

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SONY SUBMARINE INC.)	
INC.,)	
Petitioner)	
)	
V)	No. 15 TT 181
ILLINOIS DEPARTMENT)	Chief Judge James M. Conway
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. Petitioner is an Illinois corporation (defunct since May 2014) formerly located in Chicago, Illinois, and can be reached at 312-208-9426.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

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 Department admits the allegations in paragraph 2 of the petition.

3. Petitioner’s Taxpayer (Account) ID is 5567-2061.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

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: The allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

5. On July 15, 2015, Petitioner received a Notice of Tax Liability letter for the sales tax audit periods January 1, 2011 to June 30, 2013 in the amount of \$114,953 in tax plus interest plus late and fraud penalties. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

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: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

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

8. Petitioner was a sandwich shop located on the west side of Chicago.

ANSWER: The Department admits the allegations in paragraph 8 of the petition.

9. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s purchases by estimated selling prices of Petitioner’s products without providing any allowance for “specials”, normal business “waste”, tax-exempt customers, and resale items like bags and shortening.

ANSWER: The Department admits that after having determined that the Petitioner did not

maintain cash register z-tapes, that it used an alternative approach for determining and establishing receipts which involved applying a calculated mark-up to the Petitioner's purchases. The Department further states that the precise manner of establishing that alternative approach is as set forth in the Auditor's Comments and work papers and therefore denies the Petitioner's description and characterization thereof and all other allegations in paragraph 9 of the petition.

COUNT I

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 9 as though fully set forth herein.

11. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices without providing allowances for several items like "specials" and "waste".

ANSWER: The Department admits that after having determined that the Petitioner did not maintain cash register z-tapes, that it used an alternative approach for determining and establishing receipts which involved applying a calculated mark-up to the Petitioner's purchases. The Department further states that the precise manner of establishing that alternative approach is as set forth in the Auditor's Comments and work papers and therefore denies the Petitioner's description and characterization thereof and all other allegations in paragraph 11 of the petition.

12. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's actual selling prices during the audit period were lower than the estimates used by the

Department.

ANSWER: The Department denies the allegations in paragraph 12 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 Notice of Tax Liability at issue is 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.

COUNT II

13. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 12 as though fully set forth herein.

14. In its Notices, the Department assessed late and fraud penalties.

ANSWER: The Department admits the allegations in paragraph 14 of the petition.

15. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The allegations in paragraph 15 of the petition consist of legal conclusions and are thus denied.

16. 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 its proper tax liability and to pay its proper tax liability in a timely fashion, and 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: The allegations in paragraph 16 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

17. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax during the audit periods by using actual selling prices and clearly did not use the Department's estimated audit results, so neither the late nor the fraud penalties apply (no intent to defraud).

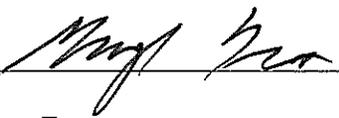
ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

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 Notice of Tax Liability at issue is 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,

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