

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

PREMIER SOUND & DESIGN)	
)	
INC.,)	
Petitioner)	
)	
V)	No. 14 TT 209
ILLINOIS DEPARTMENT)	Chief Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. Petitioner brings this action pursuant to Rule Section 5000.310 of the Tax Tribunal 86 Ill.Admin. Code § 5000.310.

ANSWER: The allegations in paragraph 1 of the petition consist of legal conclusions and are thus denied.

2. The Petitioner is Premier Sound & Design Inc., 1104 N. Prospect Avenue, Champaign, Illinois 61820.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. The Petitioner’s identification number is Account ID 2884-2294.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. The Department audited Petitioner and issued to Petitioner certain Notices of Tax Liability which are attached as Exhibit A and which involve the periods July 1, 2008 through March 31, 2011 (Periods at Issue).

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. The Tax Tribunal has jurisdiction over this matter pursuant to the Illinois Tax Tribunal Act of 2012, 35 ILCS 1010/1-1 et seq.

ANSWER: The allegations in paragraph 5 of the petition consist of legal conclusions and are thus denied.

6. Petitioner is a corporation qualified to do business in Illinois.

ANSWER: The allegations in paragraph 6 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

7. The tax involved herein is the Illinois retailers' occupation tax imposed under the Illinois Tax Act, 35 ILCS 5/120 et seq.

ANSWER: The allegations in paragraph 7 of the petition consist of legal conclusions and are thus denied.

8. Petitioner maintains its commercial domicile in Champaign, Illinois.

ANSWER: The allegations in paragraph 8 of the petition consist not of material allegations of fact, but primarily of factual and/or legal

conclusions and are thus denied.

9. Petitioner operates a business which provides a funds deposit system and also sells tangible personal property such as telecommunications equipment. Customers deposit money in the funds deposit system which funds can be used for multiple purposes.

ANSWER: The Department admits that Petitioner sells tangible personal property such as telecommunications equipment. The Department also admits that it made a determination that the petitioner also made sales of cellular telephone prepaid minutes to customers and that the gross receipts from these sales were subject to retailer's occupation tax. The Department further states that the petitioner's characterization of these transactions in the context of a "funds deposit system" is vague and conclusionary and therefore denies any and all other allegations in paragraph 9 of the petition.

10. Petitioner was registered to do business with the Department under Illinois Business Tax Number 2884-2294 during the Periods at Issue.

ANSWER: The Department admits the allegations in paragraph 10 of the petition.

11. Illinois imposes an occupation tax upon sales of tangible personal property equipment.

ANSWER: The allegations in paragraph 11 of the petition consist of legal conclusions and are thus denied.

12. During the Periods at Issue, Petitioner made sales to Illinois customers and filed returns regarding its telecommunications equipment sales.

ANSWER: The Department admits the allegations in paragraph 12 of the petition.

COUNT I

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 12 as though fully set forth herein.

13. The Department audited the Petitioner for the Periods at Issue.

ANSWER: The Department admits the allegations in paragraph 13 of the petition.

14. The Department issued the Notices of Tax Liability seeking to assess additional retailers' occupation taxes against Petitioner in the amount of \$16,859.00 plus interest and penalty.

ANSWER: The Department admits the allegations in paragraph 14 of the petition.

15. The Department asserted that the deposit funds resulted in retailers' occupation taxes being due by Petitioner.

ANSWER: The Department admits that it made a determination that the petitioner made sales of cellular telephone prepaid minutes to customers and that the gross receipts from these sales were subject to retailer's occupation tax. The Department denies any and all remaining allegations in paragraph 15 of the petition.

16. Petitioner is not a retailer as to the funds deposit portion of its business.

ANSWER: The allegations in paragraph 16 of the petition consist primarily of legal and/or factual conclusions and are denied.

17. As a result of its determination, the Department recalculated the retailers' occupation tax liability of Petitioner.

ANSWER: The Department admits that it made a determination that the petitioner made sales of cellular telephone prepaid minutes to customers and that the gross receipts from these sales were subject to retailers occupation tax. The Department denies any and all remaining allegations in paragraph 17 of the petition.

18. This recalculation of Petitioner's retailers' occupation tax liability is not supported by the facts and is contrary to the law.

ANSWER: The Department denies the allegations in paragraph 18 of the petition.

19. There is an actual controversy between Petitioner and the Department concerning Petitioner's entitlement to a refund of all or a portion of the protest payment.

ANSWER: The Department admits that there is an actual controversy between Petitioner and the Department. The Department denies any and all remaining allegations in paragraph 19 of the petition.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition;
- b. finding that the Notices of Tax Liability at issue are correct as issued;

- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 19, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 19 as though fully set forth herein.

20. The Notices of Tax Liability calculate penalty and interest.

ANSWER: The Department states that the Notices of Tax Liability speak for themselves and therefore deny the characterization thereof and any and all other allegations in paragraph 20 of the petition.

21. Section 3-8 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-8 states:

No penalties if reasonable cause exists. The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability.

ANSWER: The allegations in paragraph 21 of the petition consist of legal conclusions and are thus denied.

22. Petitioner was filing and paying its retailers occupation tax in conformity with existing regulations and rulings.

ANSWER: The allegations in paragraph 22 of the petition consist not of material allegations of fact but primarily of legal and/or factual conclusions and are denied.

23. Petitioner was filing and paying its retailers occupation tax in conformity with a long established system of determining property used as telecommunications or telephone cards.

ANSWER: The allegations in paragraph 23 of the petition consist not of material allegations of fact but primarily of legal and/or factual conclusions and are denied.

24. Petitioner had reasonable cause not to pay amounts in the proposed Notices of Tax Liability.

ANSWER: The allegations in paragraph 24 of the petition consist not of material allegations of fact but primarily of legal and/or factual conclusions and are denied.

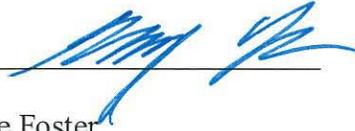
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Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____



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CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on December 10, 2014 a copy of the Department's ANSWER was served on John R. Simpson, Sorling Northrup, by causing a copy to be sent by electronic mail to jrsimpson@sorlinglaw.com.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "George Foster".