

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

GREEN OAK FOOD & LIQUOR INC.,)	
)	
Petitioner)	
)	
V)	No. 14 TT 113
ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian F. Barov
Respondent)	
)	

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. Petitioner is an Illinois corporation located at 13002 Sandburg Court, Palos Park, Illinois, 60464, and can be reached at 312-761-1956.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. Petitioner is represented by Romanoff & Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. Petitioner's Taxpayer (Account) ID is 2238-0280.

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

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

5. On June 17, 2014, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods July 1, 2010 to December 31, 2012. The Notice reflects \$42,833 in tax due, \$8,344 in late payment penalties, \$8,344 in negligence penalties, \$500 in late filing penalties, \$2,229 in interest, and payments/credits of \$1,115, for a total assessment balance of \$61,135. The Notice is attached hereto as Exhibit 1.

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

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

ANSWER: The allegations in paragraph 7 of the petition consist of legal conclusions and are thus denied.

8. Petitioner is a liquor/convenience store located in the southwest suburb of Palos Park.

ANSWER: The Department admits that the Petitioner operated a liquor/convenience store in Chicago, Illinois during the taxable period. The Department denies the remaining allegations in paragraph 8 of the petition.

9. Defendant audited Petitioner's books and records for the tax periods July 1, 2010 to December 31, 2012.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products.

ANSWER: The Department admits that after having determined that the Petitioner did not keep the cash register z-tapes and that its source documents were incoherent, that it used an alternative approach for determining and establishing receipts. The Department also admits that as part of this alternative approach it used a mark-up analysis which involved multiplying purchases by a determined mark-up percentage. The Department further admits that in this case it used an industry standard mark-up since the business was closed and selling prices could not be provided.

COUNT I

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices.

ANSWER: The Department admits that after having determined that the Petitioner did not keep the cash register z-tapes and that its source documents were incoherent, that it used an alternative approach for determining and establishing receipts. The Department also admits that as part of this alternative approach it used a mark-up analysis which involved multiplying purchases by a determined mark-up percentage. The Department further admits that in this case it used an industry standard mark-up since the business was closed and selling prices could not be provided. The Department denies any remaining allegations in paragraph 12 of the petition.

13. By applying such estimated prices to Petitioner's purchases during the audit period, the Department drastically and unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department especially with respect to cigarette sales.

ANSWER: The Department denies the allegations in paragraph 13 of the petition.

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 Notice of Tax Liability at issue is 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

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

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

15. In its Notice, the Department assessed several penalties.

ANSWER: The Department admits that its notice assessed a late payment penalty, a negligence penalty, and a late filing penalty. The Department denies any remaining allegations in paragraph 15 of the petition.

16. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The allegations in paragraph 16 of the petition consist of legal conclusions and are thus denied.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine and pay its proper tax liability in a timely fashion 86 Ill. Admin. Code 700.400(b).

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but of legal conclusions and are denied. The Department further states that the cited regulation speaks for itself.

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but of legal conclusions and are denied. The Department further states that the cited regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated selling prices.

ANSWER: The allegations in paragraph 19 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are 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 Notice of Tax Liability at issue is 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: 

George Foster
Special Assistant Attorney General

George Foster
Illinois Department Of Revenue
100 W. Randolph Street, Level 7
Chicago, Illinois 60601
312-814-3493
george.foster@illinois.gov

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 James E. Dickett, Romanoff & Dickett Ltd., by causing a copy to be sent by electronic mail to jdickett@aol.com.

A handwritten signature in blue ink, appearing to be "G. Foster", written over a horizontal line.