

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

DIRECT AUCTION GALLERIES INC.,)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-172
)	
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ANSWER

The Department of Revenue (the “Department”) 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 an Illinois corporation located at 7232 North Western Avenue, Chicago, Illinois, 60645, and can be reached at 773-465-3300.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (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) (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 3389-5996.

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 laws. 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 July 7, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") for the tax periods January 1, 2012 through June 30, 2014. The Notice reflects \$62,853 in tax due, plus late penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits that the Notice reflects \$62,853.00 in tax due, \$12,571.00 in late payment penalties, and \$3,035.28 in interest, for a total assessment of

\$78,459.28. The Department admits the other factual allegations 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: 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 timely filed this Petition within 60 days of the Notice.

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.

BACKGROUND

8. Petitioner is an auction company located on the north side of Chicago.

ANSWER: The Department objects on the grounds of vagueness and ambiguity of the term “auction company.” The Department admits that one of the two locations of Petitioner’s business, at 7232 North Western Avenue, Chicago, Illinois 60645, engages in periodic auctions. Otherwise, denied.

9. Defendant audited Petitioner’s books and records for sales tax for the tax periods

January 1, 2012 to June 30, 2014. The Department also audited Petitioner for prior tax periods and the prior audit is currently pending in the Tribunal under docket number 14 TT 203.

ANSWER: The Department admits the factual allegations contained in Paragraph 9.

10. The audit liability contained in the Notice is based on the Department disallowing multiple sales for resale even though the Petitioner's books and records contained "other evidence" of resale.

ANSWER: The Department objects to the use of the term "other evidence" as vague and ambiguous. Otherwise, the basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations in Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation 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 determined the audit liability by disallowing multiple sales for resale even though the Petitioner's maintained "other evidence" of resale.

ANSWER: The Department objects to the use of the term “other evidence” as vague and ambiguous. Otherwise, the basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations in Paragraph 12.

13. By disallowing Petitioner’s sales for resales, the Defendant drastically and unreasonably inflated Petitioner’s audit liability.

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 allegation 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 late penalties in excess of \$17,000.

ANSWER: Denied. The Department assessed a Late Payment Penalty Increase, as shown in the Notice, of \$12,571.00

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 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).

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