

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

CORNELIUS ALEXANDER d/b/a 007 LOUNGE)	
)	
Petitioner)	
v.)	16-TT-89
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to the Petition (the “Petition”) of Cornelius Alexander, doing business as 007 Lounge (“Petitioner”), respectfully pleads as follows:

PARTIES

1. Petitioner is a sole proprietor located at 178 North Lamon Avenue, Chicago, Illinois, 60644, and can be reached at 773-343-8681.

ANSWER: Respondent denies the allegations in Paragraph 1, and affirmatively states that Petitioner’s former business, 007 Lounge, was a sole proprietorship located at 600 North Kedzie Avenue, Chicago, Illinois, 60612, but was closed on September 30, 2014.

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: Respondent admits the allegations in Paragraph 2.

3. Petitioner’s Taxpayer (Account) ID is 0046-9467.

ANSWER: Respondent admits the allegations 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: Respondent admits the allegations in Paragraph 4.

NOTICE

5. On or about March 10, 2016, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods July 1, 2011 to September 30, 2014. The Notice reflects \$57,581 in tax due, \$11,516 in late payment penalties, \$28,790 in fraud penalties, and \$4,465 in interest, for a total of \$102,352. The Notice is attached hereto as Exhibit 1.

ANSWER: Respondent admits the allegations in the first and second sentences of Paragraph 5. A copy of the Notice of Tax Liability issued by Respondent to Petitioner, for the reporting periods of July 1, 2011 through September 30, 2014 (the “Periods”), dated March 10, 2016 and with Letter ID CNXXXX7634X41765, attached to the Petition (the “Notice”), is not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code 5000.310), but to the extent an answer is required, Respondent admits issuing the Notice and states that the Notice 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: Respondent admits the allegations in Paragraph 6.

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: Respondent admits the allegations in Paragraph 7.

BACKGROUND

8. Petitioner is a tavern/package goods store located on the west side of Chicago.

ANSWER: Respondent denies the allegations in Paragraph 8, and affirmatively states that Petitioner's former business, 007 Lounge, was a tavern, which also sold packaged goods, and was located on the west side of Chicago.

9. Defendants [sic] audited Petitioner for the tax periods July 1, 2011 to Sept. 30, 2014.

ANSWER: Respondent admits that it conducted a sales/use tax audit of Petitioner's books and records for the Periods. Respondent denies any remaining allegations in Paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products, but the Department's audit calculations do not account for the increases in inventory during the audit tax periods and the mark-up amounts are too high and the packaged goods to tavern sales allocation is severely flawed (90% packaged goods).

ANSWER: Respondent admits that the sales tax liability reflected in the Notice is the excess of Petitioner's corrected taxable sales over the taxable sales reported on its Forms ST-1 for the Periods. Such corrected taxable sales consist of Petitioner's sales during the Periods, computed by applying markups, based on Petitioner's price listing and industry standard selling prices, to Petitioner's purchases during the Periods. Respondent denies the remaining allegations in Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: Respondent incorporates and repeats its answers to Paragraphs 1 through 10 as if fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying all of Petitioner's purchases by estimated selling prices found in a book at the library.

ANSWER: Respondent objects to Paragraph 12 in that it is vague and ambiguous as to the "book at the library." Notwithstanding said objection, and without waiving the same, Respondent denies the allegations in Paragraph 12.

13. By applying such estimated prices to all of Petitioner's purchases 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 and also because the Department's projections improperly fail to account for inventory increases and packaged goods sales.

ANSWER: Respondent denies the allegations in Paragraph 13.

WHEREFORE, Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count I of Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. order judgment in favor of Respondent and against Petitioner; and

d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause and other factors.

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

ANSWER: Respondent incorporates and repeats its answers to Paragraphs 1 through 13 as if fully set forth herein.

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

ANSWER: Respondent admits the allegations in Paragraph 15.

16. Illinois law provides that 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: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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 pursuant to Rule 310(b)(2).

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 pursuant to Rule 310(b)(2).

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices, so neither the late penalties nor the fraud penalties are proper.

ANSWER: Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2), but to the extent an answer is required, Respondent denies the allegations in Paragraph 19.

WHEREFORE, Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count II of Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. find that Respondent's assessment of the penalties contained in the Notice was appropriate and conformed with the law;
- d. find that Petitioner's failure to pay the tax assessed in the Notice was not due to reasonable cause. 35 ILCS 735/3-8;
- e. order judgment in favor of Respondent and against Petitioner; and
- f. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
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State of Illinois

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