ILLINOIS INDEPENDENT
TAX TRIBUNAL

CYNTHIA A. DRAFALL, an individual	**)**	
Petitioner,	**)**	**No. 16-TT-20**
v.	**)**	
ILLINOIS DEPARTMENT OF REVENUE,	**)**	**Judge Brian F. Barov**
Defendant.	**)**	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

PARTIES

1. Petitioner is an Illinois resident who resides at 275 South Collins Street, South Elgin, Illinois 60177 and can be reached at 847-269-5112.

   ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 1.

2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg, and Michael W. Gutting of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or tcalandriello@dandgpc.com. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Michael W. Gutting can be reached at 312-263-2200 or mgutting@dandgpc.com.

   ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 2.

3. The last four digits of Petitioner's Social Security number are 7195.

   ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within 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. See 20 ILCS 5/5-15.

   ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

NOTICE

Illinois Department of Revenue

5. On information and belief, in or about May or June of 2015, the Department issued an Assessment and Notice of Intent (the "Notice of Penalty Liability") to Petitioner proposing a responsible officer penalty liability of $17,305.54 equaling the outstanding sales/use tax liabilities of Top Table LLC covering the period October 2014 through December 2014 (the "period at issue"). A copy of the Department's Collection Action Assessment and Notice of Intent dated August 20, 2015 reflecting the Notice of Penalty Liability balance is attached hereto as **Exhibit A.**

   ANSWER: The Department states that this documentation pertains to the reporting periods ending on October 2014, November 2014, and December 2014. Otherwise, the Department admits the factual allegations contained within Paragraph 5.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the "Tribunal Act"), 35 ILCS 1010/1-1 *et seq.*

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

7. On December 8, 2015, The Department's Office of Administrative Hearings granted Petitioner's request for a late discretionary hearing. A copy of the Department's December 8, 2015 letter is attached as **Exhibit B.**

   ANSWER: The Department admits the factual allegations contained within Paragraph 7.

8. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act, because Petitioner timely filed this petition within 60 days of the issuance of the Department's December 8, 2015 letter.

   ANSWER: Paragraph 8 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

BACKGROUND

9. Top Table LLC was a restaurant located at 1 West Illinois Street, St. Charles, Illinois 601274. The liability appears to stem from the non-payment and/or underpayment of sales tax covered in the period at issue.

   ANSWER: The Department denies that the zip code is 601274, as it is listed as 60174. The Department admits the rest of the listed address. Otherwise, the Department admits the factual allegations contained within Paragraph 9.

10. During the period at issue, Petitioner did not have control, supervision, or responsibility over the filing of Top Table LLC's sales tax returns (and attendant collection and payment of tax) and was not responsible for Top Table LLC's unpaid liabilities.

    ANSWER: The Department denies the factual allegations contained within Paragraph 10.

11. During the period at issue, Petitioner did not act willful in connection with Top Table LLC's sales/use tax liabilities.

ANSWER: The Department denies the factual allegations contained within Paragraph 11.

COUNT I

Defendant's Proposed Penalty Liability Assessment against the Petitioner is not Supported

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11 above as and for this paragraph 12.

    ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 11 as though fully set forth herein.

13. The Department erred in determining that Petitioner is personally responsible (in accordance with 35 ILCS 735/3-7) for Top Table LLC's sales/use tax liabilities as set forth in the Department's Notice of Penalty Liability which the Petitioner has never received.

    ANSWER: The Department denies the factual allegations contained within Paragraph 13. The Department adds that the Notice of Penalty Liability was sent to the Petitioner's address.

WHEREFORE, the Department respectfully requests this Tribunal:

a. Deny each prayer for relief in the Petition;

b. Find that the Department's Notice correctly reflects the Petitioner's liability;

c. Enter judgment in favor of the Department and against the Petitioner; and

d. Grant any further relief this Tribunal deems just and appropriate.

Dated: February 24, 2016

Respectfully submitted,
Illinois Department of Revenue

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