

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

---

---

<b>SALVADORE MORALES,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 15-TT-21</b>
	)	
<b>DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS,</b>	)	
<b>Respondent.</b>	)	

---

---

**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:

**JURISDICTION**

1. This timely filed petition concerns the notices that involve a tax assessment, including penalty and interest, in excess of \$15,000 under a tax law identified in Section 1-45 of the Act, therefore, the Tax Tribunal has jurisdiction over this amended petition. Copies of the notices are attached hereto as Exhibit A.

**ANSWER:** Paragraph 1 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.

**PARTIES**

2. Petitioner was formerly President and shareholder of Diamora, Inc. (“Diamora”). Petitioner resides at 2840 McDuffee Circle, North Aurora, Illinois 60542. His tax identification number is xxx-xx-1193. A copy of Petitioner’s notice is attached hereto as Exhibit A.

**ANSWER:** The information contained in Paragraph 2 is required by Illinois Tax Tribunal

Regulations Section 310(a)(1)(A) and (D)(86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. IDOR is an agency of the Executive Department of the State of Illinois that is authorized to administer and enforce provisions of the Illinois Retailers' Occupation Tax Act ("ROTA"), and the Illinois Use Tax Act. 20 ILCS 2505/2505-25 and 20 ILCS 2505/2505-90.

**ANSWER:** Paragraph 3 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.

#### **BACKGROUND**

4. Diamora, formerly doing business as Club Gala, was engaged in the restaurant and tavern business, and was so engaged during the tax periods at issue in this petition.

**ANSWER:** The Department admits the allegations in Paragraph 4.

5. As previously noted, Petitioner was an officer of Diamora and one of its shareholders during the periods at issue in this petition.

**ANSWER:** The Department admits Petitioner was an officer of Diamora during the periods at issue but lacks sufficient information to admit or deny if Petitioner was a shareholder during the periods at issue.

6. Petitioner did not manage the day-to-day operations of the business.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 6 and demands strict proof thereof.

7. On information and belief, IDOR conducted an audit of Diamora's business in or around August 2012.

**ANSWER:** The Department admits it conducted an audit of Diamora during 2012 and 2013.

8. IDOR had access to the Diamora's books and records. The audit included tax periods July 1, 2009 through December 31, 2011 ("Tax Periods").

**ANSWER:** The Department denies Diamora provided a full set of books and records or that the Department had access to all of Diamora's books and records during the audit. The Department admits it conducted an audit of Diamora's July 1, 2009 to December 31, 2011 books and records.

9. On information and belief, IDOR's auditor corrected Diamora's sales tax returns for the Tax Periods pursuant to Section 4 of the ROTA (35 ILCS 120/4). This section provides in pertinent part as follows:

...the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information.

**ANSWER:** Paragraph 9 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.

10. On or about March 4, 2013 Diamora was assessed a tax liability of \$45,993.27 (the "Liability").

**ANSWER:** The Department states the Notice of Tax Liability and Notice of Penalty Liability speak for themselves and therefore deny the characterizations thereof and any and all other allegations in Paragraph 10.

11. On information and belief, IDOR assessed a fraud penalty on Diamora based on the auditor's method of calculating gross receipts that far exceeded the actual gross receipts generated by the Petitioner, which resulted in an excessive tax liability.

**ANSWER:** The basis of the assessment, including any penalties, is as set forth in the audit file including the audit narrative, and the Department therefore denies Petitioner's characterization and all other allegations contained in Paragraph 11.

12. Diamora has filed with the Tax Tribunal an amended petition, wherein it is challenging IDOR's assessment of the Liability.<sup>1</sup>

**ANSWER:** The Department admits the allegations in Paragraph 12.

13. On or about May 6, 2014 the Petitioner, a shareholder of Diamora, was personally assessed the Liability.

**ANSWER:** The Department admits it issued the Notice of Personal Liability dated May 6, 2014 to Petitioner.

#### **COUNT I**

#### **Petitioner's Assessed Liability must be Abated because IDOR's Calculations of Diamora's Purported Tax Liability was Incorrect**

14. Petitioner restates and incorporates by reference paragraphs 1 through 13 of this Petition.

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

15. As previously noted, Petitioner, as shareholder of Diamora, was personally assessed the Liability based on his role as officer and shareholder of Diamora.

**ANSWER:** The basis of the assessment is as set forth in the Notice of Penalty Liability including the Responsible Officer file, and the Department therefore denies Petitioner's characterization in Paragraph 15. The Department admits it issued the Notice of Personal Liability dated May 6, 2014 to Petitioner.

16. As previously noted, Section 4 of the ROTA requires that IDOR "...shall examine such

---

<sup>1</sup> Diamora, Inc. v. Illinois Department of Revenue, Case No. 14 TT 246

return and shall, if necessary, correct such return according to its best judgment and information.” 35 ILCS 120/4.

**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.

17. The auditor determined Diamora’s marked-up alcohol receipts by applying a multiplier of 5.2 to its alcohol purchases. The auditor did not make a distinction between various types of alcohol, such as beer and liquor.

**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 and all other allegations contained in Paragraph 17.

18. Diamora’s actual marked-up alcohol receipts were based on a multiplier of 3.4, which generated actual receipts that were substantially lower than the amounts attributed to it by the auditor.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 18 and therefore demands strict proof thereof.

19. A reasonable review of Diamora’s vendor invoices, which identified its cost of goods sold, relative to the corresponding sale price, which was reflected on its menu and confirmed by its point-of-sale receipts, should have sufficiently informed the auditor that the proper multiplier was 3.4 rather than the 5.2 that she applied.

**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 and all other allegations contained in Paragraph 19.

20. IDOR's corrected returns, which were based on an incorrect method of calculating Diamora's purported tax liability, were not produced with a minimum standard of reasonableness because the auditor did not use her best judgment based on the information provided by Diamora.

**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. The Department denies the legal conclusion in Paragraph 20.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

## **COUNT II**

### **Petitioner's Failure to Pay the Purported Additional Tax was due to Reasonable Cause**

21. Petitioner restates and incorporates by reference paragraphs 1 through 21 of this Petition.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as though fully set forth herein.

22. Illinois law provides that penalties "shall not apply if the taxpayer shows that his failure to...pay tax at the required time was due to reasonable cause." 35 ILCS 735/3-8.

**ANSWER:** Paragraph 22 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.

23. Petitioner, as an officer of Diamora, made a good faith effort to determine Diamora's sales tax obligations as reported on its sales tax reports.

**ANSWER:** Paragraph 23 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 in Paragraph 23.

24. As previously noted, Petitioner did not manage the business day-to-day. He relied on key employees to accurately report the monthly sales that were generated, which he then provided to Diamora's accountant.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 24 and therefore demands strict proof thereof.

25. Petitioner acted in good faith, and therefore, he acted with reasonable cause and therefore no penalty should be assessed against the Petitioner.

**ANSWER:** Paragraph 25 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 in Paragraph 26.

26. Petitioner did not willfully fail to pay Diamora's sales tax obligations: therefore, he should not be held liable for unpaid sales tax penalties and interest.

**ANSWER:** Paragraph 26 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 in Paragraph 26.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;

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

### **COUNT III**

#### **Petitioner had no Intent to Defraud the Department**

27. Petitioner restates and incorporates by reference paragraphs 1 through 27 of this Petition.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 27 as though fully set forth herein.

28. The Illinois Uniform Penalty and Interest Act (the “UIPA”) provides that:

if any return or amended return is filed with the intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.  
35 ILCS 735/3-6(a).

**ANSWER:** Paragraph 28 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.

29. On information and belief, IDOR’s auditor assessed a fraud penalty against the Petitioner based on the fact that IDOR’s auditor applied a method of calculating gross receipts that resulted in a purported tax liability that far exceeded the actual gross receipts generated by Petitioner.

**ANSWER:** The basis of the assessment, including any penalties, is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization and all other allegations contained in Paragraph 29.

30. At no time, and in no way, did Petitioner intend to defraud the State of Illinois.

**ANSWER:** Paragraph 30 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 in Paragraph 30.

31. Petitioner acted in good faith, and therefore, he acted with reasonable cause; therefore, no fraud penalty should be assessed against the Petitioner.

**ANSWER:** Paragraph 31 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 in Paragraph 31.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Dated: March 3, 2015

Respectfully submitted,  
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte  
Ashley Hayes Forte  
Special Assistant Attorney General

Ashley Hayes Forte  
Illinois Department of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-3514 phone  
(312) 814-4344 facsimile  
[ashley.forte@illinois.gov](mailto:ashley.forte@illinois.gov)

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

---

---

<b>SALVADORE MORALES,</b>	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Case No. 15-TT-21</b>
	)	
<b>DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS,</b>	)	
<b>Respondent.</b>	)	

---

---

**AFFIDAVIT OF FLO WOOD  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Collections Bureau's 100% Penalty Unit.
2. My current title is RTS. III
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 5, 6, 18 and 24.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

  
\_\_\_\_\_  
Flo Wood  
RTS III  
Illinois Department of Revenue

DATED: 3/2/15