

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

E R & J FOOD & LIQUOR INC.,)	
)	
Petitioner,)	
)	
v.)	No. 16-TT-77
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Defendant.)	

ANSWER

The Department of Revenue of the State of Illinois (the “Department”), 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 corporation located at 654 East 67th Street, Chicago, Illinois, 60637, and can be reached at 708-267-4989.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310(a)) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department notes that the audit file indicates the Petitioner’s phone number as 773-752-7815. Otherwise, the Department admits the factual allegations contained within 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 information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310(a)) 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. Petitioner's Taxpayer (Account) ID is 2274-8717.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310(a)) 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. 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

5. On April 7, 2016, the Department issued a Notice of Tax Liability letter to Petitioner for a sales/use tax audit for the tax periods July 1, 2012 to December 31, 2014. The Notice reflects \$41,268 in tax due, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: Denied. The Notice reflects \$41,268.00 in tax due. \$41,268.00 is the calculated liability for the entire period with all sales being considered high rate sales. The auditor also gave credit for taxes paid on the return for low rate items. The tax due on the audit is the

difference, which is \$32,789.00.

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: 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. This 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: Paragraph 7 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

8. Petitioner is a liquor store located on the south side of Chicago.

ANSWER: Denied that Petitioner is only a liquor store. As indicated in the audit file, the Petitioner sells beer, wine, liquor, cigarettes, candy, chips, soda, various sundry items, and lottery tickets, even though it is classified as a liquor store. Otherwise, the Department admits the factual allegations contained within Paragraph 8.

9. Defendants audited Petitioner’s books and records for the tax periods July 1, 2012 to December 31, 2014.

ANSWER: The Department admits the tax periods within Paragraph 9. Otherwise, the Department denies the remaining allegations contained within Paragraph 9 because the Department objects to the term “books and records” as vague.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by overstated estimated industry standard selling prices of Petitioner's products, and the Department also improperly included purchases from another liquor store and also improperly included purchases from a vendor that Petitioner does not use.

ANSWER: The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by overstated estimated selling prices, and the Department also included incorrect purchases in its audit calculations.

ANSWER: The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 12.

13. By applying such overstated estimated prices to all of Petitioner's purchases (some of which were overstated by the Department) during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the

audit period were lower than the estimates used by the Department.

ANSWER: The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 13.

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.

COUNT II

All penalties should be abated based on reasonable cause.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

15. In its Notice, the Department assessed penalties based on the audit liability.

ANSWER: The Department admits the factual allegations contained within in Paragraph 15.

16. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 16 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 admits the existence, force and effect of Section 3-8 of the

Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself. To the extent an answer is required for this Petition, denied.

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. Admin. Code 00.400(b).

ANSWER: Paragraph 17 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. To the extent an answer is required for this Petition, denied.

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. Admin. Code 700.400(b).

ANSWER: Paragraph 18 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. To the extent an answer is required for this Petition, denied.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated selling prices.

ANSWER: Paragraph 19 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 denies the legal conclusions/allegations contained in Paragraph 19.

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: May 23, 2016

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
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