

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

R BELLA BARCA INC.,)	
)	
Petitioner,)	
)	
v.)	No. 14-TT-224
)	CHIEF JUDGE JAMES M. CONWAY
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:

A. The name, address, and telephone number of the petitioner is:

**R Bella Barca Inc.
3511 Silverside Road, Suite 105
Wilmington, DE 19810-4902**

ANSWER: The information contained in Paragraph A is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (86 Ill. Adm. 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. Further answering, the Department denies the factual allegations of paragraph A to the extent no telephone number is included. The Department admits the remaining factual allegations in paragraph A.

B. The name, address, telephone number and email address of the petitioner's representatives are:

Kevin Wolfberg, Esq.
Patrick J. McGuire, Esq.
SCHAIN BANKS
70 W. Madison Street, Suite 5300
Chicago, IL 60602
Ph. 312.345.5700
kwolfberg@schainbanks.com
pmcguire@schainbanks.com

ANSWER: The information contained in Paragraph B is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (86 Ill. Adm. 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 denies that Patrick J. McGuire is listed on Taxpayer's IL-2848 Power of Attorney Form. Otherwise, the Department admits the factual allegations in paragraph B.

C. The taxpayer's identification number is:

Account ID No.: 20079-81568

ANSWER: The information contained in Paragraph C is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (86 Ill. Adm. 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 in paragraph C.

D. A copy of the Statutory Notice at issue is attached hereto as **Exhibit A**.

ANSWER: The Department admits the factual allegations in paragraph D. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due. *See 35 ILCS 105/12; 35 ILCS 120/5.*

E. The years or periods involved are:

Tax Year(s): January 1, 2007 through December 31, 2007.

ANSWER: The information contained in Paragraph E is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (86 Ill. Adm. 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 denies that the sales and use tax audit at issue was limited to the time periods of January 1, 2007 through December 31, 2007.

Statement of Claim:

- 1. Petitioner is a Delaware corporation with a current address of 3511 Silverside Road, Suite 105, Wilmington, Delaware 19810 and a FEIN of 20-5820067.**

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1) (86 Ill. Adm. 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. Further answering, the Department denies that the FEIN is 20-5820067. The FEIN is 95-2134304. Otherwise the factual allegations in paragraph 1 are admitted.

2. **Petitioner purchased a 2007 Pama Pilothouse motor yacht on or about December 15, 2006 (the "Watercraft") from Dave Adams Yacht Sales in North Palm Beach, Florida.**

ANSWER: The Department denies that the purchase took place on or about December 15, 2006. The purchase date was December 13, 2006. The Department also denies that the yacht was purchased from Dave Adams Yacht Sales. The seller was Dave Adams Yacht Sales, Inc. doing business as Premier Yacht & Ship in North Palm Beach, Florida. Otherwise, the factual allegations in paragraph 2 are admitted.

3. **Petitioner took delivery of the Watercraft in the State of Florida on December 15, 2006.**

ANSWER: The Department denies that Petitioner "took delivery" of the Watercraft on December 15, 2006. The Petitioner purchased the Watercraft on or about December 13, 2006. Otherwise, the factual allegations in paragraph 3 are admitted.

4. **The Watercraft embarked on a journey commonly referred to as "America's Great Loop" on or about December 16, 2006.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 and, therefore, denies the same.

5. **According to the America's Great Loop Cruisers Association, "America's Great Loop" is a journey on the continuous waterway that encompasses the eastern portion of North America and includes the Atlantic Ocean and Gulf Intercostal Waterways, The Great Lakes, the Canadian Heritage Canals and inland rivers in the United States.**

ANSWER: The Department denies this request to the extent that it states information obtained from a third party. Otherwise, admitted.

6. **The "America's Great Loop" journey took the Watercraft through Florida, Georgia, Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, South Carolina, Virginia, Wisconsin and Canada.**

ANSWER: The Department admits that the Watercraft logs from 2007 indicate that the Watercraft was in Florida, Georgia, Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, South Carolina, Virginia, Wisconsin and Canada. The logs also show the Watercraft was in Missouri, Kentucky, Tennessee, and Mississippi during 2007. The Department is without information sufficient to form a belief as to the truth of the remaining factual allegations contained in Paragraph 6 and, therefore, denies the same.

7. **The Watercraft travels at approximately eight (8) miles per hour during this journey, only travels during daylight and is restricted by any inclement weather.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 7 and, therefore, denies the same.

8. **The Watercraft arrived in Illinois waters on or about August 5, 2007.**

ANSWER: The Department denies the factual allegations in paragraph 8 to the extent the term “arrived” is vague and ambiguous. Otherwise, admitted.

9. **The Watercraft left Illinois waters, on or about August 11, 2007.**

ANSWER: The Department denies the factual allegation in paragraph 9 to the extent the term “left” is vague and ambiguous. Otherwise, admitted.

10. **On or about August 19, 2007, while in the State of Michigan, the Watercraft developed an exhaust leak between its turbo chargers and the exhaust system.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 10 and, therefore, denies the same.

11. **The nearest Volvo D-9 certified mechanic was Turk Diesel and Marine in Trevor, Wisconsin.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 11 and, therefore, denies the same.

12. **At the request of the mechanics from Turk Diesel and Marine, the Watercraft was repaired in Winthrop Harbor, Illinois.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 12 and, therefore, denies the same.

13. **The Watercraft was in Winthrop Harbor for fourteen (14) days while waiting for parts, the installation of such parts, and the custom spacers needed for the repairs which were manufactured for the Watercraft by Chip Manning in Wisconsin.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 13 and, therefore, denies the same.

14. **On or about September 14, 2007, the repairs were completed and the Watercraft travelled south to leave Illinois waters on the Illinois River.**

ANSWER: The Department denies that the Watercraft travelled south to leave Illinois waters on or about September 14, 2007. The Watercraft logs indicate that the Watercraft travelled south to leave Illinois on or about September 19, 2007. Otherwise, the Department is without information sufficient to form a belief as to the truth of the remaining factual allegations contained in Paragraph 14 and, therefore, denies the same.

15. **On or about September 23, 2007, the Watercraft was out of Illinois waters.**

ANSWER: The Department admits that on or about September 23, 2007, the Watercraft was out of Illinois waters.

16. **On or about November 23, 2007, the Watercraft finished the America's Great Loop voyage in the State of Florida.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 16 and, therefore, denies the same.

17. **After this trip through Illinois in 2007, the Watercraft has not been in, or near, the State of Illinois.**

ANSWER: The Department is without information sufficient to form a belief as to the truth of the factual allegations contained in Paragraph 17 and, therefore, denies the same.

18. **On or before March 6, 2013, petitioner was audited by the Illinois Department of Revenue for the purchase of the Watercraft.**

ANSWER: Admitted that before March 6, 2013, petitioner was audited by the Illinois Department of Revenue for the purchase and use of the Watercraft in Illinois. Otherwise, denied.

19. **During the course of the audit, representatives of the Illinois Department of Revenue determined that the Watercraft was subject to Illinois Use Tax as it was acquired for use in Illinois.**

ANSWER: Paragraph 19 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 further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie*

evidence of the correctness of the amount of tax due. *See 35 ILCS 105/12; 35 ILCS 120/5.*

- 20. Taxpayer contends that it did not acquire the Watercraft for use in Illinois and that its temporary storage in the State while traveling on a multi-state and multi-county journey was simply temporary storage of the Watercraft in the State.**

ANSWER: Paragraph 20 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.

- 21. Accordingly, this petition is timely and petitioner is entitled to the relief sought herein.**

ANSWER: Paragraph 21 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.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects 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: December 30, 2014

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
Seth Jacob Schriftman
Special Assistant Attorney General

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AFFIDAVIT OF TEENA COFFEY
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

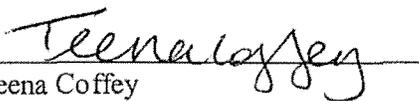
STATE OF ILLINOIS

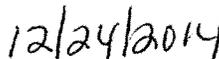
COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Teena Coffey, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor.
3. I audited R Bella Barca Inc. regard the taxes asserted on the Notice of Tax Liability attached to and subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some or all of the allegations contained in Paragraphs 4, 6, 7, 10, 11, 12, 13, 14, 16, and 17 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.


Teena Coffey
Revenue Auditor


Date