

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

BAGHERIA LLC,)	
)	
Petitioner,)	
v.)	No. 15 TT 06
)	Judge Brian F. Barov
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

DEPARTMENT’S ANSWER TO PETITION

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the “Petition”), hereby states as follows:

PARTIES

1. Petitioner is a corporation located at 7636 West Madison, Forest Park, Illinois, 60130, and can be reached at 708-366-3010.

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

2. Petitioner is represented by Romanoff & Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558, and can be reached at 708-784-322 or jdickett@aol.com.

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

3. Petitioner’s Taxpayer (Account) ID is 3903-1055.

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

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: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

NOTICE

5. On December 8, 2014, the Department issued a Notice of Tax Liability letter ("Notice") to Petitioner for the tax periods January 1, 2010 to September 30, 2013 that is comprised of \$40,846 in tax plus penalties and interest. The Notice is attached as Exhibit 1.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit 1 and referred to in paragraph 5 and state that such document speaks for itself.

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: The Department admits the allegations contained in paragraph 6.

7. The 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: Although paragraph 7 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 7.

BACKGROUND

8. Defendants audited Petitioner's books and records for the tax periods January 1, 2010 to September 30, 2013.

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

9. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's ticket orders for complimentary items by an average menu selling price of Petitioner's products even though the Petitioner obtained zero gross receipts for such "comps" and even though the ticket orders are otherwise included in the daily report totals (as zero sales).

ANSWER: The Department denies the allegations contained in paragraph 9.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

11. On audit, the Department calculated the audit liability by multiplying Petitioner's "comps" ticket orders by an average price even though the "comps" generated zero sales dollars.

ANSWER: The Department denies the allegations contained in paragraph 11.

12. By using this audit methodology during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner does not owe sales tax on complimentary items provided to its customers.

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.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count I of this matter;
- B) That the Department's Notice of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT II

All penalties should be abated based on reasonable cause

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

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

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 1 and referred to in paragraph 14 and state that such document speaks for itself.

15. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 15 and state such statute speaks for itself.

16. 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.Adm.Code § 700.400(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 16 and state such regulation speaks for itself.

17. 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.Adm.Code §700.400(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 17 and state such regulation speaks for itself.

18. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not collect tax on its “comps.”

ANSWER: Although paragraph 18 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 18.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;
- B) That the Department’s Notice of Tax Liability be determined to be correct;
- 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) 814-6697

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By _____
Michael Coveny,
Assistant Attorney General

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:

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on March 9, 2015.



Michael Coveny,
Assistant Attorney General