

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

CABELA’S RETAIL IL, INC.,)	
)	
Petitioner,)	
)	
v.)	No. 14 TT 181
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
)	Chief Judge James Conway
)	
Respondent.)	

DEPARTMENT’S ANSWER TO PETITION

NOW COME the Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Petitioner’s Petition (“Petition”), hereby states as follows:

INTRODUCTION

1. The Department issued NTLs on August 4, 2014 assessing \$465,287 in Retailers' Occupation Tax ("ROT") and Use Tax, \$258,603 in penalties and \$224,493.84 in interest for the Reporting periods January 1, 2007 through June 30, 2009, and \$454,222 in ROT and Use Tax, \$91,152 in penalties and \$41,951.63 in interest for the reporting periods July 1, 2009 through December 31, 2011. Copies of the NTLs are attached to this Petition.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition and referred to in paragraph 1 and state that such documents speak for themselves.

2. Petitioner is an Illinois corporation with its principal place of business at 5225 Prairie Stone Parkway, Hoffman Estates, IL 60192. All notices should be sent to its corporate parent in care of Jeff Ellwanger, Cabela's Retail, Inc., 1 Cabela Drive, Sidney, Nebraska, 69160-1001. The telephone number for Jeff Ellwanger, Director of Tax, is (308) 255-2125. The Taxpayer Account number is 3815-4560.

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

BACKGROUND AND RELEVANT FACTS

3. Petitioner operates a Cabela's store at its Hoffman Estates location.

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

4. The Cabela's store is principally engaged in retailing of hunting, fishing, camping, shooting, and related outdoor recreation merchandise.

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

5. The Cabela's store has a "general store" area that sells, among other things, food for human consumption.

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

6. Petitioner also is the issuer of Cabela's gift cards.

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

7. Petitioner timely filed form ST-1's for all required months during the period of January 1, 2007 through December 31, 2011 (the "Period at Issue").

ANSWER: The Department denies the allegations contained in paragraph 7.

8. Petitioner included all of its taxable sales on the ST-1's that it filed for the Period at Issue.

ANSWER: The Department denies the allegations contained in paragraph 8.

9. During the Period at Issue, the State and local combined ROT rate applicable to the sale of food for human consumption in Hoffman Estates that is to be consumed off the premises where it is sold was 2.25% (the "Low Rate").

ANSWER: The Department denies the allegations contained in paragraph 9.

10. During the Period at Issue, the State and local combined ROT rate applicable to the sale in Hoffman Estates of general merchandise and the sale of food for human consumption that is to be consumed on the premises where it is sold was 9.5% (the "High Rate").

ANSWER: The Department denies the allegations contained in paragraph 10.

11. Petitioner collected and remitted ROT on its sales of various food items at the Low Rate.

ANSWER: The Department admits the allegations contained in paragraph 11.

12. On or about August 16, 2011, Petitioner purchased three tables and twelve chairs for its sitting area near the general store.

ANSWER: The Department admits that Petitioner had three tables and twelve chairs in its sitting area but is without knowledge when such chairs and tables were first purchased or used.

13. The Department audited the Petitioner for the Period at Issue and asserted that Petitioner failed to report \$4,541,988 of taxable sales on its ST-1s and that Petitioner's sales of food should have been taxed at the High Rate.

ANSWER: The Department admits that part of the proposed assessment derives from food that should have been taxed at the high rate but denies that the total amount of sales Petitioner failed to report is \$4,541,988.

14. The Department also denied a total of \$2,524,457 of Petitioner's deductions for the Period at Issue.

ANSWER: The Department admits the allegations contained in paragraph 14.

15. The Department also made several adjustments to the returns filed for the Period at Issue relating to Petitioner's fixed assets. The Department applied an error percentage developed for the 2007 through 2009 fixed assets to estimate the liability for 2010 and 2011. The Department also asserted that Petitioner owed additional ROT in the amounts of \$167,972.70, \$80,664.90 and \$19,980.66 on several invoices from Quality Wood Designs, LLC.

ANSWER: The Department admits the allegations contained in paragraph 15.

16. The Department also assessed additional Use Tax on Petitioner's supplies in the amount of \$346,606.56 based on a three month supply sample.

ANSWER: The Department denies the allegations contained in paragraph 16.

ERROR 1

17. The Department erroneously asserted that Petitioner failed to report \$4,541,988 of taxable sales on its ST -1's or ST -556's for the Period at Issue. Petitioner reported all of its taxable sales on the ST -1's that it filed for the Period at Issue.

ANSWER: Although paragraph 18 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 18.

ERROR 2

18. Under the ROT, gross receipts from the sales of general merchandise in Hoffman Estates are subject to tax at the High Rate while sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) are subject to tax at the Low Rate.

ANSWER: The Department admits the allegations contained in paragraph 18.

19. The Department erroneously asserted that the table and chairs located in a sitting area near Petitioner's general store constituted a deli area and therefore the food items sold by Petitioner were for immediate consumption.

ANSWER: Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 19.

20. The Department erroneously asserted that the table and chairs located in a sitting area near Petitioner's general store constituted a deli area and therefore the food items sold by Petitioner were for immediate consumption.

ANSWER: Although paragraph 20 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 20.

21. Even if the Petitioner's table and chairs constituted a deli area, the table and chairs were not present before August 16, 2011, which is well into the Period at Issue and would require a significant adjustment of the proposed tax.

ANSWER: Although paragraph 30 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 30.

ERROR 3

22. The Department erroneously denied a total of \$2,524,457 of Petitioner's deductions for the Period at Issue.

ANSWER: Although paragraph 22 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 22.

ERROR 4

23. The Department erroneously adjusted Petitioner's fixed assets reported for the Period at Issue.

ANSWER: Although paragraph 23 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 23.

24. The Department erroneously applied an error percentage developed for the 2007 through 2009 fixed assets to estimate the liability for 2010 and 2011. The information to determine actual error rates for 2010 for 2011 was provided, but not used.

ANSWER: Although paragraph 24 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 24.

25. The Department erroneously assessed Use Tax in the amounts of \$167,972.70, \$80,664.90 and \$19,980.66 on several invoices from Quality Wood Designs, LLC. Petitioner paid South Dakota sales tax on the items purchased from Quality Wood Designs, LLC and is entitled to a credit for the amounts paid to South Dakota.

ANSWER: Although paragraph 25 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 25.

ERROR 5

26. The Department erroneously assessed additional Use Tax on Petitioner's supplies in the amount of \$346,606.56 based on an overly inflated three month supply sample.

ANSWER: Although paragraph 26 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 26.

ERROR 6

27. Late penalties do not apply if a taxpayer's late payment was "due to reasonable cause." 35 ILCS 735/3-8. The Department's regulation on reasonable cause looks to whether the taxpayer "made a good faith effort," which is demonstrated by the exercise of "ordinary business care and prudence" in view of "the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education." Ill. Admin. Code tit. 86, § 700.400(c).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statute and regulation set forth or referred to in paragraph 27 and state such provisions speaks for themselves.

28. Petitioner had reasonable cause for all of its filing positions such that penalties should not be imposed.

ANSWER: Although paragraph 28 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 28.

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 Notices of Tax Liability be determined to be correct.

C) That this Tribunal grant such other additional relief it deems just and proper

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Respectfully submitted,



Michael Coveny
Special 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 the Petition of Petitioner upon:

Catherine A. Battin
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606

By email to cbattin@mwe.com on January 9, 2015.