

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

BIRLA, LLC,)		
)		
)		
v.)	Case No. 15-TT-160	
)		
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:

PARTIES

1. Petitioner is a corporation that can be contacted at 5918 Corey Lane, # 1 BL, Oak Forest, Illinois, 60452, and can be reached at 516-728-6062.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by The Law Office of James E. Dickett Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal

Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 3933-6840.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax law. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

NOTICE

5. On May 8, 2015, the Department issued a Notice of Tax Liability letter ("Notice") to Petitioner for the tax periods July 1, 2010 to December 31, 2013 in the amount of \$136,208 in tax (less payment/credit of \$16,346), plus late payment penalties of \$23,973 and negligence penalties of \$23,973, plus interest of \$8,823, for a total of \$176,631. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits it issued a Notice dated May 8, 2015 and states the Notice speaks for itself. The Department admits the May 8, 2015 Notice is attached as Petitioner's Exhibit 1.

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: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner obtained a late discretionary hearing from the Department dated July 31, 2015 (copy attached as Exhibit 2), and then timely filed this Petition within 60 days of the Department's letter granting the late discretionary hearing for Petitioner.

ANSWER: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the July 31, 2015, letter granting a late discretionary hearing is attached as Petitioner's Exhibit 2.

BACKGROUND

8. Petitioner operated a liquor store in rural Illinois.

ANSWER: The Department admits the factual allegations contained in Paragraph 8.

9. Defendants audited Petitioner's books and records for the tax periods January 1, 2011 to December 31, 2013.

ANSWER: The Department denies the allegations in Paragraph 9. The Department states the audit period was 07/01/2010 through 12/31/2013.

10. The audit liability contained in the Notice is based on projections whereby the Department overstated both the mark-up and the disallowed low rate sales adjustment.

ANSWER: The Department denies the allegations in Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by applying a mark-up to Petitioner's purchases.

ANSWER: The Department admits the allegations in Paragraph 12.

13. By applying this audit methodology during the audit period, the Department unreasonably inflated Petitioner's audit liability because the mark-up is too high for the Petitioner's rural location and also because the disallowed low rate sales adjustment is overstated based on Petitioner's low rate purchases.

ANSWER: The Department denies the allegations in Paragraph 13.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice 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.

COUNT II

All penalties should be abated based on reasonable cause.

14. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

15. In its Notice, the Department assessed both late and negligence penalties based on the audit liability.

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

16. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine and pay its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use an inflated mark-up to report its sales.

ANSWER: Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 19.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice 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.

Dated: August 24, 2015

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Respectfully submitted,
Illinois Department of Revenue

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