

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

T. BELMONTE INC.,)	
)	
Petitioner)	
)	
V)	No. 14 TT 161
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Respondent)	
)	

ANSWER

Now comes 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, and for its Answer to Taxpayer’s Petition states as follows:

1. At all relevant times hereto, the Petitioner was an Illinois corporation with its principal place of business at 5336 W. Chicago Ave., Chicago, Illinois, 60651, phone number 630-728-8813.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. The Petitioner’s employer identification number is 36-3603870.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. The Petitioner is a liquor store engaged in the business of selling at retail only liquor, soda, beer.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. Sometime during 2013, the Department initiated retailer's occupation tax audit of the Petitioner's Sales Tax Returns, Forms ST-1, for the periods January 1, 2011 through June 30, 2013 (hereafter "Audit Period").

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. At the time of the audit, the taxpayer no longer maintained any of its cash register tapes for the Audit Period.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

6. The Department estimated the Petitioner's taxable receipts for the Audit Period by estimating a markup and applying it to Petitioner's inventory purchases during that period.

ANSWER: The Department admits that it determined the Petitioner's taxable receipts for the audit period using its best judgment and information. The Department further admits that in making this determination that it calculated a markup which it applied to the Petitioner's purchases during the audit period. The Department denies any and all other allegations in paragraph 6 of the petition.

7. The Department estimated the Petitioner's markup by comparing the actual cost of various bottles of liquor and beer from one month of 2011 and one month of 2012 and comparing it to the Petitioner's 2013 sales prices. The auditor then averaged its markup of each of those individual bottles, giving equal weight to each, and determined an overall beer markup of 39% ("Beer Markup") and an overall liquor markup of 26% ("Liquor Markup").

ANSWER: The Department admits the allegations in paragraph 7 of the Petition

8. The Department reviewed all of the 2012 purchases and determined that 62% of the Petitioner's total dollar cost was for liquor and that 38% of the Petitioner's total liquor cost was for beer.

ANSWER: The Department admits the allegations in paragraph 8 of the Petition.

9. The Department then determined an overall alcohol markup to apply to both liquor and beer in the amount of 31% ("Overall Alcohol Markup"), by computing a weighted average of the Beer Markup of 39% and the Liquor Markup of 26% based upon the dollar cost percentages as referenced in paragraph 8 above.

ANSWER: The Department admits the allegations in paragraph 9 of the Petition.

10. The Petitioner maintained very low markups based upon being located in a very a very depressed area in the city of Chicago. Additionally, a neighboring and competing liquor store would regularly undercut Petitioner's prices which led to further price reductions by Petitioner.

ANSWER: The statement that the Petitioner maintained very low markups based upon being located in a very depressed area in the city of Chicago is vague and conclusionary and is denied. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. The Department estimated the Petitioner's taxable receipts by applying the Overall Alcohol Markup of 31% to the higher of the Petitioner's cost of purchases reported on the EDA-20 forms or the Petitioner's cost of purchases reported by its vendors to the State of Illinois (" Estimated Taxable Receipts").

ANSWER: The Department admits the allegations in paragraph 11 of the Petition.

12. The Department compared the Estimated Taxable Receipts described in paragraph 11 above to the sales reported on the Forms ST-1 which Petitioner filed for the Audit Period. The Department applied the sales tax rate to the difference to determine the additional sales tax owed by Petitioner for the Audit Period.

ANSWER: The Department admits the allegations in paragraph 12 of the Petition.

13. Upon conclusion of the audit, the Department issued a Notice of Tax Liability, Letter ID: CNXXX1X285357769 ("Notice"). See Exhibit A attached hereto.

ANSWER: The Department admits the allegations in paragraph 13 of the Petition.

14. The Department made the several errors in its methodology of determining Taxable Receipts and erred in assessing a fraud penalty in this case.

ANSWER: The Department denies the allegations in paragraph 14 of the Petition.

15. In determining the markup on each individual bottle of liquor and beer, the Department used an incorrect selling price.

ANSWER: The Department denies the allegations in paragraph 15 of the Petition.

16. The Department compared the Petitioner's 2013 selling prices for its beer and liquor to the Petitioner's 2011 or 2012 cost for those same items.

ANSWER: The Department admits that as part of its audit procedures, it "compared" the Petitioner's 2013 selling prices for its beer and liquor to the Petitioner's 2011 or 2012 cost for those same items, but denies that this procedure amounted in any way to an error or flaw in methodology.

17. The Petitioner's cost and/or selling prices of its beer and liquor increased over time so the Department's markup is overstated.

ANSWER: The Department denies the allegations in paragraph 3 of the petition.

18. In determining the markup on each individual bottle of beer and liquor, the Department erred in assuming that the Petitioner received approximately two and one half (2 ½) cases of free liquor from its vendors each month.

ANSWER: The Department denies the allegations in paragraph 18 of the petition.

19. In determining the Beer Markup and the Liquor Markup, the Department erred in giving equal weight in its averaging of the per bottle markup.

ANSWER: The Department denies the allegations in paragraph 19 of the petition.

20. The Department's method erroneously assumes that the Petitioner sells an equal number of each sampled bottle during the course of the year.

ANSWER: The Department denies the allegations in paragraph 20 of the petition.

21. In determining the Overall Alcohol Markup, the Department erred in applying a weighted average to the Beer Markup and Liquor Markup based upon the Petitioner's cost for the beer and liquor.

ANSWER: The Department denies the allegations in paragraph 21 of the petition.

22. The Petitioner's cost has no relationship to the quantity it sells and is not reflective of the proper allocation of sales between beer and liquor.

ANSWER: The allegations in paragraph 22 of the petition are vague and conclusionary and are denied.

23. In determining Taxable Receipts, the Department erred in disallowing a reduction for theft and breakage.

ANSWER: The Department denies the allegations in paragraph 23 of the petition.

24. The Petitioner lost some of its inventory to both theft and breakage during the audit period.

ANSWER: The allegations in paragraph 24 of the petition that the Petitioner lost “some” of its inventory to both theft and breakage during the audit period is vague. Furthermore the allegations in paragraph 24 of the petition are essentially a subpart of the allegations in paragraph 23 of the petition alleging that the Department erred in disallowing a reduction for theft and breakage. The allegations in paragraph 24 of the petition are thus denied.

25. The Department erred in assessing the Petitioner with a fraud penalty.

ANSWER: The Department denies the allegations in paragraph 25 of the petition.

26. Under 35 ILCS 735/3-6, the Department must prove by clear and convincing evidence that the taxpayer filed its return(s) with an intent to defraud.

ANSWER: The allegations in paragraph 26 of the Petition consist of legal conclusions and are denied.

27. The evidence in this case does not support a finding that the Petitioner filed its Forms ST-1 for the Audit Period with an intent to defraud.

ANSWER: The allegations in paragraph 27 of the petition consist of factual and/or legal conclusions and are denied.

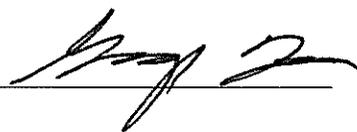
WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
 - b. finding that the Notice of Tax Liability at issue is correct and should be finalized as issued;
 - c. ordering judgment in favor of the Department and against the Petitioner;
- and

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

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: 

George Foster
Special Assistant Attorney General

George Foster
Illinois Department Of Revenue
100 W. Randolph Street, Level 7
Chicago, Illinois 60601
312-814-3493
george.foster@illinois.gov

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

T. BELMONTE INC.,)	
Petitioner)	
v.)	14-TT-161
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

AFFIDAVIT OF RAY BARNES
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor I.
3. I audited T. Belmonte Inc. for the period November 2011 through June 2013.
4. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Taxpayer's Petition paragraph 10.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

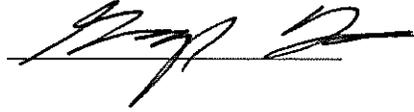
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

Ray Barnes
Ray Barnes
Revenue Auditor I
Illinois Department of Revenue

DATED: 9/15/2014

CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on September 18, 2014 a copy of the Department's ANSWER was served on Tami Tolitano, Lohman Neschis & Tolitano, by causing a copy to be sent by electronic mail to TTOLITANO@LNT-LAW.com.

A handwritten signature in black ink, appearing to read "George Foster", is written over a horizontal line.