

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

XS LIQUORS, INC.,)	
)	
Petitioner,)	
v.)	No. 15 TT 214
)	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 8542 West Lawrence Avenue, Norridge, Illinois, 60634, and can be reached at 630-730-3721.

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

2. Petitioner is represented by Romanoff & Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558, and can be reached at 708-784-322 or jdickett@aol.com.

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

3. Petitioner’s Taxpayer (Account) ID is 3530-8249.

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 existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

NOTICE

5. On September 22, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods of July 1, 2011 to December 31, 2013. The Notice reflects \$40,306 in tax plus interest plus penalties for late payment, negligence, and fraud. The Notice also reflects payments of \$40,306, so all of the tax has been paid in full. 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.

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: The Department admits the allegations contained in paragraph 6.

7. The 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: Although paragraph 7 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 7.

BACKGROUND

8. Petitioner is a liquor store located near O'Hare airport.

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

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

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.

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 price but affirmatively states that such information was the best and only information available as Petitioner provided very limited books and records to the Department's auditor in support of the amount of gross receipts claimed on its sales tax returns.

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 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 Petitioner's purchases by estimated selling prices and the Department's calculations do not adequately account for inventory adjustments and inventory losses like theft and spoilage.

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 price but affirmatively states that such information was the best and only information available as Petitioner provided very limited books and records to the Department's auditor in support of the amount of gross receipts claimed on its sales tax returns.

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.

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. The Department further affirmatively states that Petitioner failed to provide most of the books and records it is required by law to maintain and that the very limited sample of Petitioner's books and records actually provided to its auditor were wholly inadequate.

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 based on reasonable cause

14. Petitioner realleges and incorporates by reference the allegations 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 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: 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.Adm.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 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.Adm.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 estimates to determine its sales.

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.

20. The fraud penalty also is not supported by the fact because there was no intent to defraud and also because the audit liability as issued is overstated and, when corrected, will not be within the Department's normal fraud guidelines.

ANSWER: Although paragraph 20 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 20.

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

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By _____
Michael Coveny,
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on November 24, 2015.



Michael Coveny,
Assistant Attorney General