

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS**

JASBIR ENTERPRISES INC.)	
)	
V)	No. 14 TT 13
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Taxpayer)	
)	

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. The Taxpayer is a corporation organized and existing under the laws of the State of Illinois, located at 732 E. Main Street, Danville, Illinois, where the Taxpayer owns and operates a liquor store. The Taxpayer’s Illinois identification number is 3481-8871.

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

2. The Notice, a copy of which is attached and marked Exhibit A, was mailed to the Taxpayer on December 4, 2013 and was issued by the Department.

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

3. The liabilities as determined by the Department are in retailer’s occupation taxes for the periods beginning January 1, 2010 and ending December 31, 2011.

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

4. The Taxpayer filed a timely Protest with the Department of Revenue on January 16, 2014 (the "Department Protest"). Copy enclosed and marked Exhibit B.

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

5. The Taxpayer's Department Protest was dismissed for lack of jurisdiction in a letter from the Department dated January 24, 2014 ("Dismissal Letter"). Copy enclosed and marked Exhibit C.

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

6. The Dismissal Letter extended the deadline to timely file this Petition to 60 days from the date of the Department's letter, or March 26, 2014.

ANSWER: The Department states that the Dismissal Letter speaks for itself and denies all other allegations in paragraph 6 of Taxpayer's Petition.

7. Pursuant to the Department letter the Taxpayer timely submits this Petition.

ANSWER: The Department states that the Dismissal Letter speaks for itself and denies all other conclusions and allegations in paragraph 7 of Taxpayer's Petition.

8. The determination of the tax set for in the said Notice is based upon the following errors:

- A. The Department was unreasonable when it estimated the Taxpayer's revenues despite the Taxpayer's production of books and records as required by 35 ILCS 120/7 and 86 Ill. Admin. Code 130.805. The Taxpayer maintains books and records including: daily/ monthly spreadsheets, register tapes (including transactional tapes, daily Z tapes, and credit card tapes), purchase invoices, bank statements, receipts of purchase and inventory lists.

The Taxpayer's records were made available to the Department during the audit. The Department disregarded the use of the Taxpayer's records when conducting its audit and instead opted to apply an average mark-up against purchases.

ANSWER: The Department denies that it was unreasonable when it estimated the Taxpayer's revenues. The Department admits that the Taxpayer maintained certain records during the audit period at issue but denies that the records made available to the Department's auditor were either complete or accurate. The Department denies that it disregarded the use of the Taxpayer's records when conducting its audit. The Department admits that it applied an average mark-up against purchases.

B. The Department was unreasonable in its mathematical basis for conducting its audit of the Taxpayer in the Original Audit Report. The Department calculated a deficiency in taxable sales and applied an average mark-up to the deficiency.

ANSWER: The Department denies that it was unreasonable in its mathematical basis for conducting its audit of the Taxpayer in the Original Audit Report. The Department admits that it calculated a deficiency in taxable sales. The Department further admits that as part of that process it applied an average mark-up to what it determined to be taxpayer's purchases during the audit period. The Department denies any and all remaining allegations in paragraph 8B of the petition.

C. The Department was unreasonable in its mathematical basis for conducting its audit of the Taxpayer in the Revised Audit Report. The Department calculated a deficiency in taxable sales and applied an average mark-up to all sales for the entire audit period.

ANSWER: The Department denies that it was unreasonable in its mathematical basis for conducting its audit of the Taxpayer in the Revised Audit Report. The Department admits that it calculated a deficiency in taxable sales. The Department further admits that as part of that process it applied an average mark-up to what it determined to be taxpayer's purchases during the audit period. The Department further states that the allegations in paragraph 8C of the petition are vague and partially unintelligible and denies any and all remaining allegations in paragraph 8C of the petition.

D. The Department was unreasonable in its calculation of a mark-up rate. The Department calculated a mark-up rate and applied it to the Taxpayer's sales despite the Taxpayer's records being made available to the auditor.

ANSWER: The Department denies that it was unreasonable in its calculation of a mark-up rate. The Department admits that it calculated a mark-up rate and applied the mark-up rate to Taxpayer's purchases. The Department admits that certain of Taxpayer's records were made available to the auditor but denies that they were complete or accurate. The Department denies any and all remaining allegations in Paragraph 8D of Taxpayer's Petition.

9. The facts upon which the Taxpayer relies, as the basis of the Taxpayer's case, are as follows:

A. The Taxpayer was first audited by the Department for the period beginning January 1, 2007 and ending December 31, 2009 and when the audit was completed, the Taxpayer filed a Protest with the Department of Revenue and the Department settled the case before it came to administrative hearing.

ANSWER: The Department admits that the Taxpayer was audited by the Department for the period beginning January 1, 2007 and ending December 31, 2009, that the Taxpayer filed a Protest with the Department of Revenue and that the Department settled the case before it came to administrative hearing, but denies that these facts are relevant to the current proceedings.

B. In 2012 the Department commenced the follow-up compliance audit of the Taxpayer for the period beginning January 1, 2010 and ending December 31, 2011.

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

C. On February 6, 2013 the Taxpayer received a report from the auditor (the Original Audit Report") reflecting tax adjustments in the amount of \$9,092. Copy enclosed and marked Exhibit D.

ANSWER: The Department admits the allegations in paragraph 9C of the petition but states affirmatively that the original audit report was voided due to errors in computation.

D. The Original Audit Report based its deficiency on an alleged discrepancy between purchases, from purchase invoice requests, and sales reported by the Taxpayer on its sales tax returns.

ANSWER: The Department admits that in calculating a deficiency with respect to the original audit report, that the Department calculated purchases through third party means after determining that purchases reported per the taxpayer's books and records were understated, and applied an average mark-up, which then resulted in a determination that sales had been underreported, resulting in a tax deficiency. The Department further states that the allegations in paragraph 9D of the petition are partially unintelligible and denies any and all remaining allegations in Paragraph 9D of the petition. As the Original Audit Report was voided, the Department further denies that any allegations with respect to the Original Audit Report are relevant to these proceedings.

E. This alleged discrepancy is explained by the Taxpayer's inventory. The Taxpayer keeps an extensive inventory and hires a third party inventory company for inventory reports, all of which were made available to the auditor. No allowance was made for the Taxpayer's inventory throughout the Department's audit.

ANSWER: The allegation that the taxpayer maintains an "extensive" inventory is vague and conclusory and on that basis is denied. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that the Taxpayer hires a third party

inventory company for inventory reports. The Department denies that any inventory reports or other documentation regarding inventory were made available to the auditor. The Department admits that no allowance was made in the audit for changes in inventory but denies that any documentation was provided by the taxpayer to allow for such allowance. The Department further states that the allegations in paragraph 9E of the petition are vague and partially unintelligible and denies any and all remaining allegations in Paragraph 9E of the petition.

- F. As opposed to using the Taxpayer's inventory to explain the discrepancy, the auditor took the difference between purchases on the Taxpayer's income tax returns and purchases determined by the audit to determine unreported taxable sales.

ANSWER: The Department admits that the auditor determined through third party means that purchases reported per the taxpayer's books and records were understated and used third party means as a basis to calculate purchases for purposes of the audit. The Department further admits that no audit adjustments were made to provide for any inventory fluctuations but denies that documentation was provided by the taxpayer to allow for such allowance. The Department further states that the allegations in paragraph 9F of the petition are vague and at least partially unintelligible and denies any and all remaining allegations in Paragraph 9F of the petition.

- G. The auditor then applied an unsupported average mark-up to the deficiency and arrived at the liability.

ANSWER: The Department admits that it applied a mark-up that was derived directly from the taxpayer's records to what it determined to be taxpayer's purchases, as part of the calculation of the tax liability at issue. The Department further states that the allegations in paragraph 9G of the petition are vague and at least partially unintelligible and denies any and all remaining allegations in Paragraph 9G of the petition

- H. On May 9, 2013, before the Department's issuance of a Notice of Tax Liability on the Original Audit Report, the Taxpayer received a letter from the auditor informing that the Original Audit Report had been disregarded in favor a new revised audit report (the "Revised Audit Report") reflecting tax adjustments in the amount of \$68,938. Copy enclosed and marked Exhibit E.

ANSWER: The Department admits that it voided the original audit report due to errors in computation and issued a revised audit report, a copy of which the taxpayer attached to the petition as Exhibit E.

- I. The Department issued the Revised Audit Report to the Taxpayer basing its deficiency on an alleged discrepancy found between purchases, from purchase invoice requests, and sales reported by the Taxpayer on its sales tax returns.

ANSWER: The Department admits that the auditor determined through third party means that purchases reported per the taxpayer's books and records were understated. The Department further admits that it determined an average mark-up from using the taxpayer's records, and applied the mark-up

to what it determined to be the taxpayer's purchases for the audit period to compute revised sales per audit. The Department further admits that it then compared the revised sales per audit to what the taxpayer reported on its sales tax returns to calculate the tax liability at issue. The Department further states that the allegations in paragraph 9I of the petition are vague and at least partially unintelligible and denies any and all remaining allegations in Paragraph 9I of the petition.

- J. Different from the Original Audit Report, where the auditor's calculated average mark-up rate was applied to the alleged unreported sales, the auditor applied the Department's calculated average mark-up rate against all sales in the Revised Audit Report.

ANSWER: The Department admits that the auditor determined through third party means that purchases reported per the taxpayer's books and records were understated. The Department further admits that it determined an average mark-up from using the taxpayer's records, and applied the mark-up to what it determined to be the taxpayer's purchases for the audit period to compute revised sales per audit. The Department further admits that it then compared the revised sales per audit to what the taxpayer reported on its sales tax returns to calculate the tax liability at issue. The Department further states that the allegations in paragraph 9J of the petition are vague and at least partially unfelligible and denies any and all remaining allegations in Paragraph 9J of the petition.

K. The audit, as it was conducted in the Original Audit Report or the Revised Audit Report did not reveal an issue with the Taxpayer's mark-up rate.

ANSWER: The Department admits that it used the taxpayer's books and records to determine an average mark-up to then compute revised sales per the audit. The Department further states that the allegations in paragraph 9K of the petition are vague and at least partially unintelligible and denies any and all remaining allegations in Paragraph 9K of the petition.

L. No explanation was given as to why the Department's average mark-up rate was applied to all taxable sales.

ANSWER: The Department denies that the average mark-up rate was applied to sales rather than purchases so as to allow for such an explanation.

M. The Department applied its mark-up rate on an item by item basis of almost exclusively high mark-up items.

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

N. This method does not give any effect to loss leader items.

ANSWER: The Department denies the allegations in paragraph 9N of the petition as they assume untrue facts previously denied by the Department and are conclusory.

O. This method does not give effect to the quantity of items sold.

ANSWER: The Department denies the allegations in paragraph 9O of the petition as they assume untrue facts previously denied by the Department and are conclusory.

P. This method assumes that an equal amount was sold of each item and thus vastly overstates the average mark-up.

ANSWER: The Department denies the allegations in paragraph 9P of the petition as they assume untrue facts previously denied by the Department and are conclusory.

Q. The Department applied its average mark-up calculation despite having the Taxpayer's actual books and records reflecting the Taxpayer's true mark-up rate.

ANSWER: The Department admits that after it determined that the taxpayer's books and records for the taxable period were incomplete and unreliable that it used an alternative method to compute taxable sales which method included an average mark-up calculation. The Department further states that the allegations in paragraph 9Q are vague and partially unintelligible and denies the remaining allegations in paragraph 9Q.

R. The use of an average mark-up to calculate sales artificially inflates sales.

ANSWER: The allegations in paragraph 9R of the petition consist not of facts but of unsupported conclusions and are therefore denied by the Department.

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

- a. deny the prayer for relief in the Taxpayer's Petition;
- b. find the Notice of Tax Liability is correct as issued;

- c. order judgment in favor of the Department and against the Taxpayer; and
- d. grant 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

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

JASBIR ENTERPRISES INC.,)	
)	
v.)	14-TT-0013
)	
ILLINOIS DEPARTMENT)	
OF REVENUE)	

AFFIDAVIT OF RUDOLF BUJAK
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 III.
3. I audited Jasbir Enterprises for the period January 2010 through December 2011
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraph 9D that the taxpayer hires a third party inventory company for inventory reports.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

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.

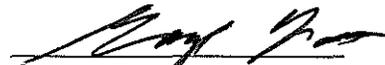


Rudolf Bujak
Revenue Auditor III
Illinois Department of Revenue

DATED: 3/3/14

CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on March 5, 2014 a copy of the Department's ANSWER was served on Claire L. McMahon, Madden, Jiganti, Moore & Sinars, by causing a copy to be sent by electronic mail to cmcmahon@mjms.com


George Foster