

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

---

---

**SYBARIS CLUBS INTEERNATIONAL )  
INC., AN ILLINOIS COPROPATION )**

**Petitioner, )**

**v. )**

**Case No. 15-TT-249  
Judge Brian F. Barov**

**DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS, )**

**Respondent. )**

---

---

**ANSWER**

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:

**INTRODUCTION**

1. Petitioner Sybaris Clubs International, Inc. ("Sybaris") is an Illinois corporation with its principal office located at 2430 East Rand Road, Arlington Heights, Illinois 60004. Its telephone number is (847) 637-3000. The Department assigned Petitioner account identification number 41375521.

**ANSWER:** The Department admits the allegations in Paragraph 1.

2. On October 15, 2015, the Department issued two Notices under the Illinois Hotel Operators' Occupation Tax Act for the combined period July 1, 2008 to March 31, 2014 which, in the aggregate, assess tax in the amount of \$2,147,194.00, late filing payment penalties of \$504,437.00, late filing penalty increases of \$20,250.00 and interest of \$314,299.33, for a total of \$2,986,180.33. Copies of the Notices are attached as Exhibit 1.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the documents attached to Plaintiff's Petition as Exhibit 1 and referred to in paragraph 2 and state that such documents speak for themselves.

3. The Department erred in assessing Petitioner for its activities under the Illinois Hotel Operators' Occupation Tax Act because Petitioner is not a "hotel" as defined in Section 2(1) of the Act (35 ILCS 145/2(1)). Alternatively, Petitioner is exempt from the tax because it is a private club subject to the exemption in Section 480.101(b)(2) of the Illinois Administrative Code.

**ANSWER:** Although paragraph 3 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 3.

### **BACKGROUND AND RELEVANT FACTS**

4. Sybaris began doing business in Illinois in 1974. It currently maintains three facilities in Illinois: Downers Grove, Frankfort, and Glenview.

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

5. Sybaris suites may only be reserved for use by Sybaris members.

**ANSWER:** The Department denies the allegations contained in paragraph 5.

6. Sybaris members pay an annual membership fee, which entitles them to reserve times to use suites and receive suggestions and other communications designed to enhance their personal relationships. Higher level memberships grant those members opportunities for discounts on suites and other preferences.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 and therefore neither admits or denies the allegations.

7. At each location, Sybaris members, who must show proof of age over 18, can reserve the use of a suite specifically designed to be a romantic retreat for couples to be intimate for several hours.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 and therefore neither admits or denies the allegations.

8. Sybaris does not hold itself out to the public as a hotel.

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

9. All street signage refers to the Sybaris facilities as "Sybaris Pool Suites" or a "romantic getaway". There is no street signage that indicates to passers-by whether suites are currently available.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 and therefore neither admits or denies the allegations.

10. Sybaris suites are available by reservation only.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 and therefore neither admits or denies the allegations.

11. Sybaris' members generally live in close proximity to its suites' locations.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 and therefore neither admits or denies the allegations.

12. Only two persons may use a Sybaris suite, a rule that is strictly enforced. Attempts to circumvent this rule results in the loss of membership and, in extreme circumstances, the arrest and physical removal of the offending member from Sybaris premises.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 and therefore neither admits or denies the allegations.

13. Children, pets and visitors are not permitted in a Sybaris suite.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 and therefore neither admits or denies the allegations.

14. Sybaris suites are reserved for and charges are based on either a block of 4 hours or an overnight stay.

**ANSWER:** The Department admits the allegations contained in paragraph 14.

15. Sybaris suites are frequently used by members for less than the total time for which the suite is reserved.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 and therefore neither admits or denies the allegations.

16. No general housekeeping or maid service is available to members while they are using a Sybaris suite.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 and therefore neither admits or denies the allegations.

17. There are no common areas for members at any Sybaris facility.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 and therefore neither admits or denies the allegations.

18. The check-in office at each Sybaris facility offers for sale memorabilia and sexual aids, and two facilities offer liquor by the bottle, but no food, snacks or toiletries are offered for sale.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18 and therefore neither admits or denies the allegations.

19. Sybaris collects Illinois sales tax on the items sold to members at its check-in offices.

**ANSWER:** The Department admits that the Sybaris collects sales tax generally on its sales of items sold at its check-in offices but is without knowledge or information as to whether such sales are limited only to members.

20. Each Sybaris suite is designed for couples only, with two chairs, two robes, two cups and two champagne flutes.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 and therefore neither admits or denies the allegations.

21. Sybaris suites have no dressers in which to place or store clothing.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 and therefore neither admits or denies the allegations.

22. Sybaris suites have no nightstands with storage.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 and therefore neither admits or denies the allegations.

23. Sybaris suites have no desks or work areas.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 and therefore neither admits or denies the allegations.

24. Sybaris facilities do not offer copying, printing or facsimile services to members.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24 and therefore neither admits or denies the allegations.

25. Sybaris suites have no kitchens or food preparation areas.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 and therefore neither admits or denies the allegations.

26. Sybaris suites have neither a telephone nor windows

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 and therefore neither admits or denies the allegations.

27. No Sybaris facility has a laundry room for members or offers laundry services to members.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 and therefore neither admits or denies the allegations.

28. Each Sybaris suite has a two person steam room and either a whirlpool tub, larger spa, or a pool of varying size, depending upon room size and price.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 and therefore neither admits or denies the allegations.

29. Each Sybaris suite has a DVD player and television along with adult videos for members to use as part of their intimate experience.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 29 and therefore neither admits or denies the allegations.

30. There is generous use of glass and mirrors in a Sybaris suite, both on the walls and over the bed.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30 and therefore neither admits or denies the allegations.

31. Depending upon the location and size of a Sybaris suite, the suite contains at least one of the following:

- a. A hook above the bed to which a member can attach a patented device known as a "Taiwan basket" to enhance a couple's sensual experience;
- b. Hooks on a diagonal across the bed to which a member can attach a device known as an "intimacy hammock" or "love swing" to enhance a couple's sensual experience; or
- c. "Sexual furniture" from an unrelated company, designed to enhance a couple's sensual experience.

**ANSWER:** The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 31 and therefore neither admits or denies the allegations.

**Prior Court Finding that Sybaris is not a Hotel:**

32. In 1989, the Village of Downers Grove passed an ordinance establishing a tax on "persons engaged in the business of renting, leasing or letting rooms in a hotel" (the "1989 Downers Grove Tax"). A copy of the ordinance is attached as Exhibit 2.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance set forth or referred to in paragraph 32 and state such provision speaks for itself.

33. The 1989 Downers Grove Tax ordinance defined a "hotel" as "any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping

accommodations. The term includes inns, motels, hotels, tourist homes or courts, lodging houses, rooming houses and apartment houses".

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance set forth or referred to in paragraph 33 and state such provision speaks for itself.

34. The 1989 Downers Grove Tax ordinance defined the terms "room" and "rooms" as " ... any living quarters, sleeping or housekeeping accommodations.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance set forth or referred to in paragraph 34 and state such provision speaks for itself.

35. The definitions of "hotel" and "room/rooms" in the 1989 Downers Grove Tax ordinance are identical to the definitions of those terms in Sections 2(1) and 2(4) of the Act.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance and state of Illinois statutory provision set forth or referred to in paragraph 35 and state such provisions speak for themselves.

36. Shortly after the enactment of the 1989 Downers Grove Tax, Sybaris, through its then attorneys, challenged whether the tax applied to its operations, and on January 18, 1990, the village issued a letter to Sybaris agreeing that after review by the village's legal department, the tax did not apply to Sybaris (Exhibit 3).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 3 and referred to in paragraph 36 and state that such document speaks for itself.

37. In 1993, the Village of Downers Grove passed a new ordinance establishing a hotel tax (the "1993 Downers Grove Tax"). A copy of the ordinance is attached as Exhibit 4).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 4 and referred to in paragraph 37 and state that such document speaks for itself.

38. The 1993 Downers Grove Tax ordinance defined a "hotel" as "any building or buildings in which the public may, for rent, obtain living quarters, sleeping or housekeeping

accommodations. The term includes inns, motels, hotels, clubs, tourist homes or courts, lodging houses, rooming houses and apartment houses".

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance set forth or referred to in paragraph 38 and state such provision speaks for itself.

39. The 1993 Downers Grove Tax ordinance further defined a "hotel room" as "any room or rooms with living quarters, sleeping or housekeeping accommodations and offered for rental on a daily or weekly basis, or any fraction thereof, including but not limited to hourly or half day rentals."

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance set forth or referred to in paragraph 39 and state such provision speaks for itself.

40. The definitions of "hotel" and "room/rooms" in the 1993 Downers Grove Tax ordinance are broader in scope than the definitions of those terms in the Act.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Downers Grove ordinance and state of Illinois statutory provision set forth or referred to in paragraph 40 and state such provisions speak for themselves.

41. The Village of Downers Grove brought an action before the Circuit Court in DuPage County requesting, in part, a finding that Sybaris was subject to the 1993 Downers Grove Tax. The action bore case number 93 MR 298.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the litigation set forth or referred to in paragraph 41 and state that such litigation is a matter of public record and speaks for itself.

42. After trial in the above action, the court entered an order finding Sybaris (1) not to be a hotel as defined by the 1993 Downers Grove Tax ordinance and (2) not a business for use by the public generally. A copy of the order is attached as Exhibit 5.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the litigation set forth or referred to in paragraph 42 and state that such litigation is a matter of public record and speaks for itself.

43. The Village of Downers Grove appealed from that order to the Appellate Court for the Second District of Illinois.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the litigation set forth or referred to in paragraph 43 and state that such litigation is a matter of public record and speaks for itself.

44. On appeal, the appellate court, in that matter bearing appeal number 2-91-0601, affirmed the decision of the trial court that Sybaris is not a "hotel" under the definition of the 1993 Downers Grove Tax ordinance. The appellate court did not address whether Sybaris is a private club because the finding that Sybaris is not a hotel rendered the question moot. A copy of the opinion, issued as a Rule 23 Order, is attached as Exhibit 6.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the litigation set forth or referred to in paragraph 44 and state that such litigation is a matter of public record and speaks for itself.

**2014 Audit of Sybaris by Illinois Department of Revenue:**

45. In 2014, Sybaris was audited by the Department with regard to the Illinois Hotel Operators' Occupation Tax for the period July 1, 2008 through March 31, 2014.

**ANSWER:** The Department admits the allegations contained in paragraph 45.

46. On October 8, 2014, the Department issued a Notice of Proposed Liability to Petitioner, a copy of which is attached as Exhibit 7, asserting tax due under the Act of \$2,147,194.00 plus penalty of \$398,578.00 and interest of \$239,325.00, for a total of \$2,785,097.00.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 7 and referred to in paragraph 46 and state that such document speaks for itself.

47. On November 21, 2014, Sybaris filed a Form ICB-1, Request for Informal Conference Board Review, with the Department's Informal Conference Board (the "Board"). The Board granted Petitioner's request.

**ANSWER:** The Department admits the allegations contained in paragraph 47.

48. The informal conference was held on March 30, 2015.

**ANSWER:** The Department admits the allegations contained in paragraph 48.

49. On June 4, 2015, the Board issued its Action Decision, stating that Sybaris is a hotel and not a private club (Exhibit 8).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 8 and referred to in paragraph 49 and state that such document speaks for itself.

50. On October 15, 2015, the Department issued the Notices.

**ANSWER:** The Department admits that it issued its Notices of Tax Liability on October 15, 2015.

### **APPLICABLE LAW**

51. Section 3(A) of the Illinois Hotel Operators' Occupation Tax Act imposes a tax on "persons engaged in the business of renting, leasing or letting rooms in a hotel .... " (35 ILCS 145/3(A)).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 51 and state such provision speaks for itself.

52. For purposes of the Act, Section 2(1) of the Act defines "Hotel" as "any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses."

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 52 and state such provision speaks for itself.

53. Section 2(4) of the Act defines "Room" or "rooms" as "any living quarters, sleeping or housekeeping accommodations."

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 53 and state such provision speaks for itself.

54. Section 480.10l(b)(2) of the Illinois Administrative Code (86 Ill. Adm. Code 480.10l(b)(2)) provides that "Since the tax is limited to the renting of rooms to the "public", a private club that

restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from those rooms."

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 54 and state such regulation speaks for itself.

55. Neither the Act nor the Administrative Code provides any other definitions of the above terms in the context of the Illinois Hotel Operators' Occupation Tax Act.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the Illinois regulation and Illinois statutory provision set forth or referred to in paragraph 55 and state such provisions speak for themselves.

56. On January 28, 2005, the Department issued General Information Letter ST 05-0016-GIL to a taxpayer other than Sybaris requesting a determination that the requesting taxpayer's operations are not subject to the Hotel Operators' Occupation Tax (Exhibit 9).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 9 and referred to in paragraph 56 and state that such document speaks for itself.

57. The facts presented by the taxpayer requesting the ruling are very similar to Sybaris' operations.

**ANSWER:** Although paragraph 57 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 57.

58. The Department's response states in part, "As you are aware, a private club which restricts the renting of rooms to its members and its guests does not incur Hotel Operators' Occupation tax on its rental receipts for such rooms. See 86 Ill. Adm. Code 480.101(b)(2)."

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 9 and referred to in paragraph 58 and states that such document speaks for itself.

## **ERRORS**

59. The Department incorrectly categorized Sybaris as a "hotel" subject to the Act:
- a. Sybaris does not provide living quarters to its members.
  - b. Sybaris does not provide sleeping accommodations to its members.

c. Sybaris does not provide housekeeping accommodations to its members.

**ANSWER:** Although paragraph 59 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 59.

60. The Department incorrectly determined that Sybaris is not a private club.

**ANSWER:** Although paragraph 60 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 60.

61. The Department failed to consider that other governmental agencies in Illinois have concluded that Sybaris' operations do not fall within the definition of "hotel" as set forth in the Act, and that in one instance a trial court and an appellate court in Illinois reached the same conclusion with a more inclusive definition than that in the Act.

**ANSWER:** Although paragraph 61 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 61.

62. The Department failed to give consideration to its own General Information Letter ST 05-0016-GIL, which when presented with a very similar fact pattern did not reject the requesting taxpayer's statement that it was a private club, and in fact reiterated that a private club meets the exception of 86 Ill. Adm. Code 480.101 (b )(2).

**ANSWER:** Although paragraph 62 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 62.

### **CONCLUSION AND RELIEF REQUESTED**

63. Sybaris is not a "hotel" as defined by the Illinois Hotel Operators' Occupation Tax Act, and therefore is not subject to the Illinois Hotel Operators' Occupation Tax.

**ANSWER:** Although paragraph 63 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 63.

64. Alternatively, Sybaris is a private club described in 86 Ill. Adm. Code 480.101(b)(2) and therefore exempt from the Illinois Hotel Operators' Occupation Tax.

**ANSWER:** Although paragraph 64 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 64.

WHEREFORE, the Department prays:

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

Respectfully submitted,  
Illinois Department of Revenue

By:     /s/ Michael Coveny      
Michael Coveny  
Special Assistant Attorney General

Michael Coveny  
Illinois Department of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-6697  
[michael.coveny@illinois.gov](mailto:michael.coveny@illinois.gov)

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

---

---

**SYBARIS CLUBS INTEERNATIONAL )  
INC., AN ILLINOIS COPROPATION )**

**Petitioner, )**

v. )

**Case No. 15-TT-249  
Judge Brian F. Barov**

**DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS, )**

**Respondent. )**

---

---

**AFFIDAVIT OF JASON W. MISUINAS  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Auditor I.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 6-7, 9-13, 15-19, and 20-31.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he verily believes the same to be true.

  
\_\_\_\_\_  
Jason W. Misuinas  
Revenue Auditor I  
Illinois Department of Revenue

DATED: FEB 5, 2016

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:

Robert A. Carson  
Gould & Ratner, LLP  
222 North LaSalle Street  
Suite 800  
Chicago, IL 60601

Edward A. Trio  
Gould & Ratner, LLP  
222 North LaSalle Street  
Suite 800  
Chicago, IL 60601

By email attachment to [rcarson@gouldratner.com](mailto:rcarson@gouldratner.com) and [etrio@gouldratner.com](mailto:etrio@gouldratner.com) on February 5, 2016.



---

Michael Coveny,  
Assistant Attorney General