

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

HOB HOLDING CORP.,)	
)	
Petitioner,)	
v.)	No. 16 TT 41
)	Chief Judge James M. 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, for its Answer to the Petition (the "Petition"), hereby states as follows:

PARTIES

1. Petitioner is an Illinois corporation formerly located at 15180 South LaGrange Road, Orland Park, Illinois, 60462 and can be reached at 630-629-4040.

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

2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

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

3. Petitioner's Taxpayer Account ID is 3925-2728.

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 January 20, 2016, the Department issued two (2) Notice of Tax Liability letters ("Notice") to Petitioner for a sales/use tax audit for the tax periods January 1, 2009 to July 31, 2012. The Notices reflect \$307,331 in total tax due, plus penalties and interest. The Notices are 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 was a bridal gown store located in the southwest suburbs.

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

9. Defendants audited Petitioner's books and records for the tax periods January 1, 2009 to July 31, 2012.

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

10. Petitioner properly filed its sales tax returns during the audit tax periods by reporting its sales using the cash basis method of accounting (based on bank deposits) and deducting from its sales the substantial alteration charges for bridal gowns (\$375) and bridesmaid dresses (\$125 each) that are contained in Petitioner's monthly POS

reports, but the Department's auditor and audit supervisor (both recently retired) reviewed all of the abovementioned documents during the audit and estimated the audit liability using an unknown audit methodology.

ANSWER: The Department admits that it was required to estimate or project Petitioner's liability for certain months in the audit period but affirmatively states that such estimates or methodology was necessary and represented the best and most reliable information available as Petitioner's records for these periods were inadequate and/or nonexistent. The Department otherwise denies the remaining allegations in Paragraph 10.

COUNT I

Defendant's audit methodology drastically overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation 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 using an unknown audit methodology and improperly failed to allow Petitioner's sales tax return methodology.

ANSWER: The Department admits that it was required to estimate or project Petitioner's liability for certain months in the audit period but affirmatively states that such estimates or methodology was necessary and represented the best and most reliable information available as Petitioner's records for these periods were inadequate and/or nonexistent. The Department otherwise denies the remaining allegations in Paragraph 12.

13. By applying such audit methodology, the Department drastically and unreasonably inflated Petitioner's audit liability because Petitioner properly filed its sales tax returns during the audit tax periods by reporting its sales using the cash basis method of accounting and deducting from its sales alteration charges for bridal gowns and bridesmaid dresses that are contained in Petitioner's monthly POS reports.

ANSWER: The Department admits that it was required to estimate or project Petitioner's liability for certain months in the audit period but affirmatively states that such estimates or methodology was necessary and represented the best and most reliable information available as Petitioner's records for these periods were inadequate and/or nonexistent. The Department otherwise denies the remaining allegations in Paragraph 13.

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 Notices 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 late and negligence penalties.

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 such penalties do not 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 when it reasonably determined its sales tax liability by reporting sales using the cash basis method of accounting (based on bank deposits) and deducting from its sales the alteration charges for dresses.

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.

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 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
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CHICAGO, IL 60601
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Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

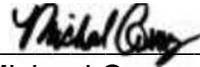
By  _____
Michael Coveny,
Assistant Attorney General

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
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on May 12, 2016.



Michael Coveny,
Assistant Attorney General