

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>CHINA HUT 3, INC.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-164</b>
	)	
<b>THE ILLINOIS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**ANSWER TO AMENDED PETITION**

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 Amended Petition as follows:

**INTRODUCTION**

1. On June 10, 2013, The Notice (in three separate notices) was issued by the Department on June 10, 2013.

**ANSWER:** The Department denies the “Notice of Claim Notice of Penalty Liability, Notice of Deficiency” that Petitioner references in its definition of the “Notice”, as defined by the Petitioner in its introductory paragraph, if separate and distinct from the Notice of Tax Liability, was issued on June 10, 2013. The Department admits it issued three Notices of Tax Liability dated June 10, 2013.

2. The first Notice dated June 10, 2013, assessed the amount of \$119,915.00 in taxes, \$23,983.00 in late payment penalty increase, \$23,983.00 in negligence penalty, and \$4,875.13 in interest for taxable periods January 1, 2010 to April 30, 2012. (Attached)

**ANSWER:** The Department admits the allegations in Paragraph 2.

3. The second Notice under Letter ID: L1332763488 assessed the amount of \$3,049.00 in taxes, \$610.00 in late payment penalty increase; \$610.00 in negligence penalty totaling \$4,269.00 for the reporting period of June 1, 2012 through June 30, 2012. (Attached)

**ANSWER:** The Department admits the allegations in Paragraph 3.

4. The third Notice under Letter ID L0795892576 assessed the amount of \$3,049.00 in taxes, \$610.00 in late payment penalty increase, \$610.00 in negligence penalty totaling \$4,269.00 for the reporting periods of May 1, 2012 to May 31, 2012. (Attached)

**ANSWER:** The Department admits the allegations in Paragraph 4.

5. The late discretionary hearing was granted on July 2, 2014 by Judge Terry D. Charlton. (Attached)

**ANSWER:** The Department admits the allegations in Paragraph 5.

6. The Petitioner filed a petition within the required time with the Illinois Independent Tax Tribunal on August 21, 2014.

**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. The Department admits the allegations in Paragraph 6.

7. Petitioner is a corporation with its place of business in 7100 N. Clark Street, Chicago, IL 60626-2408. Its telephone number is 312-636-6823. The Petitioner is represented by James T. Hyun, Attorney at Law, whose contact number is 847-501-2900. The taxpayer Account Number is 3965-5997.

**ANSWER:** The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A), (B)&(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 7.

### **BACKGROUND AND RELEVANT FACTS**

8. The Petitioner filed a return and sales tax return for taxable periods on the following dates:

Year 2010 on or prior to March 15, 2011

Year 2011 on or prior to March 15, 2012

Year 2012 on or prior to March 15, 2013

In addition, all monthly sales tax returns were filed before the due date of the following month.

**ANSWER:** The Department denies the allegations in Paragraph 8.

9. On June 10, 2013, the Respondent has conducted an audit for a period of January 1, 2010 to April 30, 2012 on the Petitioner.

**ANSWER:** The Department denies all allegations in Paragraph 9.

### **ERRORS**

10. The Respondent committed an error in the audit in that it utilized.

#### ERROR # 1

The Respondent when conducting the audit for those aforementioned tax years utilized a markup percentage of 3.50 as the basis of the calculation. A standard and normal process is calculated in the range of 2.50 to 2.70.

#### ERROR # 2

The Petitioner had an old POS system to manage and calculate the sales tax and daily sales for the business. At the time of the audit, the company that sold the POS system was no longer in business operation. There was no one from the company to give us any technical support during the time of the audit. The auditor simply without giving us the opportunity

rejected all of the POS system daily sales report and calculated the sales from the vendor's invoices (EDA-20) and bank statements.

**ERROR # 3**

The Respondent assumed that all checks written by the Petitioner as "Cash" or to himself were counted as cost of goods sold which resulted in gross mark-up of the sales during the audit period.

**ANSWER:** The Department denies the allegations in Paragraph 10.

11. The Respondent made the following assumptions which was an error.

- a. The Respondent incorrectly assumed that mark-up percentage was 3.50.
- b. The Respondent improperly calculated sales from vendors invoices and bank statements.
- c. The Respondent improperly assumed all checks written as "Cash" or to himself were cost of goods sold.

**ANSWER:** The Department denies all allegations in Paragraph 11.

12. The Petitioner was not negligent in their assessment in that they had made a good faith and diligent effort to explain all aforementioned errors outlined from 1 to 3.

**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 denies the legal conclusions/allegations contained in Paragraph 12.

13. The Petitioner is seeking the following relief:

- a. The mark up of goods be calculated at 2.50 to 2.70 instead of 3.50.
- b. Checks written as "cash" or the owners be not counted as cost of goods sold.

- c. Waive all late payment penalty, negligent penalty and interest associated with this tax period.

**ANSWER:** Paragraph 13 does not contain 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 allegations in Paragraph 13.

**WHEREFORE**, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notices correctly reflect 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: September 17, 2014

Respectfully submitted,  
Illinois Department of Revenue

By  
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