

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>RICHARD S. HYDE S.C.</b> Petitioner,	)	
	)	
<b>V</b>	)	<b>No. 14 TT 107</b>
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	<b>Chief Judge James M. Conway</b>
Respondent	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. Jurisdiction of the claims in this matter is granted on this Court pursuant to the Illinois Tax Tribunal Act of 2012, 35 ILCS 1010/1-45.

ANSWER: The allegations in paragraph 1 of the petition consist of legal conclusions and are thus denied.

2. At all relevant times hereto, the Petitioner, HYDE, was and is an Illinois corporation registered and doing business in Illinois.

ANSWER: The Department admits that at all relevant times hereto the Petitioner, Hyde was and is an Illinois corporation doing business in Illinois. The allegation that the Petitioner was registered in Illinois is vague and is denied. The Department further specifically denies that the Petitioner was

registered with the Illinois Department of Revenue for sales tax purposes during the times relevant hereto.

3. The Petitioner is located at 416 E. Roosevelt Road, Suite 108, Wheaton, IL 60187, phone (630) 665-0788.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. The Petitioner's employer identification number is 36-4424019.

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. The Petitioner is engaged in the business of providing chiropractic services.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

6. The Petitioner also occasionally sells chiropractic equipment to its patients including but not limited to weights, fractions and physioballs.

ANSWER: The Department admits the allegations in paragraph 6 of the petition. However, the Department denies any inference in paragraph 6 of the petition that chiropractic equipment is the only category of item sold by the petitioner to the exclusion of other items, including dietary supplements.

7. The Petitioner only sells chiropractic equipment if its chiropractor determines after a full evaluation and diagnosis that its patient might benefit from the use of the equipment. In all cases, the Petitioner sells this equipment pursuant to the sale of its services.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the petition that the Petitioner only sells chiropractic equipment if its chiropractor determines after a full evaluation and diagnosis that its patient might benefit from the use of the equipment and therefore neither admits or denies said allegations. The remaining allegations in paragraph 7 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

8. The revenue derived from the sales of the chiropractic equipment are nominal.

ANSWER: The allegations in paragraph 8 of the petition are vague and conclusionary and are therefore denied.

9. Sometime during 2012, the Department audited the Petitioner for retail occupation tax for the periods January 2006 through January 2013 (hereafter "audit period"). Sales tax returns had not been filed for any of those periods.

ANSWER: The Department admits that it conducted an audit of the Petitioner which commenced in 2011 and concluded in 2013. The Department admits the remaining allegations in paragraph 9 of the petition.

10. During the audit, the Department did not receive or review any of the Petitioner's books and records. Thus, the Department estimated and assessed retail occupation tax by imposing the ROT tax rate on the Petitioner's total gross income as reported on its federal corporate income tax returns for 2006 through 2012.

ANSWER: The Department denies that it did not receive or review any of the Petitioner's books and records. The Department admits that the Petitioner only made very limited books and records available during the audit and that the Department therefore imposed ROT on the Petitioner's total gross income as reported on its federal corporate income tax returns for 2006 through 2012.

11. Upon conclusion of the audit, the Department issued the following Notices of Tax Liability (a) Letter ID: CNXXX11XX54512XO, (b) Letter ID: CNXXX17X4274X163, (c) Letter ID: CNXXXX63X5321928, (d) CNXXXX543X475848, (e) CNXXX11674X31X41, (f) CNXXXXXX9366128X8, (g) CNXXX2X398183366, (h) CNXXXXXX268X32963, (i) CNXXXXXX966X765126, (j) CNXXX15X29474241, (k) CNXXX21239552964, (l), CNXXX1X5X2134721, (m) CNXXX1X799184964, (n) CNXXX142161776X1. See Exhibit A attached hereto.

ANSWER: The Department admits the allegations in paragraph 11 of the petition.

12. The Petitioner did not file a Protest in connection with any of the Notices of Tax Liability.

ANSWER: The Department admits the allegations in paragraph 12 of the petition.

13. On January 31, 2014, the Petitioner requested a discretionary hearing from the Department's Office of Administrative Hearings. On April 29, 2014, the Office of Administrative Hearings granted that request. See Exhibit B attached hereto.

ANSWER: The Department admits the allegations in paragraph 13 of the petition

## COUNT I

1-13. Petitioner restates and incorporates herein paragraphs 1-13 above as paragraphs 1-13 of Count I.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 13 as though fully set forth herein.

14. The Department erred in imposing retailer's occupation tax on any of the Petitioner's income.

ANSWER: The Department denies the allegations in paragraph 14 of the petition.

15. The Petitioner is a service provider deriving almost all of its revenue from the sale of its chiropractic services.

ANSWER: The allegations in paragraph 15 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

16. The Petitioner only sells chiropractic equipment to patients in those instances where its chiropractor performs a full evaluation and diagnosis and determines the equipment to be the appropriate treatment. The Petitioner's annual revenue from these sales is minimal.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 of

the petition that the Petitioner only sells chiropractic equipment to patients in those instances where its chiropractor performs a full evaluation and diagnosis and determines the equipment to be the appropriate treatment and therefore neither admits or denies said allegations. The remaining allegations in paragraph 16 of the petition are vague and conclusionary and are denied.

17. The transfer and sale of the chiropractic equipment is strictly sold incident to the sale of its chiropractic service.

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

18. Under 35 ILCS 115, when property is sold incident to the sale of services, a service occupation tax rather than the retailer's occupation tax is imposed on the sale. Thus, the Petitioner's sales are not subject to the retailer's occupation tax.

ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but of factual and legal conclusions and are thus denied.

**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
  - b. finding that the Notices of Tax Liability at issue are correct and should be finalized as issued;
  - c. ordering judgment in favor of the Department and against the Petitioner;
- and

granting such further relief as this Tribunal deems appropriate under the circumstances.

**COUNT II**

1-18. Petitioner restates and incorporates herein paragraphs 1-18 above as paragraphs 1-18 of Count II.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 18 as though fully set forth herein.

19. The Department erred in imposing retail occupation tax on the total gross income as reported on the Petitioner's federal corporate income tax returns during the audit period.

ANSWER: The Department denies the allegations in paragraph 19 of the petition.

20. Almost all of the gross income as reported on the Petitioner's federal income tax returns for the audit period was derived from the its sale of its services with only a nominal portion from the sale of its equipment.

ANSWER: The allegations in paragraph 20 of the petition are vague and conclusionary and are denied.

21. Under 35 ILCS 120, the retailer's occupation tax is only imposed on the sale of property and not on the sales of services. Thus, Petitioner's service income should not have been subjected to retailer's occupation tax.

ANSWER: The allegations in paragraph 15 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
  - b. finding that the Notices of Tax Liability at issue are correct and should be finalized as issued;
  - c. ordering judgment in favor of the Department and against the Petitioner;
- and

granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: \_\_\_\_\_

  
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ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

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RICHARD S. HYDE S.C.	)	
Petitioner,	)	
v.	)	14-TT-107
	)	Chief Judge James Conway
ILLINOIS DEPARTMENT	)	
OF REVENUE	)	

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AFFIDAVIT  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor II.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Taxpayer's Petition paragraphs 7 and 16.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

Cynthia Cosby

DATED: 7/28/2014

**CERTIFICATE OF SERVICE**

I, George Foster, an attorney, do hereby certify that on July 28, 2014 a copy of the Department's ANSWER was served on Tami Tolitano, Lohman, Neschis, & Tolitano, by causing a copy to be sent by electronic mail to TTOLITANO@LNT-LAW.COM.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to read "George Foster".