ILLINOIS INDEPENDENT
TAX TRIBUNAL

TAP HOUSE GRILL ST CHARLES LLC	)	
	)	
Petitioner,	)	
v.	)	No. 14 TT 154
	)	Chief Judge James Conway
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, and for its Answer to Petition ("Petition"), hereby states as follows:

Jurisdiction and Venue

1. This timely petition involves a Notice of Tax Liability (NTL) that assesses an amount in excess of $15,000.00 in tax, penalty and interest proposed for assessment under a tax law identified in Section 1-45 of the Tax Tribunal Act; therefore, the Tax Tribunal has jurisdiction over this petition.

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

2. Tap House St. Charles accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

ANSWER: Paragraph 2 is not an allegation of material fact but a statement of Petitioner's belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

Facts Common to all Counts

The Parties

3. Tap House St. Charles is a limited liability company maintaining its principal office at 708 south Vermont Street, Palatine, Illinois 60067-7139.

ANSWER: The Department admits the allegations contained in paragraph 3

4. Tap House St. Charles is engaged in the restaurant/bar business, and was so engaged in Illinois during the taxable periods at issue in this petition.

ANSWER: The Department admits the allegations contained in paragraph 4

5. The Illinois Department of Revenue is an executive agency authorized, among other functions, to administer and enforce the provisions of the Illinois Retailers' Occupation Tax Act, and the Illinois Use Tax Act. 20 ILCS 2505/2505-25; 20 ILCS 2505/2505-90.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 5 and states such provision speaks for itself.

The Retailers' Occupation Tax Act and the Use Tax Act and the Uniform Penalty and Interest Act

6. The Retailers' Occupation Tax Act (the "ROT") imposes a tax on persons engaged in the occupation of selling tangible personal property at retail in Illinois. 35 ILCS 120/1 *et seq.*

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 6 and states such provision speaks for itself.

7. The Use Tax Act (the "UT") imposes a tax on a purchases of tangible personal property for use or consumption, and not for resale, from a retailer. 35 ILCS 105/1 et. Seq.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 7 and states such provision speaks for itself.

8. The ROT is imposed on the gross receipts from a taxable retail sale.

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

9. The UT is imposed on the purchase price of a taxable retail purchase.

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

10. The Illinois Uniform Penalty and Interest Act (the "UPIA") provides that:

> If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

35 ILCS 735/3-6(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 10 and states such provision speaks for itself.

The Department's Audit

11. The Department's audit staff and management received access to Tap House St. Charles's books and records supporting its Illinois state tax returns.

ANSWER: The Department denies the allegations contained in paragraph 11.

12. The Department's audit of Tap House St. Charles included the taxable periods January 2010 through June 2012 (the "Years at Issue").

ANSWER: The Department admits the allegations contained in paragraph 12.

13. On information and belief, the Department's auditor prepared a corrected return for Tap House St. Charles Retailers' Occupation Tax liability pursuant to section 4 of the ROTA (35 ILCS 120/ 4). Said section provides in pertinent part as follows:

> As soon as practicable after any return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information. . . In the event that the return is corrected for any reason other than a mathematical error, any return so corrected by the Deportment shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.
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> Proof of such correction by the Department may be made at any hearing before the Department or in any legal proceeding by a reproduced copy or computer print-out of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue. . . such certified reproduced copy or computer print-out shall without further proof, be admitted into evidence before the Department or in any legal proceeding and shall be prima facie proof of the correctness of the amount of tax due, as shown therein.

35 ILCS 120/4.

ANSWER: The Department admits that it prepared corrected returns and further admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 13 and states such provision speaks for itself.

14. On information and belief, the Department's auditor assessed a fraud penalty on Tap House St. Charles due to the fact that the Department's auditor's method of calculating gross receipts led to an alleged tax liability that was more than double the gross receipts that had been reported by Tap House St. Charles.

ANSWER: The Department admits that it imposed or assessed a fraud penalty in its Notice of Tax Liability but denies the remaining allegations of paragraph 14.

The Controversy

15. The Department audited Tap House St. Charles Illinois sales and use tax returns for the Years at Issue.

ANSWER: The Department admits the allegations contained in paragraph 15.

16. On June 11, 2014, the Department issued to Tap House St. Charles a Notice of Tax Liability for the Years at Issue, proposing an assessment in the amount of $269,949.74 in tax, interest, late payment penalty and fraud penalty. A copy of the Notice of Tax Liability is attached hereto as Exhibit 1

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 1 and states such document speaks for itself.

COUNT I

The Department's Calculation of Tap House St. Charles's Gross Receipts was not According to its Best Judgment and the Information

17. As previously noted, Section 4 of the ROT A requires that "the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information." 35 ILCS 130/4.

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

18. On information and belief during the Department's audit, Tap House St. Charles provided the Department's auditor with all of the information and records that were requested.

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

19. The Department's auditor's calculated gross receipts and corrected return were not produced with a minimum standard of reasonableness because the Department's auditor did not use his or her best judgment and the information that was provided by Tap House St. Charles.

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

WHEREFORE, the Department prays:

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

Tap House St. Charles's Failure to Pay the Alleged Additional Tax was due to Reasonable Cause

20. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, shall not apply if the taxpayer shows that his failure to ... pay tax at the required time 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 statutory provision set forth or referred to in paragraph 20 and states such provision speaks for itself.

21. Tap House St. Charles made a good faith effort to determine the correct reporting of its sales and use tax liability through the exercise of ordinary business care and prudence.

ANSWER: Although paragraph 21 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 21.

22. Tap House St. Charles acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalty should apply to the audit assessment that the Department assessed against Tap House St. Charles.

ANSWER: Although paragraph 22 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 22.

WHEREFORE, the Department prays:

A) That Judgment be entered against the Petitioner and in favor of the Department on Count II 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 III

Tap House St. Charles had no Intent to Defraud the Department

23. As previously noted, section 3-6 of the UPIA provides that:

> If any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.

35 ILCS 735/3-6(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 23 and states such provision speaks for itself.

24. The Department's regulations under the UPIA provide that "[i]f any return or amended return is filed with intent to defraud ... a penalty will be imposed in an amount equal to 50% of any resulting deficiency." 86 Ill. Admin. Code § 700.330(a).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 24 and states such regulation speaks for itself.

25. On information and belief, the Department's auditor assessed a fraud penalty on Tap House St. Charles due to the fact that the Department's auditor's method of calculating gross receipts led to an alleged tax liability that was more than double the gross receipts that had been reported by Tap House St. Charles.

ANSWER: The Department admits that it imposed or assessed a fraud penalty in its Notice of Tax Liability but denies the remaining allegations of paragraph 14.

26. At no time did Tap House St. Charles intend to defraud the State of Illinois.

ANSWER: Although paragraph 26 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 26.

WHEREFORE, the Department prays:

A) That Judgment be entered against the Petitioner and in favor of the Department on Count III 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

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:

Michael J. Wynne / Adam Beckerink
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606

By email attachment to mwynne@reedsmith.com and abeckerink@reedsmith.com on November 14, 2014.

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Michael Coveny,
Assistant Attorney General