.
DALE & GENSBURG, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T-(312) 263-2200
F-(312) 263-2242
Email: tcalandriello@dandgpc.com
Attorney No. 31490