

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

7123 W. HIGGINS RD. CORP.)	
D/B/A TEASERS PUB,)	
Petitioner,)	
)	
v.)	Case No. 14-TT-185
)	
THE ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

ANSWER

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 Petition as follows:

INTRODUCTION

1. The Notice was issued by the Department on September 8, 2014, assessing \$74,718.00 in Retailers' Occupation Tax, \$14,944.00 as late payment penalty, \$12,084.00 as a negligence penalty, and \$3,309.46 in interest for the taxable periods July 1, 2010 through December 31, 2012. A copy of the Notice is attached.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D) (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 1.

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

ANSWER: The Department admits the allegations in Paragraph 2.

3. Petitioner is located at 7123 W. Higgins Ave., Chicago, Illinois 60656.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A)(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 3.

4. The Taxpayer Account Number is 0045-7541.

ANSWER: The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(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 4.

BACKGROUND AND RELEVANT FACTS

5. Teasers Pub is a late night bar in Chicago.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 5 and therefore demands strict proof thereof.

6. At all relevant times, Mr. Thomas Hickey was the owner of Teasers.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 6 and therefore demands strict proof thereof.

7. At all relevant times Mr. Thomas Hickey generally worked at the bar from 1:30 p.m. until 8:00 p.m. and his son Christopher Hickey worked at the bar from 8:00 p.m. until close at 4:00 a.m. or 5:00 a.m.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 7 and therefore demands strict proof thereof.

8. Thomas and Christopher jointly made operational decisions concerning the

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 8 and therefore demands strict proof thereof.

9. Teasers timely filed all ST-1 returns during the periods at issue.

ANSWER: The Department admits the allegations in Paragraph 9.

10. Teasers was equipped with old cash registers that did not have the capability to create “z-tapes.”

ANSWER: The Department admits z-tapes were not made available by the taxpayer to the auditor for the audit period. The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and therefore demands strict proof thereof.

11. On or about April 16, 2013, the Department issued a Notice of Audit and subsequently audited the taxpayer’s records.

ANSWER: The Department admits the allegations in Paragraph 11.

12. The Department obtained from Teasers and other sources invoices and other documents from which to determine the quality and pricing of goods sold by Teasers.

ANSWER: The Department denies it obtained documents from Teasers or other sources regarding the quality of goods sold. With respect to the pricing of goods sold by the taxpayer, the basis of the assessment and its process is as set forth in the audit file including the audit narrative. The Department admits the remainder of the allegations in Paragraph 12.

ERROR I- TIMING OF PRICE INCREASE

13. The Department requested that Teasers supply the Department with a list of prices that Teasers charged its patrons for various drinks, cigarettes and food items so that the Department could determine gross sales and from that the amount of sales tax due.

ANSWER: The Department admits the allegations in Paragraph 13.

14. During the period under audit, Teasers increased its prices, so Teasers provided two price lists.

ANSWER: The Department admits the allegations in Paragraph 14.

15. Revenue Agent Rudy Bujak interviewed Thomas Hickey. During the interview, Mr. Bujack asked Thomas when the second price list went into effect and Thomas initially told Mr. Bujak that the increased prices went into effect in February of 2012.

ANSWER: The Department denies that Rudy Bujak is a Revenue Agent. The Department admits the remainder of the allegations in Paragraph 15.

16. However, when Thomas was talking with Christopher after the interview with Mr. Bujak, Christopher reminded Thomas that while they had intended to put the new price list in place in February they did not because they were afraid of the competition from Rosemont.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 16 and therefore demands strict proof thereof.

17. Christopher reminded Thomas that they agreed to put the new prices into effect on the week of “Black Wednesday” of 2012.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 17 and therefore demands strict proof thereof.

18. Black Wednesday is a notoriously big day for bars in Chicago because the college students return home for the Thanksgiving holiday break on Black Wednesday and patronize the bars.

ANSWER: Paragraph 18 does not contain a material allegation of facts, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the allegations contained in Paragraph 18.

19. Black Wednesday of 2012 was Thursday, November 21, 2012.

ANSWER: Paragraph 19 contains legal conclusions, not 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 in Paragraph 19.

20. Thomas contacted Mr. Bujak and notified him that the price increase actually went into effect in November and not February as previously stated.

ANSWER: The Department denies the allegations in Paragraph 20.

21. Mr. Bujak declined to change the date of the price increase in his calculations.

ANSWER: The Department admits the allegations in Paragraph 21.

22. Additionally, after Thomas obtained present counsel for representation, Christopher searched and found in his desk drawer a note that he had written to himself about the agreed upon date for the price increase. Christopher provided that to counsel.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 22 and therefore demands strict proof thereof.

23. Counsel contacted Mr. Bujak and his supervisor, Ms. Elizabeth Comiano, with the documentary evidence. Again, the Department declined to consider the changed testimony or the document.

ANSWER: The Department admits the taxpayer's present counsel contacted the auditor regarding the price increase. The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations in Paragraph 23.

24. Other than Thomas' initial statement, the Department has no evidence to place the date of the price increase in February 2012.

ANSWER: The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the allegations in Paragraph 24.

25. The Department's reliance on Thomas' initial statement regarding the date of the price increase is not reasonable.

ANSWER: The Department denies the allegations in Paragraph 25.

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.

ERROR II- INCORRECT AMOUNTS USED FOR SPILLAGE

26. Once the Department determined the amount of goods that were purchased, the Department then proceeded to calculate the amount sold by dividing the amount purchased by the size of the serving. For example, if the good in question was a shot of whiskey, the Department would calculate the total ounces of whiskey available and then divide the amount available by the ounces in a shot.

ANSWER: The basis of the assessment is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The remainder of Paragraph 26 contains legal conclusions, not material allegation of facts, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions in Paragraph 26.

27. However, when pouring drinks bartenders frequently “free pour”- that is, pour the liquor without using a shot glass to measure. This leads to beverages that frequently contain more ounces than the perfect shot. Also, when pouring, such as in beer from the tap, bartenders spill some of the product. Further, wait staff give drinks away. All of these instances give rise to “spillage”.

ANSWER: Paragraph 27 contains legal conclusions, not material allegation of facts, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions in Paragraph 27.

28. Spillage reduces the amount of servings that are obtained from a given number of ounces. Reduced number of servings reduces gross sales and sales tax due.

ANSWER: Paragraph 28 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 in Paragraph 28.

29. The Department used a spillage rate of 2% for liquor and 4% for beer.

ANSWER: The Department admits the allegations in Paragraph 29.

30. However, the Department regularly allows 10% spillage based on its accumulated experience in auditing cash businesses.

ANSWER: The Department denies the allegations in Paragraph 30.

31. Furthermore, the auditor did not perform any pour tests or use any other basis for the Department’s determination of the amount of spillage to allocate. The spillage amount is unreasonable and arbitrary.

ANSWER: The Department denies the allegations in Paragraph 31.

32. As a result, the Department's determination of the number of drinks sold by Teasers during the audit period is unreasonably large.

ANSWER: The Department denies the allegations in Paragraph 32.

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: October 30, 2014

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
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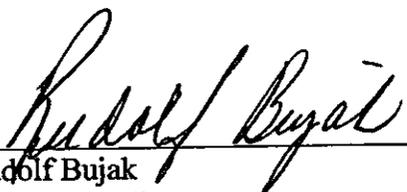
THE ILLINOIS DEPARTMENT)
OF REVENUE,)

Respondent.)

**AFFIDAVIT OF RUDOLF BUJAK
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Auditor III.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 5, 6, 7, 8, 10, 16 and 17.

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.



Rudolf Bujak
Revenue Auditor
Illinois Department of Revenue

DATED: 10/30/14