

ILLINOIS INDEPENDENT
TAX TRIBUNAL

NICKEL LIQUORS & MUNI)	
MART, INC.,)	
)	
Petitioner,)	
v.)	No. 14 TT 136
)	Judge Brian F. Barov
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	
Respondent.)	

DEPARTMENT’S ANSWER TO AMENDED PETITION

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Amended Petition (the “Petition”), hereby states as follows:

PARTIES

1. Petitioner, NICKEL LIQUORS & MINI MART, INC. (“Petitioner”), is a corporation duly organized and existing under the laws of the state of Illinois.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner’s principal place of business is located at 3637 W. Division, Chicago, IL, 60651.

ANSWER: The Department admits the allegations contained in paragraph 2.

3. Petitioner’s telephone number is (708) 878-3702.

ANSWER: The Department admits the allegations contained in paragraph 3.

4. Petitioner’s Tax identification number is 36-3780749.

ANSWER: The Department admits the allegations contained in paragraph 3.

5. Respondent, Illinois Department of Revenue (the “Department”) is an agency of the State of Illinois responsible for administering and enforcing the revenue laws of the State of Illinois.

ANSWER: The Department admits the allegations contained in paragraph 5.

JURISDICTION

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 Department admits the allegations contained in paragraph 6.

7. On or about May 19, 2014, the Department issued a Notice of Tax Liability to Petitioner asserting additional tax due in the amount of \$148,316 for the period of January 2011 through September 2013. (A copy of the May 19, 2014 notice is attached hereto and incorporated herein as Exhibit “B”).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit B and referred to in paragraph 7 and state that such document speaks for itself.

8. The Tribunal has jurisdiction pursuant to Section 1-45, and 1-50 of the Tribunal Act over the Department’s determinations as reflected on the May 19, 2014 notice, where the amount at issue exceeds \$15,000, exclusive of penalties and interest and because Petitioner timely filed this petition within 60 days of the May 19, 2014 notice. See 35 ILCS 1010/1-45 and 35 ILCS 1010/1-50.

ANSWER: Although paragraph 8 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 8.

BACKGROUND

9. Petitioner is a grocery and liquor store engaged in the sale of food and packaged liquor items.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. Petitioner timely filed all tax returns and paid all amounts due on a regular and timely basis.

ANSWER: Although paragraph 10 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 10.

PROCEDURAL HISTORY

11. At some point before May 19, 2014 the Department initiated an audit of the returns filed by the Petitioner for the period of January 2011 through September 2013 (the “Audit Period”).

ANSWER: The Department admits the allegations contained in paragraph 11.

12. Upon information and belief, the auditor requested information from the petitioner by sending documents to the petitioner's grocery store.

ANSWER: The Department admits that it sent its standard Notice of Audit Initiation letter to taxpayer's address.

13. The petitioner was closed for business for the entire 2014 period based upon remodeling that had to take place.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 and therefore neither admits or denies the allegations. Department further affirmatively states that petitioner received and protested the Notice of Tax Liability which was sent to the same address as the Notice of Audit Initiation which Petitioner alleges it did not receive.

14. The petitioner had no knowledge of the audit and was not provided any other means of information that an audit was initiated.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 and therefore neither admits or denies the allegations.

15. Had the petitioner know that an audit had been initiated, the petitioner would have provided all the books and records necessary to complete the audit.

ANSWER: Paragraph 15 is not an allegation of material fact but a statement of Petitioner's belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

16. As a result on May 19, 2014 and upon information and belief the audit was completed without obtaining any books and records from the petitioner and the audit assessment was issued.

ANSWER: The Department admits that it completed its audit without receiving any books and records from the Petitioner but affirmatively states that it made a number of attempts to reach Petitioner to request such records including both in person visits as well as several letters and written demand for records, all sent to the same address where Petitioner received the Notice of Tax Liability.

17. The Department's calculations based upon the audit are in error since they do not included any books and records that the petitioner would have readily provided had he known about the audit.

ANSWER: Although paragraph 17 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 17.

COUNT I

18. Petitioner hereby restates and realleges the allegations contained in paragraphs 1-21 as if fully set forth herein.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-21 as if fully set forth herein.

19. The Department failed to properly assess the tax since they did not give the petitioner time to provide the books and records.

ANSWER: Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 19.

20. The Petitioner has books and records and said documents are available to the Department for review.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 and therefore neither admits or denies the allegations.

21. The Department should review the books and records and revise any assessment they may have against the Petitioner after review of the books and records.

ANSWER: Paragraph 21 is not an allegation of material fact but a statement of Petitioner's belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter;
- B) That the Department's Notices of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper.

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

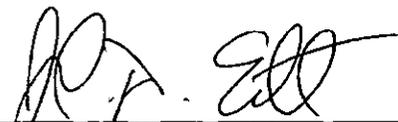
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By _____
Michael Coveny,
Assistant Attorney General

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

I, JEMAL D. EVERETT, being first duly sworn, deposes and says that I am an employee of the Illinois Department of Revenue, that I have read the foregoing Department's Answer to Petitioner's Petition to the Illinois Independent Tax Tribunal, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that I lack the required personal knowledge to either admit or deny paragraphs 13, 14, and 20 pursuant to 735 ILCS 5/2-610(b) and Tribunal Rule 5000.310(b)(3). I hereby certify that the statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief.



Jemal D. Everett
Revenue Auditor III
Illinois Department of Revenue

Date: _____

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

Akram Zanayed
Akram Zanayed & Associates
8500 South Harlem Avenue
Suite G
Bridgeview, IL 60455

By email to zanayedlaw@gmail.com on October 20, 2014.



Michael Coveny,
Assistant Attorney General