

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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PRIME BAR CHICAGO LLC	)	
	)	
Petitioner,	)	
v.	)	No. 14 TT 24
	)	
ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
	)	Judge Brian Barov
	)	
Respondent.	)	

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**DEPARTMENT' S ANSWER TO PETITION**

NOW COMES the Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Taxpayer' s Petition ("Petition"), hereby states as follows:

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

Prime Bar Chicago LLC  
1840 Pickwick Lane  
Glenview, Illinois 60026-1307

**ANSWER:** The Department admits the allegations contained in paragraph 1.

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

Kevin Wolfberg, Esq.  
Patrick J. McGuire, Esq.  
Schain, Burney, Banks & Kenny Ltd.

70 W. Madison Street, Suite 4500  
Chicago, IL 60602  
Ph. 312-345-5700  
[kwolfberg@sbbklw.com](mailto:kwolfberg@sbbklw.com)  
[pmcguire@sbbklw.com](mailto:pmcguire@sbbklw.com)

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

C. Taxpayer's identification number is:

TIN# 27-0752712  
IBT: 3966-4902

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

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

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

E. The Years or periods involved are:

Tax years(s): January 1, 2010 through June 30, 2012.

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

F. Statement of Claim:

1. Petitioner operates a restaurant and bar in Chicago, Illinois.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. As part of its business, petitioner purchases food, drinks and other supplies.

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

3. Petitioner sells to the general public some, but not all, of the food, drinks, and other supplies it purchases.

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

4. It is usual and customary in the restaurant industry to “mark up” the cost of food and drinks purchases so that a restaurant can realize a profit.

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

5. Petitioner applies a “mark up” in varying percentages to the food and drinks it sells.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 and therefore neither admits or denies the allegations.

6. For example, petitioner typically marks up the cost of food by a percentage ranging from A% to B% (redacted to protect confidential information) and drinks by percentage ranging from X% to Y% (redacted to protect confidential information).

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 and therefore neither admits or denies the allegations.

7. The cost of the different types of foods and drinks petitioner purchases vary widely and can constitute 50% or more of the sale price of the item.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 and therefore neither admits or denies the allegations.

8. On or before October 9, 2013, petitioner was audited by the Illinois Department of Revenue for the tax year(s) January 1, 2010 through June 30, 2012.

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

9. During the course of the audit, representatives of the Illinois Department of Revenue used incorrect methods and formulas to determine petitioner’s tax liability.

ANSWER: Although paragraph 9 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 9.

10. Specifically, representatives of the Illinois Department of Revenue determined petitioner’s tax liability by wrongfully calculating that petitioner’s cost of all of the food and

drinks it sold accounted for just 20% of the sale price of all items without regard to the actual cost paid by petitioner for various items or differences in the percentage mark ups petitioner applied to various items.

ANSWER: Although paragraph 10 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 10.

11. The Illinois Department of Revenue's use of an across-the board 20% cost factor to determine petitioner's tax liability was contrary to the facts and generally accepted accounting procedures for the restaurant industry.

ANSWER: Although paragraph 11 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 11.

12. The Illinois Department of Revenue's use of an across-the board 20% cost factor to determine petitioner's tax liability was wrong, unreasonable, and arbitrary.

ANSWER: Although paragraph 12 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 12.

13. As a result of the Illinois Department of Revenue's wrongful audit procedures, petitioner was assessed an incorrect and inflated tax liability.

ANSWER: Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13.

14. Petitioner timely filed a protest to the Illinois Department of Revenue's audit results and requested an administrative hearing for this matter. A copy of the timely filed protest and request for administrative hearing is attached hereto as Exhibit B.

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

15. Thereafter, on January 17, 2014, the Illinois Department of Revenue dismissed the protest due to lack of jurisdiction stating that "a timely protest that is dismissed by the Department for lack of jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal." A copy of the Department's Protest Dismissal Due to Lack of Jurisdiction is attached here to as Exhibit C.

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

16. Accordingly, this petition is timely and petitioner is entitled to the relief sought herein.

ANSWER: The Department admits that the petition is timely but denies that petitioner is entitled to the relief it is seeking as such statement represents a legal conclusion rather than a material allegation of fact.

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 upheld and affirmed in its entirety;
- C) That this Tribunal grant such other additional relief it deems just and proper

LISA MADIGAN  
ILLINOIS ATTORNEY GENERAL  
REVENUE LITIGATION BUREAU  
100 W. RANDOLPH ST., RM. 13-216  
CHICAGO, IL 60601  
By: Michael Coveny (312) 814-4142

Respectfully Submitted,

LISA MADIGAN  
Illinois Attorney General



By \_\_\_\_\_  
Michael Coveny,  
Assistant Attorney General

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK         )

**AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE**

I, CHARLES SCHOEN, being first duly sworn, deposes and says that I am an employee of the Illinois Department of Revenue, that I have read the foregoing Department's Answer to Petitioner's Petition, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that I lack the required personal knowledge to either admit or deny paragraphs 5-7, pursuant to 735 ILCS 5/2-610(b) and Tribunal Rule 5000.310(b)(3). I hereby certify that the statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief.

 3/31/14  
\_\_\_\_\_  
Charles Schoen  
Revenue Auditor  
Illinois Department of Revenue

**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 Petitioner's Petition upon:

Kevin Wolfberg and Patrick J. McGuire  
Schain, Burney, Banks & Kenny Ltd.  
70 West Madison Street  
Suite 4500  
Chicago, IL 60602

By email to [kwolfberg@sbbklaw.com](mailto:kwolfberg@sbbklaw.com) and [pmcguire@sbbklaw.com](mailto:pmcguire@sbbklaw.com) on April 1, 2014.