

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

ZANZIBAR LLC,)	
Petitioner)	
v.)	15-TT-114
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (the “Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Zanzibar LLC’s (the “Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

INTRODUCTION

1. In a Notice of Tax Liability dated April 9, 2015, for Form EDA-105-R, (the “Notice”), a copy of which Notice is attached hereto as Exhibit A, the Illinois Department of Revenue (the “Department”) assessed tax liability against Zanzibar. The Notice claimed due for the reporting period of July 1, 2011, through December 31, 2013, the following:

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	38,949.00	0.00	38,949.00
Late Payment Penalty Increase	7,790.00	0.00	7,790.00
Fraud Penalty	19,474.00	0.00	19,474.00
Interest	1,989.82	0.00	1,989.82
Assessment Total	\$68,202.82	0.00	\$68,202.82

ANSWER: A copy of the Notice of Tax Liability issued by the Respondent to the Petitioner, for the periods of July 1, 2011 through December 31, 2013 (the “Periods”), dated April 9, 2015 and with Letter ID CNXXX1438X469924, attached to the Petition as

Exhibit “A” (the “Notice”), is not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code 5000.310(b)(2)), but to the extent an answer is required, the Respondent admits issuing the Notice and states that the Notice speaks for itself. The Respondent admits the remaining allegations in Paragraph 1.

2. Zanzibar is an Illinois Limited Liability Company using the Account I.D. number shown above and an FEIN of #26-3362625, having its principal place of business at 1036 W. Bryn Mawr Avenue, Chicago, IL 60660-4630. The manager of Zanzibar is Helen Potakis whose telephone number is 773-443-4945

ANSWER: The Respondent admits the allegations in the first sentence of Paragraph 2. The Respondent admits that the Petitioner’s telephone number is (773) 443-4945, and that Helen Potakis (“Mrs. Potakis”) is the owner and co-manager of the Petitioner. The Respondent denies the remaining allegations in Paragraph 2.

3. Zanzibar believes that the assessment of tax as shown on the Notice is inaccurate because it is based upon an estimate of sales subject to tax computed by the Department and is far in excess of the actual sales of Zanzibar. The estimate of sales is based upon Zanzibar’s U.S. Income Tax Return and the cost of goods sold on that return. Zanzibar is managed by a retired school teacher who took over the coffee shop’s operations when the tenant abandoned it. The manager is not an experienced restaurant operator, employs students and incurs significant waste in its food service operations, (although over the year efficiency has improved somewhat).

ANSWER: The Respondent objects to Paragraph 3 in that it is vague as to the “U.S. Income Tax Return,” the “retired school teacher,” the “tenant,” the “year,” and the degree of improvement in efficiency represented by the term “somewhat.” Notwithstanding said objection, and without waiving the same, the Respondent denies the allegations in the first and second sentences of Paragraph 3, and affirmatively states the following: (a) during the Respondent’s sales tax audit of the Petitioner for the Periods (the “Audit”), the Respondent’s auditor, Mary T. Piszczor (“Ms. Piszczor”) determined the Petitioner lacked reliable books and records to establish control over sales; (b) Ms. Piszczor therefore requested purchase information from the Petitioner’s vendors; (c) based on such purchase information, the schedules supporting cost of goods sold on Schedule C of Mrs. Potakis’ federal income tax returns for the years ending December 31, 2012 and December 31, 2013, and a cost analysis conducted by a restaurant consultant retained by the Petitioner, a reliable average mark-up figure was determined; and, (d) this mark-up figure was then applied to the purchases for the Periods, resulting in the Petitioner’s adjusted taxable sales. The Respondent admits the following, with respect to the third and fourth sentences of Paragraph 3: (a) the Petitioner is co-managed by Mrs. Potakis, who is exclusively involved in the Petitioner’s day-to-day activities; (b) the Petitioner began operations on October 1, 2008, after the prior lessee vacated the premises; and, (c) the Petitioner was given credit, in the Audit, for spillage and spoilage. The Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in the third and fourth sentences of Paragraph 3, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

BACKGROUND AND RELEVANT FACTS

4. Zanzibar is a small, family run coffee and sandwich shop in a store front on a neighborhood commercial street. In order to maintain viability of the remainder of the building where Zanzibar is located that is occupied by commercial and residential tenants, Zanzibar took over operations by necessity when the original tenant abandoned the coffee shop. On February 26, 2013, the Department issued its Notice of Tax Liability for the period of January 1, 2009, through June 30, 2011, claiming substantial sales tax liability with facts similar to the present case. Zanzibar contested this assessment, requested an informal conference with the Board of Review, filed a request for a Hearing before the Department and is now awaiting resolution through the Illinois Department of Revenue Board of Appeals.

ANSWER: The Respondent objects to Paragraph 4 in that it is vague as to the “original tenant.” Notwithstanding said objection, and without waiving the same, the Respondent admits, with respect to the allegations in the first and second sentences of Paragraph 4, that the Petitioner is a family-run coffee shop and restaurant, and that the Petitioner began operations on October 1, 2008, after the prior lessee vacated the premises. The Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in the first and second sentences of Paragraph 4, and therefore neither admits nor denies said allegations, but demands strict proof thereof. The Respondent strongly objects to the third and fourth sentences of Paragraph 4, as they seek an answer concerning an audit that is beyond the scope of the relevant Audit in this matter. In addition, the Respondent strongly objects to the third and fourth sentences of Paragraph 4, to the extent they seek an answer concerning an informal review conference

or administrative hearing with the Respondent's Office of Administrative Hearings, a proceeding with the Respondent's Board of Appeals, and other proceedings the conduct and resolution of which are beyond the scope of this proceeding before the Illinois Independent Tax Tribunal. *See, e.g.* 35 ILCS 1010/1-45(e)(5).

5. Zanzibar acknowledges that copies of all receipts for the period of January 1, 2009, through June 30, 2011 ("Period 1") and for the period of July 1, 2011, through December 31, 2013 ("Period 2") have not been presented, such sales records having been lost or inadvertently destroyed. Based upon the available verifiable sales records that cover most additional days of Period 1 and Period 2, Zanzibar's reported sales are substantially less than the estimated sales determined by the Department.

ANSWER: The Respondent objects to Paragraph 5 in that it is vague as to the "receipts," the "sales records," the "available verifiable sales records," and the number of days represented by the phrase "most additional days." The Respondent also strongly objects to Paragraph 5, to the extent it seeks an answer concerning an audit that is beyond the scope of the relevant Audit in this matter. Notwithstanding said objections, and without waiving the same, and to the extent Paragraph 5 refers to the relevant Audit in this matter, and the Petitioner's books and records relevant to such Audit, the Respondent admits that during the Audit, Ms. Piszczor determined the Petitioner lacked reliable books and records to establish control over sales. The Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in the first sentence of Paragraph 5 that the Petitioner's "sales records," to the extent such phrase refers to the Petitioner's books and records relevant to the Audit, were "lost or inadvertently

destroyed,” and therefore neither admits nor denies said allegations, but demands strict proof thereof. The Respondent denies the remaining allegations in Paragraph 5.

6. Zanzibar prepared and timely filed returns based upon the manager’s belief that the returns were accurate and included all gross income of Zanzibar.

ANSWER: The Respondent objects to Paragraph 6 in that it is vague as to the “returns,” the “manager,” and the “gross income.” In addition, the Respondent strongly objects to Paragraph 6, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant Audit in this matter. Notwithstanding said objections, and without waiving the same, the Respondent admits that the Petitioner filed all sales tax returns for the Periods. The Respondent denies that all such sales tax returns were timely-filed. The Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

7. Since the tax liability assessed far exceeds any actual tax liability, the amounts assessed for penalties and interest are excessive. No fraud penalty assessment is warranted.

ANSWER: The Respondent objects to Paragraph 7 in that it is vague as to the “tax liability” and the “actual tax liability.” In addition, the Respondent strongly objects to Paragraph 7, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant Audit in this matter. Notwithstanding said

objections, and without waiving the same, the Respondent denies the allegations in Paragraph 7.

APPLICABLE LAW

8. Zanzibar relies upon the statutory foundation of the Retailer's [sic] Occupation Tax that states that the Retail [sic] Occupation Tax shall be based upon the gross retail sales of Zanzibar.

ANSWER: Paragraph 8 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

ERRORS

9. Zanzibar alleges that the liability assessed is excessive and that the Department unrealistically estimated an amount of taxable sales far in excess of the actual taxable sales of Zanzibar.

ANSWER: The Respondent objects to Paragraph 9 in that it is vague as to the "liability assessed," the "taxable sales," and the "actual taxable sales." In addition, the Respondent strongly objects to Paragraph 9, to the extent it seeks an answer concerning an audit or tax period that is beyond the scope of the relevant Audit in this matter. Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 9.

10. Zanzibar maintains records and is able to produce records showing gross sales that are far less than the Department's estimated calculations present [sic].

ANSWER: The Respondent objects to Paragraph 10 in that it is vague as to the "gross sales" and "the Department's estimated calculations present." In addition, the

Respondent strongly objects to Paragraph 10, to the extent it seeks an answer concerning an audit or tax period that is beyond the scope of the relevant Audit in this matter. Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 10.

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

- a. deny each prayer for relief in the Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 1) is correct as issued;
- c. order judgment in favor of the Respondent and against the Petitioner; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Daniel A. Edelstein
Daniel A. Edelstein
Special Assistant Attorney General

Daniel A. Edelstein
Special Assistant Attorney General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
Telephone: (312) 814-3120
Facsimile: (312) 814-4344
Email: Daniel.Edelstein@Illinois.gov

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

ZANZIBAR LLC,)	
Petitioner)	
v.)	15-TT-114
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

AFFIDAVIT OF MARY T. PISZCZOR
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Mary T. Piszczor, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I reviewed Zanzibar LLC's (the "Petitioner") Illinois sales tax audit for the periods of July 1, 2011 through December 31, 2013.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in the Petitioner's Petition, Paragraphs 3-6.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify 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 as aforesaid that she verily believes the same to be true.



Mary T. Piszczor
Revenue Auditor III
Illinois Department of Revenue

Date: 7-8-15