

ILLINOIS INDEPENDENT
TAX TRIBUNAL

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|-------------------------------|---|-----------------------------|
| ROCKFORD FOOD & LIQUOR, INC., |) | |
| |) | |
| Petitioner, |) | |
| v. |) | No. 16 TT 95 |
| |) | 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:

INTRODUCTION

1. The "Notice" was issued by the Department on March 18, 2016 assessing in the amount of \$155,084.00 in tax, \$107,928.00 in penalties and \$9,967.89 in interest for taxable periods of January 1, 2012 through December 31, 2014, less payments/credits of \$1,760.00. A copy of the "Notice" is attached to this Petition. For reason(s) unknown to Petitioner's counsel, another statement provided by the Department to the Petitioner indicates that only \$269,459.89 is "subject to protest".

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as an Exhibit and referred to in Paragraph 1 and state that such document speaks for itself.

2. Petitioner is a corporation with its principal place of business in Rockford, Illinois.

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

3. It is located at c/o registered agent Saleh A. Thabet, 5512 Heidi Drive, Rockford, Illinois 61109, and its phone number is (815) 608-4051. The Taxpayer Account number is 3491-4056. The Taxpayer Identification Number is 20-0626038.

ANSWER: The Department admits the allegations contained in paragraph 3.

BACKGROUND AND RELEVANT FACTS

4. The Department conducted an audit of the Petitioner and determined that the Petitioner was liable for unpaid tax, late payment and fraud penalties.

ANSWER: The Department admits the allegations contained in paragraph 4.

APPLICABLE LAW

5. The Retailers Occupation Tax Act is at 35 ILCS 120 et. seq.

ANSWER: The Department admits the allegations contained in paragraph 5.

6. Section 3-5 of the Uniform Penalty and Interest Act is at 35 ILCS 735/3-5.

ANSWER: The Department admits the allegations contained in paragraph 6.

ERROR 1

7. The Department erroneously used an excessive markup rate during the audit of Petitioner thus overstating Petitioner's sales.

ANSWER: Although paragraph 7 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 7.

ERROR 2

8. The Department erroneously determined the amount of the late payment penalty based on its erroneously high determination of sales which was based on the Department's use of an excessive markup rate during the audit.

ANSWER: Although paragraph 8 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 8.

ERROR 3

9. The Department erroneously refused to adequately consider Petitioner's Z tapes during the audit.

ANSWER: Although paragraph 9 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 9.

ERROR 4

10. The Department erroneously determined Petitioner to be liable for the fraud penalty. Petitioner did not act with the intent to defraud. Consequently, Petitioner is not liable for the fraud penalty under Section 3-6 of the Uniform Penalty and Interest Act.

ANSWER: Although paragraph 10 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 10.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter;
- B) That the Department's Notice 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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Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

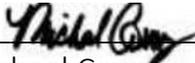
By  _____
Michael Coveny,
Assistant Attorney General

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:

Michael C. Whelan
2860 River Road,
Suite 240
Des Plaines, IL 60018

By attachment to email to mcwhelanlaw@yahoo.com on June 29, 2016.



Michael Coveny,
Assistant Attorney General