

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

SANTINI INC.,)	
)	
Petitioner,)	
)	
v.)	No. 14 TT 228
)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

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:

PARTIES

1. Petitioner is an Illinois corporation located at 1141 Lee Street, Des Plaines, Illinois, 60016, and can be reached at 847-678-0230.

ANSWER: The information contained in Paragraph 1 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. Further answering, the Petitioner does business as Foremost Liquors. The Petitioner’s phone number of 847-678-0230 is also denied. The audit information indicates the phone number as 847-824-3103. Otherwise, the factual allegations in Paragraph 1 are admitted.

2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and

can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The information contained in Paragraph 2 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. Further answering, the IL-2848 form indicates that the Petitioner is represented by James Dickett from the firm of Romanoff & Dickett, LTD. The other factual allegations in Paragraph 2 are admitted.

3. Petitioner's Taxpayer (Account) ID is 2085-1537.

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 factual allegations in Paragraph 3 are admitted.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 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.

NOTICE

5. On October 1, 2014, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods July 1, 2010 to December 31, 2012. The Notice reflects \$56,770 in tax due, \$11,354 in late payment penalties, \$11,354 in negligence penalties, and \$3,463 in interest, for a total of \$82,941. The Notice is

attached hereto as Exhibit 1.

ANSWER: Admitted that the Notice reflects \$56,770.00 in tax due, \$11,354.00 in late payment penalties, \$11,354.00 in negligence penalties, and \$3,462.97 in interest, for a total assessed of \$82,940.97. The Department further states that the liability of tax 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 120/4*. The Department admits the other factual allegations in Paragraph 5.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: Paragraph 6 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 admits the existence, force, and effect of the Tribunal Act, and states that the Act speaks for itself.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

ANSWER: Paragraph 7 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 admits the existence, force, and effect of the Tribunal Act, and states that the Act speaks for itself.

BACKGROUND

8. Petitioner is a liquor store located in Des Plaines, Illinois (close to the Department’s Des Plaines office).

ANSWER: The Department objects to the term “close to” as vague and ambiguous, and therefore denies same. Otherwise, the factual allegations in Paragraph 8 are admitted.

9. Defendants audited Petitioner’s books and records for the tax periods July 1, 2010 to December 31, 2012.

ANSWER: The Department admits the factual allegations in Paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s cigarette and food purchases by estimated industry standard selling prices found by the Department in a book at the library, and the Department multiplied the Petitioner’s beer and liquor purchased by a miscalculated mark-up because 2013 selling prices and 2013 costs were used and the Department’s sample is not representative of the corporation’s business.

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 further states that the liability of tax 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 120/4*. The Department denies the remainder of the allegations in Paragraph 10.

COUNT I

Defendant’s audit methodology overstates Petitioner’s liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying some of the Petitioner's purchases by estimated selling prices found in a book at the library and then by multiplying the Petitioner's remaining purchases by a mark-up from outside of the audit period.

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 further states that the liability of tax 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 120/4.* The Department denies the remainder of the allegations in Paragraph 12.

13. By applying such audit methodology, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department.

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 further states that the liability of tax 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 120/4.* The Department denies the remainder of the allegations in Paragraph 13.

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.

COUNT II

All penalties should be abated based on reasonable cause.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

15. In its Notice, the Department assessed penalties based on the audit liability.

ANSWER: The Department admits the factual allegations in Paragraph 15.

16. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 16 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 admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

17. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(b).

ANSWER: Paragraph 17 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 admits the existence, force and effect of 86 Ill. Admin. Code 700.400(b), and states that the regulation speaks for itself.

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: Paragraph 18 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 admits the existence, force and effect of 86 Ill. Admin. Code 700.400(b), and states that the regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices.

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 denies the legal conclusions/allegations contained in Paragraph 19.

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 31, 2014

Respectfully submitted,
Illinois Department of Revenue

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