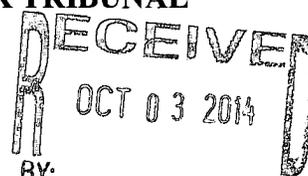


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RONALD BENDERSON & SUSAN)
JUSTINGER,)
)
Petitioners,)
)
v.)
)
THE ILLINOIS DEPARTMENT OF)
REVENUE,)
)
Respondent.)



14 TT 127

Chief Judge James M. Conway

PETITIONER'S RESPONSE TO RESPONDENTS
ILLINOIS DEPARTMENT OF REVENUE'S AFFIRMATIVE DEFENSES

Petitioners, Ronald Benderson and Susan Justinger, by its attorneys, hereby submit their Response to Respondent, Illinois Department of Revenue's Affirmative Defenses, state as follows:

BACKGROUND

1. On October 13, 2006, Department issued a Notice of Deficiency to Delta Sonic Car Wash Systems, Inc. ("Delta Sonic") for the tax year ending December 31, 2000. A copy of that Notice is attached as Exhibit 1.

RESPONSE: Petitioners admit the allegations contained in Paragraph 1.

2. Although Delta Sonic filed a protest of the Notice of Deficiency dated October 13, 2006, in the Circuit Court of Cook County, that protest was dismissed with prejudice.

RESPONSE: Petitioners deny the allegations contained in Paragraph 2.

3. On January 23, 2007, Delta Sonic filed its protest (Complaint) of the Notice of Deficiency dated October 13, 2006. See Exhibit 2, Docket Sheet, Circuit Court of Cook County, Docket No. 07-L-50059.

RESPONSE: Petitioners admit the allegations contained in Paragraph 3.

4. On February 4, 2009, the Circuit Court of Cook County entered an Order dismissing Delta Sonic's protest of the Notice of Deficiency issued October 13, 2006, because Delta Sonic's protest (Complaint) was filed more than 60 days after the Notice of Deficiency was issued. See Exhibit 3. Defendant's Motion to Dismiss and Agreed Dismissal Order in Circuit Court of Cook County docket No. 07-L-50059.

RESPONSE: Petitioners admit the allegations contained in Paragraph 4.

5. Department's Notice of Deficiency issued October 13, 2006 to Delta Sonic became final on December 12, 2006. 35 ILCS 5/908(4).

RESPONSE: Paragraph 5 contains legal conclusions which require no response. To the extent Petitioners are deemed obligated to respond to Paragraph 5, Petitioners deny the allegations in Paragraph 5.

6. Delta Sonic later filed a Form IL-1120-ST-X (amended Illinois income tax return) for tax years 2000, 2001, 2002, and 2003, respectively, which reversed the Department's unitary determination, and claimed a refund of tax overpayment for tax year 2000.

RESPONSE: Petitioners admit that Delta Sonic filed IL-1120-ST-X (amended Illinois income tax returns) for the 2000 through 2003 tax years. Petitioners deny the remaining allegations contained in Paragraph 6.

7. The Department denied Delta Sonic's refund claim for tax year ending December 31, 2000. A copy of the Department's Notice of Denial to Delta Sonic is attached as Exhibit 4.

RESPONSE: Petitioners admit the allegations contained in Paragraph 7.

8. On December 14, 2009, Delta Sonic protested the Department's refund claim denial for 2000.

RESPONSE: Petitioners admit the allegations contained in Paragraph 8.

9. Delta Sonic's protest was assigned docket number 10-IT-0229 in the Department's Office of Administrative Hearings.

RESPONSE: Petitioners admit the allegations contained in Paragraph 9 as they relate to Delta Sonic's protest of the Department's refund claim denial for 2000.

10. As of the date of this Answer, docket number 10-IT-0229 is open/pending before the Department's Office of Administrative Hearings.

RESPONSE: Petitioners admit the allegations contained in Paragraph 10.

11. The issue pending in docket number 10-IT-0229 is whether Delta Sonic and Benderson Development were members of a unitary business group in 2000 through 2003.

RESPONSE: Petitioners admit that one of the issues raised in its protest filed in docket number 10-IT-0229 is whether Delta Sonic and Benderson Development were members of a unitary group in the 2000 through 2003 tax years, but Petitioners further state that there are additional issues raised in Petitioner's protest filed in docket number 10-IT-0229.

AFFIRMATIVE DEFENSE I

12. Department incorporates its allegations in paragraphs 1 through 11 of its Affirmative Defenses as if fully set forth herein.

RESPONSE: Petitioners incorporate their responses to Paragraphs 1-11 as though stated herein.

13. The Tax Tribunal has original jurisdiction over all determinations of the Department "reflected on" the Notice of Claim Denial issued to Ronald Benderson and Susan Justinger for the tax year ending December 31, 2011 and December 31, 2012, respectively. 35 ILCS 1010/1-45(a).

RESPONSE: Paragraph 13 contains legal conclusions which require no response.

14. The Taxpayer in this matter is Ronald Benderson and Susan Justinger.

RESPONSE: Petitioners admit the allegations contained in Paragraph 14.

15. The Notices protested by Taxpayer are for Individual Income Tax for the years ending December 31, 2011 and December 31, 2012.

RESPONSE: Petitioners admit the Petition they filed with this Tribunal for the tax years ending December 31, 2011 and December 31, 2012 relate to Individual Income Tax. Petitioners deny the remaining allegations contained in Paragraph 15.

16. The Department's tax assessment to Delta Sonic was reflected on the Notice of Deficiency issued to Delta Sonic on October 13, 2006 for the tax year ending December 31, 2000. See Exhibit 1.

RESPONSE: Paragraph 16 contains legal conclusions which require no response.

17. Delta Sonic's 2000 income tax assessment is not reflected on the Notices of Claim Denial issued to Taxpayer on May 14, 2014, or May 19, 2014, for the tax years ending December 31, 2011 and December 31, 2012, respectively.

RESPONSE: Paragraph 17 contains legal conclusions which require no response.

18. This Tribunal does not have jurisdiction to determine whether Delta Sonic and Benderson Development were unitary in 2000 through 2003 because Delta Sonic's 2000 income tax assessment is not reflected on the Notices of Claim Denial issued to Taxpayer for tax years ending December 31, 2011 and December 31, 2012, which is the subject matter of the protest in the above captioned matter.

RESPONSE: Petitioners deny the allegations contained in Paragraph 18.

19. This Tribunal does not have jurisdiction to consider whether Delta Sonic and Benderson Development were unitary in 2000 through 2003 because Delta Sonic's protest of that determination is pending before the Office of Administrative Hearings as docket number 10-IT-0229.

RESPONSE: Petitioners deny the allegations contained in Paragraph 19.

AFFIRMATIVE DEFENSE II

20. Department incorporates the allegations in paragraphs 1 through 18 of its Affirmative Defenses as if fully set forth herein.

RESPONSE: Petitioners incorporate their responses to Paragraphs 1-19 as though stated herein.

21. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 35 ILCS 1010/1-1 et seq.) states: "Jurisdiction of the Tax Tribunal.... (e) The Tax Tribunal shall not have jurisdiction to review:...(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities." 35 ILCS 1010/1-45.

RESPONSE: Paragraph 21 contains legal conclusions which require no response.

22. Because the Notice of Deficiency issued on October 13, 2006 to Delta Sonic is final, this Tribunal does not have Subject Matter Jurisdiction to review the correctness of that Notice of Deficiency or the issues determined therein, including whether Delta Sonic and Benderson Development were members of a unitary group for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003. 35 ILCS 1010/1-45.

RESPONSE: Petitioners deny the allegations contained in Paragraph 22.

AFFIRMATIVE DEFENSE III

23. Department incorporates the allegations in paragraphs 1 through 21 of its Affirmative Defenses as if fully set forth herein.

RESPONSE: Petitioners incorporate their responses to Paragraphs 1-22 as though stated herein.

24. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 et seq.) states: "Jurisdiction of the Tax Tribunal.... (e) The Tax Tribunal shall not have jurisdiction to review:...(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities." 35 ILCS 1010/1-45.

RESPONSE: Paragraph 24 contains legal conclusions which require no response.

25. On October 13, 2006, Department issued a Notice of Deficiency to Petitioner, Ronald Benderson, for the tax years ending December 31, 2000, 2001, 2002, and 2003. A copy of that Notice of Deficiency is attached hereto as Exhibit 5.

RESPONSE: Petitioners admit the allegations contained in Paragraph 25.

26. Ronald Benderson did not file a Form EAR-14 or otherwise protest the Notice of Deficiency for 2000, 2001, 2002 and 2003 within 60 days of October 13, 2006.

RESPONSE: Petitioners admit that Ronald Benderson did not file a Form EAR-14 within 60 days of October 13, 2006, but answering further, Petitioners deny that Ronald Benderson did not otherwise protest the Notice of Deficiency for 2000, 2001, 2002 and 2003.

27. Illinois Income Tax Act (IITA) Section 908(d) provides: "(d) Finality of decision. If the taxpayer fails to file a timely protest or petition under subsection (a) of this Section, then the Department's notice of deficiency shall become a final assessment at the end of the 60th day after the date of issuance of the notice of deficiency." 35 ILCS 5/908(d).

RESPONSE: Paragraph 27 contains legal conclusions which require no response.

28. Department's Notice of Deficiency issued to Ronald Benderson on October 13, 2006 for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003 became final on December 12, 2006; 60 days after it was issued.

RESPONSE: Paragraph 28 contains legal conclusions which require no response.

29. Because the October 13, 2006 Notice of Deficiency is final, this Tribunal does not have Subject Matter Jurisdiction to review the correctness of the Notice of Deficiency issued to Ronald Benderson or the income tax assessments for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003. 35 ILCS 1010/1-45.

RESPONSE: Petitioners deny the allegations contained in Paragraph 29.

AFFIRMATIVE DEFENSE IV

30. Department incorporates the allegations in paragraphs 1 through 28 of its Affirmative Defenses as if fully set forth herein.

RESPONSE: Petitioners incorporate their responses to Paragraphs 1-29 as though stated herein.

31. The Tax Tribunal has original jurisdiction over all determinations of the Department reflected on the Notice of Claim Denial for the year(s) protested. 35 ILCS 1010/1-45(a).

RESPONSE: Paragraph 31 contains legal conclusions which require no response.

32. Taxpayer alleges that "Petitioners had an overpayment of \$12,250 from the 2010 tax year which Petitioners' sought to apply toward its tax liability for the 2011 tax year." Petition, ¶ 17.

RESPONSE: Petitioners admit the allegations contained in Paragraph 32.

33. On February 21, 2013, Department issued a Notice of Claim Denial to Petitioners/Taxpayer for the tax year ending December 31, 2010. A copy of that Notice is attached hereto as Exhibit 6.

RESPONSE: Petitioners admit the allegations contained in Paragraph 33.

34. Petitioners/Taxpayer did not protest the Notice of Claim Denial issued to Petitioners/Taxpayer on February 21, 2013.

RESPONSE: Petitioners admit the allegations contained in Paragraph 26.

35. The Notice of Claim Denial issued to Petitioners/Taxpayer on February 21, 2013 became final on Monday, April 22, 2013.

RESPONSE: Paragraph 35 contains legal conclusions which require no response.

36. This Tribunal does not have subject matter jurisdiction to review the amount of tax overpayment of Petitioners/Taxpayer for the tax year ending December 31, 2010.

RESPONSE: Petitioners deny the allegations contained in Paragraph 36.

AFFIRMATIVE DEFENSE V

37. Department incorporates the allegations in paragraphs 1 through 36 of its Affirmative Defenses as if fully set forth herein.

RESPONSE: Petitioners incorporate their responses to Paragraphs 1-36 as though stated herein.

38. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 et seq.) states: "Jurisdiction of the Tax Tribunal.... (e) The Tax Tribunal shall not have jurisdiction to review:...(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities." 35 ILCS 1010/1-45.

RESPONSE: Paragraph 38 contains legal conclusions which require no response.

39. Section 909(a) of the Illinois Income Tax Act (35 ILCS 5/909(a)) provides: "(a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed

thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to such person."

RESPONSE: Paragraph 39 contains legal conclusions which require no response.

40. The Department's act of offsetting overpayments against final liabilities in accordance with Section 909(a) is a "collection activit[y]" for which this Tribunal does not have jurisdiction to review. 35 ILCS 1010/1-45.

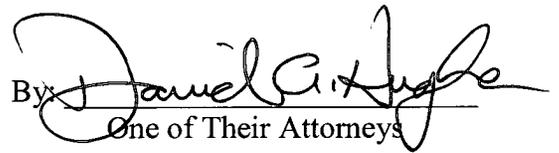
RESPONSE: Petitioners deny the allegations contained in Paragraph 40.

WHEREFORE, Petitioners, Ronald Benderson and Susan Justinger, pray that the affirmative defenses be dismissed with prejudice and that the relief requested in the Petition be granted.

Respectfully submitted,

**RONALD BENDERSON AND
SUSAN JUSTINGER,**

Petitioners

By 
One of Their Attorneys

Fred O. Marcus
David A. Hughes
David S. Ruskin
Jennifer A. Zimmerman
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CERTIFICATE OF SERVICE

The undersigned attorney of record, hereby certifies that he caused a copy of the foregoing PETITIONER'S RESPONSE TO RESPONDENT ILLINOIS DEPARTMENT OF REVENUE'S AFFIRMATIVE DEFENSES to be served on the counsel of record listed below by causing a copy of the foregoing to be delivered by messenger before the hour of 5:00 p.m. on October 3, 2014 addressed as follows:

Jennifer Kieffer
Illinois Department of Revenue
100 W Randolph Street
Level 7-900
Chicago, IL 60601

Rickey A. Walton
Illinois Department of Revenue
100 W Randolph Street
Level 7-900
Chicago, IL 60601

A handwritten signature in black ink that reads "David A. Hughes". The signature is written in a cursive style and is positioned above a horizontal line.

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JUSTINGER,)
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THE ILLINOIS DEPARTMENT OF)
REVENUE,)
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14 TT 127

Chief Judge James M. Conway

Notice of Filing

To: Rickey A. Walton
Jennifer Kieffer
Illinois Department of Revenue
100 W. Randolph Street, Level 7-900
Chicago, IL 60601

PLEASE TAKE NOTICE that on October 3, 2014, the Petitioner’s Response To Respondents Illinois Department Of Revenue’s Affirmative Defenses was filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Chicago, IL 60601, a copy of which is attached hereto.

Respectfully submitted,

**RONALD BENDERSON AND
SUSAN JUSTINGER,**

Petitioners

By: David A. Hughes
One of Their Attorneys

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