

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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EWING LIQUORS, INC.,	)	
Petitioner,	)	
	)	
v.	)	No. 15 TT 197
	)	Judge Brian F. Barov
	)	
ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
	)	
Respondent.	)	

**DEPARTMENT’S ANSWER TO PETITION**

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the “Petition”), hereby states as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 10459 South Ewing Avenue, Chicago, Illinois, 60617, and can be reached at 773-721-851.

**ANSWER:** The Department admits the allegations contained in paragraph 1.

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

**ANSWER:** The Department admits the allegations contained in paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 3098-9523.

**ANSWER:** The Department admits the 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:** The Department admits the allegations contained in paragraph 4.

## NOTICE

5. On July 21, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods January 1, 2012 to June 30, 2014. The Notice reflects \$144,214 in tax due, \$28,843 in late payment penalties, \$72,107 in fraud penalties, and \$7,047 in interest, for a total of \$252,211. The Notice is attached hereto as Exhibit 1.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit 1 and referred to in paragraph 5 and state that such document speaks for itself.

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 Department admits the allegations contained in paragraph 6.

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 Department admits the allegations contained in paragraph 7.

## BACKGROUND

8. Petitioner is a liquor store located on the southeast side of Chicago.

**ANSWER:** The Department admits the allegations contained in paragraph 8.

9. Defendants audited Petitioner for the tax periods Jan. 1, 2012 to June 30, 2014.

**ANSWER:** The Department admits the allegations contained in paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products. The estimated selling prices were found by the Department in a book at the library, and the Department's projections did not adequately provide allowances for theft, waste, etc.

**ANSWER:** The Department admits that it used an industry publication to determine the appropriate markup on Petitioner's purchases in order to estimate Petitioner's actual selling prices but affirmatively states that such information was the best and most reliable information available as Petitioner's books and records were deemed not reliable by the Department's auditor.

## 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 repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying all of Petitioner's purchases by estimated selling prices found in a book at the library.

**ANSWER:** The Department admits that it used an industry publication to determine the appropriate markup on Petitioner's purchases in order to estimate Petitioner's actual selling prices but affirmatively states that such information was the best and most reliable information available as Petitioner's books and records were deemed not reliable by the Department's auditor.

13. 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 selling prices during the audit period were lower than the estimates used by the Department especially with respect to liquor sales due to the location of the business and its customer base, and also because the Department's projections improperly failed to provide an allowance for theft, waste, etc.

**ANSWER:** Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count I of this matter;
- B) That the Department's Notice of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper

## COUNT II

### **All Penalties Should be Abated on Reasonable Cause and Other Factors.**

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

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

15. In its Notice, the Department assessed penalties based on the audit liability.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 1 and referred to in paragraph 15 and state that such document speaks for itself.

16. 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 Department admits the existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 16 and state such 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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(b).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 17 and state such regulation speaks for itself.

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:** The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 18 and state such regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices, so neither the late penalties nor the fraud penalties are proper.

**ANSWER:** Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 19.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;
- B) That the Department's Notice of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper

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Respectfully Submitted,

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Illinois Attorney General

By /s/ Michael Coveny  
Michael Coveny,  
Assistant Attorney General