

ANSWER: The Department denies the allegations in paragraph 4 of the petition in that among other things the allegations in paragraph 4 of the petition are vague, and that to the extent that they are intended to provide a description of the operations of the subject business during the taxable period, the Department denies that they provide a complete and accurate description thereof.

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 ILCS5/5-15.

ANSWER: The allegations in paragraph 5 of the petition consist of legal conclusions and are denied.

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

ANSWER: The Department admits the allegations in paragraph 6 of the petition.

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 allegations in paragraph 7 of the petition consist of legal conclusions and are denied.

8. On March 17, 2015, the Defendants issued a Notices of Tax Liability totaling tax, penalties and interest of \$245,290.00 for the periods through 01/2012-06/2014. True and accurate copies of the notices are attached hereto as Exhibit A.

ANSWER: The Department states that Exhibit A attached to the petition is a Notice of Proposed Liability and not a Notice of Tax Liability and denies the allegations in paragraph 8 of the petition.

9. On May 20, 2015 the Defendants claim to have filed a statutory notice providing the Petitioner 60 days to file a Complaint with the Illinois Tax Tribunal – Petitioners have not received such notice.

ANSWER: The allegations in paragraph 9 of the petition are vague and are denied.

10. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act, 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: The allegations in paragraph 10 of the petition consist of legal conclusions and are denied.

11. 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 February 1, 2014.

ANSWER: The allegations in paragraph 11 of the petition consist of legal conclusions and are denied.

12. Petitioner was created to operate a video game buy and sell retail store.

ANSWER: The Department denies the allegations in paragraph 12 of the petition in that among other things the allegations in paragraph 12 of the petition are vague, and that to the extent that they are intended to provide a description of the operations of the subject business during the taxable period, the Department denies that they provide a complete and accurate description thereof.

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

ANSWER: The Department admits that it conducted an audit with respect to the petitioner for the periods at issue. The Department denies any implication that a complete set of books and

records was made available for audit, and denies any remaining allegations in paragraph 13 of the petition.

14. 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 states that the allegations in paragraph 14 of the petition do not fairly and accurately describe the audit procedures performed and therefore deny the description and characterization thereof and any and all other allegations in paragraph 14 of the petition.

15. 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 that it made a determination that the petitioner had unreported sales and assessed additional Retailers Occupation and related tax liabilities. The allegations that "The Department made several adjustments to Petitioner's sales and use tax returns that resulted in the assessed liability at issue" are vague and conclusory and are denied.

16. The Department disallowed deductions claimed by the petitioner for items that were purchased, but not resold as a result of damage.

ANSWER: The Department denies the allegations in paragraph 16 of the petition.

17. The Department has levied burdensome penalties on the client's business as a result of the underreporting.

ANSWER: The Department admits that it levied penalties on the petitioner as a result of the underreporting of sales. The allegations that the penalties are burdensome are vague and conclusory and are denied.

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

ANSWER: The Department denies the allegations in paragraph 18 of the petition.

19. That the costs of goods sold vary and the sampling method yields a higher figure than the actual sale price.

ANSWER: The Department denies the allegations in paragraph 19 of the petition.

20. Petitioner alleges that the penalties are must not be applied.

ANSWER: The Department denies the allegations in paragraph 20 of the petition.

21. 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 allegations in paragraph 21 of the petition consist of legal and / or factual conclusions and are denied.

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

ANSWER: The allegations in paragraph 22 of the petition consist of legal and / or factual conclusions and are denied.

23. On May 20, 2015, the Defendants issued two Notices of Tax Liability totaling \$205,510.00 tax, \$3233.00 penalties, and \$7449.00 interest at \$245,290.00 through 01/2012-06/2014.

ANSWER: The Department admits that on May 21, 2015 it issued a Notice of Tax Liability totaling \$287,200.64. The Department further states that the Notice of Tax Liability speaks for itself and denies any and all remaining allegations in paragraph 23 of the petition.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
 - b. finding that the Notices of Tax Liability at issue are correct and should be finalized as issued;
 - c. ordering judgment in favor of the Department and against the Petitioner; and
- granting 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

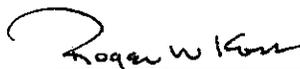
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ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

DISC REPLAY OF SOUTH COOK)	
KANKAKEE LLC,)	
)	
Petitioner)	
)	
V)	No. 15 TT 146
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

AFFIDAVIT OF ROGER KOSS
PURSUANT TO ILLINOIS SUPREME COURT RULE 216(c)

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.



Roger W. Koss
Audit Bureau
Sales and Miscellaneous Taxes Division Manager
Illinois Department of Revenue