

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

J.A.W. AQUA BELLA INC.,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-119
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

1. Petitioner is an Illinois Corporation located at 519 W Algonquin Rd., Arlington Heights, IL, 60005, and can be reached at 847-807-8515.

ANSWER: The Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by Mansoor Ansari located at 500 N. Michigan Avenue, Suite 300, Chicago, Illinois, 60611, who can be reached at 312-265-5626 or ma@myillinoistaxattorney.com.

ANSWER: The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Illinois business tax number is 2112-6518.

ANSWER: The Department admits the factual allegations contained in Paragraph 3.

4. Petitioner formed a Corporation on 4/10/1989, JA W Aqua Bella Inc., to operate a restaurant and bar.

ANSWER: The Department denies the factual allegations contained in Paragraph 4 and asserts that the Petitioner does not operate a restaurant and bar. The Department asserts that the Petitioner operates a banquet hall and conference center.

5. 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 Department admits the factual allegations contained in Paragraph 5.

6. Director Beard is the current Director of the Department.

ANSWER: The Department admits the factual allegations contained in Paragraph 6.

7. Director Beard is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the director of the Department. 20 ILCS 5/5-20.

ANSWER: The Department admits the factual allegations contained in Paragraph 7.

NOTICE

8. On April 21, 2015, the Defendants issued one Notice of Tax Liability ("Notice") totaling tax, penalties and interest of \$35,502.10 for the period of December 31st, 2011. True and accurate copies of the Notices are attached hereto as Exhibit A.

ANSWER: The Department admits the factual allegations contained in Paragraph 8 but asserts that the audit period is 7/1/09 through 12/31/11.

JURISDICTION

9. 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 factual allegations contained in Paragraph 9.

10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45, and 1-50 of the Tribunal Act because Petitioner timely filed a protest with the Department's Office of Administrative hearings within 60 days of the Notices and elected to transfer the case to the Tribunal before June 20th, 2015.

ANSWER: The Department admits the factual allegations contained in Paragraph 10.

BACKGROUND

11. Petitioner's business was created to operate a restaurant, inclusive of providing food, drink and hosting events.

ANSWER: The Department denies the factual allegations contained in Paragraph 11. The Department asserts that the Petitioner is not a restaurant but rather operates a banquet hall and conference center.

12. The Department audited the Petitioner's books and records for the Periods at issue.

ANSWER: The Department admits the factual allegations contained in Paragraph 12.

13. In addition to performing an audit of the Petitioner's sales, the Department's auditor also utilized a sample period and extrapolated those figures to the entire audit period.

ANSWER: The Department admits the factual allegations contained in Paragraph 13.

14. The Department made several adjustments to Petitioner's sales and use tax returns that resulted in the assessed liability at issue.

ANSWER: The Department admits the factual allegations contained in Paragraph 14.

15. The Department has incorrectly applied sales tax to credit card transaction fees charged to customers of the taxpayer.

ANSWER: The Department denies the factual allegations contained in Paragraph 15.

16. The Department has not allowed Chicago City Tax deductions paid.

ANSWER: The Department denies the factual allegations contained in Paragraph 16 and asserts that the Petitioner is located in Arlington Heights, IL, and, therefore, the City of Chicago tax is not an issue.

17. The Department has applied sales tax to deposits made by customers of the hotel for weddings and similar events to be performed in the future.

ANSWER: The Department denies the factual allegations contained in Paragraph 17 and asserts that the Petitioner is not a hotel and it was not able to be determined if the unreported receipts were, in fact, advance deposits.

18. The Department has not recognized that the taxpayer as a cash based business where sales tax is paid when the transaction with the customer is realized.

ANSWER: The Department denies the factual allegations contained in Paragraph 18.

19. On August 12, 2014, Petitioner timely filed a request for an Informal Conference Board Hearing, specifically reserving the right to transfer the case from the IDOR to the Illinois Independent Tax tribunal. A true and accurate copy of Petitioner's protest is attached hereto as Exhibit B.

ANSWER: The Department admits the factual allegations contained in Paragraph 19 but asserts that the Petitioner's filing with the Informal Conference Board occurs prior to the issuance of a notice that can be protested. The Department asserts that the right to apply to the Tax Tribunal remains due to the fact that a notice that can be protested was issued.

COUNT I- Improper method of calculating sales must not be used to determine liability.

20. Petitioner alleges that the sampling method cannot be used to extrapolate sales.

ANSWER: The Department denies the factual allegations contained in Paragraph 20.

21. That the credit card transaction fee must not be a basis to levy sales tax.

ANSWER: The Department denies the factual allegations contained in Paragraph 21.

22. That sales tax must not be levied on deposits for events that are to take place in the future.

ANSWER: The Department denies the factual allegations contained in Paragraph 22.

COUNT II- Penalties

23. Petitioner alleges that the penalties of \$13,440.00 must not be applied.

ANSWER: The Department denies the factual allegations contained in Paragraph 23.

24. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois sales tax on the full amount of assessment.

ANSWER: The Department denies the factual allegations contained in Paragraph 24.

25. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

ANSWER: The Department denies the factual allegations contained in Paragraph 25.

COUNT 3- Disallowed deduction

26. The Department has incorrectly disallowed taxes paid to the City of Chicago as a deduction for the taxpayer.

ANSWER: The Department denies the factual allegations contained in Paragraph 26 and asserts that the Petitioner is in Arlington Heights, IL, and no City of Chicago tax was paid.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice(s) correctly reflects the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Respectfully submitted,
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