

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

---

---

<b>HALANICK ENTERPRISES, INC.,</b>	)	
	)	
v. <b>Petitioner,</b>	)	
	)	<b>No. 16 TT 8</b>
	)	<b>Chief Judge James M. Conway</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Respondent.</b>	)	

---

---

**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:

**INTRODUCTION**

1. The "Notice" was issued by the Department on November 13, 2015 assessing in the amount of \$27,133.00 in tax, \$10,853.00 in penalties and \$11,070.48 in interest for taxable periods January 1, 2009 through June 30, 2009. A copy of the "Notice" is attached to this Petition.

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

2. The second "Notice" was issued by the Department on November 13, 2015 assessing in the amount of \$114,511.00 in tax, \$23,825.00 in penalties and \$15,409.64 in interest for taxable periods July 1, 2009 through December 31, 2012. A copy of the "Notice" is attached to this Petition

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document referred to in paragraph 2 and state that such document speaks for itself.

3. Petitioner is a corporation with its principal place of business in Orland Park, Illinois.

**ANSWER:** The Department admits the allegations contained in paragraph 3.

4. It is located at 14428 John Humphrey Dr., and its telephone number is 708-403-3334. The Taxpayer Account number is 2957-9333.

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

### **BACKGROUND AND RELEVANT FACTS**

5. Petitioner filed a return for taxable period January 1, 2009 to December 31, 2012 ("Tax Period") on a monthly basis.

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

6. During the audit for the Tax Period, Petitioner and its accountant were preparing documents for the auditor.

**ANSWER:** Paragraph 6 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

7. Because some documents and spreadsheets took longer to prepare, Petitioner signed a waiver of the statute of limitations until December 2015.

**ANSWER:** Paragraph 7 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

8. In August 2015, Petitioner provided the remaining documents for the audit, including the figures for the ending deposits from customers for each year.

**ANSWER:** Paragraph 8 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

9. Previously, Petitioner had submitted, and the auditor had applied, the ending deposits for the Year 2009.

**ANSWER:** Paragraph 15 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

10. The audit continued on August 24 and 25, 2015.

**ANSWER:** Paragraph 10 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

11. However, although the Petitioner had supplied ending deposit figures for 2010, 2011, and 2012, the auditor did not apply them to her sales reconciliation worksheet.

**ANSWER:** The Department admits that it did not use the ending deposit figures supplied by Petitioner but affirmatively states that such figures were not usable or

reliable because the auditor was unable to verify or gain control over the amounts claimed by Petitioner by corroborating them against original source documents.

12. The addition of the ending deposits would have significantly affected the outcome of the audit.

**ANSWER:** Paragraph 12 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

13. Upon information and belief, even though the Petitioner's waiver was until December 2015, the auditor was under pressure to close the audit.

**ANSWER:** Paragraph 13 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

### **APPLICABLE LAW**

14. Because the Illinois Department of Revenue issued a Notice of Tax liability and because the amount of tax due is in excess of \$15,000, jurisdiction is conferred by the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010.

**ANSWER:** Although paragraph 14 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 14.

15. Because the tax at issue is retail sales tax, the Retailers' Occupation Tax Act, 35 ILCS 120, applies and falls within the jurisdiction of the Tribunal.

**ANSWER:** Although paragraph 15 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 15.

### **ERROR 1**

16. Because the ending deposits from customers are not income until the next year when the sale is finalized, the deposits should be deducted from that year and carried over to the next.

**ANSWER:** Although paragraph 16 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 16.

17. Petitioner supplied year end deposits for the Tax Period, but the auditor only applied the figures for 2009, which were carried over into 2010.

**ANSWER:** The Department admits that it did not use the ending deposit figures supplied by Petitioner but affirmatively states that such figures were not usable or

reliable because the auditor was unable to verify or gain control over the amounts claimed by Petitioner by corroborating them against original source documents.

18. The auditor failed to apply the ending deposits for 2010, 2011, and 2012 because the deposits were not income for those years, but rather the years following.

**ANSWER:** The Department denies the allegations contained in paragraph 18.

19. As a result, the audit was inconsistent and subjected Petitioner to taxes, penalties, and interest on income outside the Tax Period.

**ANSWER:** The Department denies the allegations contained in paragraph 19.

20. Therefore, the ending deposits should be applied to the audit and a new notice of tax liability issued, if any liability is found to exist.

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

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department;
- 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

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:

John O'Brien  
Walters O'Brien Law Offices  
800 West Huron Street / Suite 4E  
Chicago, IL 60642

By email to jobrien@waltersobrienlaw.com on March 15, 2016



---

Michael Coveny,  
Assistant Attorney General