

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

DENNIS PROSIO d/b/a)	
FRANK's PIZZERIA,)	
Petitioner,)	
)	
v.)	Case No. 16-TT-56
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

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:

INTRODUCTION

1. The Notice was issued by the Department on January 20, 2016 assessing in the amount of \$63,944.00 in tax, \$44,813.00 in penalties and \$5,683.26 in interest for taxable periods January 1, 2011 through March 31, 2013 ("Tax Period"). A copy of the Notice is attached hereto as Exhibit 1.

ANSWER: The Department states the Notice speaks for itself and admits the January 20, 2016 Notice is attached to the Petition as Exhibit 1.

2. Petitioner is an individual and sole proprietor of Frank's Pizzeria which has its principal place of business in Chicago, Illinois.

ANSWER: The Department admits the allegations in Paragraph 2.

3. It is located at 6506 W. Belmont Ave, Chicago, IL 60634-3925 and its telephone number is 773-283-2564. The taxpayer account number is 0107-4490.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal

Regulations Sections 310(a)(1)(A) and (C) (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 in Paragraph 3.

BACKGROUND

4. Petitioner is a restaurant that provides dining and catering services.

ANSWER: The Department admits the allegations in Paragraph 4.

5. Due to competition in the market, Petitioner must offer large quantities of inventory and labor at a low price point in order to generate business.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 5 and demands strict proof thereof.

6. As a result, Petitioner reports low sales in relation to the inventory purchased and labor expended.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 6 and demands strict proof thereof.

7. The Illinois Department of Revenue (“Department”) recently audited Petitioner for sales and use tax for the Tax Period.

ANSWER: The Department admits the allegations in Paragraph 7.

8. Department’s audit did not rely on Petitioner’s books and records.

ANSWER: The Department denies the allegations in Paragraph 8 and further states that the taxpayer did not provide the statutorily required books and records during the audit.

9. According to Department’s letter dated January 28, 2016, the audit relied on proposed tax returns using a sales methodology (“Methodology”). A copy of the letter is attached hereto as Exhibit 2.

ANSWER: The Department denies the allegations in Paragraph 9.

APPLICABLE LAW

10. The Methodology significantly overstates Petitioner's gross receipts.

ANSWER: The Department denies the allegations in Paragraph 10.

11. The Retailers' Occupation Tax Act and section 130.805 of the Illinois Administrative Code state what records must be kept by taxpayers.

ANSWER: Paragraph 11 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.

The Department further states that section 130.805 of the Illinois Administrative Code speaks for itself.

12. Section 7 of the Retailers' Occupation Tax Act provides:

Every person engaged in the business of selling tangible personal property at retail in this State shall keep *records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale*, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents....The Department may adopt rules that establish requirements, including record forms and formats, for records to be kept and maintained by taxpayers...

35 ILCS 120/7. (Emphasis added).

ANSWER: Paragraph 12 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.

The Department further states that 35 ILCS 120/7 speaks for itself.

13. Section 130.805 of the Illinois Administrative Code states:

Where a taxpayer's business consists exclusively of the sale of tangible personal property at retail, the following records will be deemed by the Department to constitute a minimum for the purposes of the [Retailers' Occupational Tax] Act:

- a) Cash register tapes and other data which will provide a daily record of the gross amount of sales.
- b) A record of the amount of merchandise purchased. To fulfill this requirement, copies of all vendors' invoices and taxpayers' copies of purchase orders must be retained serially and in sequence as to date.
- c) A true and complete inventory of the value of stock on hand taken at least once each year.

86 Ill. Admin. Code 130.805 (2000). (Emphasis Added).

ANSWER: Paragraph 13 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. The Department further states that section 130.805 of the Illinois Administrative Code speaks for itself.

ERROR

14. Department did not rely on Petitioner's books and records relating to sales information to perform the audit. Instead, Department used a methodology based on Petitioner's purchases, which incorrectly applied an inflated mark-up percentage to complete the audit.

ANSWER: The Department denies the allegations in Paragraph 14.

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 including interest and penalties;
- 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: April 20, 2016

Respectfully submitted,
Illinois Department of Revenue

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