

ILLINOIS INDEPENDENT
TAX TRIBUNAL

ROCKFORD FOOD & LIQUOR, INC.,)	
)	
Petitioner,)	
v.)	No. 14 TT 170
)	Chief Judge James 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

The "Notice" was issued by the Department on July 7, 2014 assessing in the amount of \$41,169.00 in tax, \$16,312.00 in penalties and \$3,523.71 in interest for taxable period of July 1, 2009 through December 31, 2011, less payments/credits of \$1,050.00, resulting in a proposed liability of \$59,954.71 for sales/use tax & E911 surcharge. 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 \$58,904.71 is "subject to protest".

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

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 the “Introduction” section and state that such document speaks for itself. The Department admits the remaining allegations contained in the paragraph. The Department also admits that Petitioner’s address, phone number, and tax or account ID number as represented in the “Introduction” section are correct.

BACKGROUND AND RELEVANT FACTS

Petitioner is a retailer selling food and liquor.

Petitioner was audited by the Department and disagrees with the results.

ANSWER: The Department admits the allegations contained in the above section titled “Background and Relevant Facts.”

APPLICABLE LAW

The Retailers Occupation Tax Act (35 ILCS 120 et. seq.).

Section 3-5 of the Uniform Penalty and Interest Act (35 ILCS 735/3-5).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provisions set forth or referred to in the above paragraph and state such provisions speak for themselves.

ERRORS OF FACT OR LAW

1. The Department erroneously determined Petitioner's tax liability by using an excessive markup analysis during the audit thus overstating Petitioner's liability and exceeding what is actually owed under the Retailers Occupation Tax Act (35 ILCS 120 et. seq.).

ANSWER: Although paragraph 1 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 1.

2. The Department erroneously determined Petitioner to be negligent. The Department thus erroneously imposed a negligence penalty. Petitioner was not negligent and is not subject to the penalty set forth at section 3-5 of the Uniform Penalty and Interest Act (35 ILCS 735/3-5).

ANSWER: Although paragraph 2 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 2.

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
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697

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 October 17, 2014.



Michael Coveny,
Assistant Attorney General