

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

CYPRUS LONG BAR INC.,)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-25
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ANSWER

The Illinois Department of Revenue (“The Department”), by and through its attorneys, Lisa Madigan, Attorney General, by Marc L. Muchin, Special Assistant Attorney General, as its answer to Taxpayer, Cyprus Long Bar, Inc., alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 13115 South Western Avenue, Blue Island, Illinois, 60406, and can be reached at 708-935-6457.

ANSWER: The Department admits the factual allegations contained in Paragraph 1.

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 Department admits the factual allegations contained in Paragraph 2.

3. Petitioner’s Taxpayer (Account) ID is 2719-8820,

ANSWER: The Department admits the factual 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 factual allegations contained in Paragraph 4.

NOTICE

5. On December 9, 2014, Petitioner received two Notice of Tax Liability letters (“Notice”) from the Department for a sales/use tax audit for the combined tax periods of January 1, 2011 to September 30, 2013. The Notice reflects \$101,776 in tax due, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the factual allegations contained 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: The Department admits the factual allegations contained in Paragraph 6.

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: The Department admits the factual allegations contained in Paragraph 7.

BACKGROUND

8. Petitioner is a tavern located in near south suburbs of Chicago.

ANSWER: The Department admits the factual allegations contained in Paragraph 8.

9. Defendants audited Petitioner’s books and records for the tax periods January 1, 2011 to September 30, 2013.

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

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products. The estimated selling prices were found by the Department in a book at the library.

ANSWER: The Department denies the factual allegations contained in Paragraph 10.

COUNT I

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

ANSWER: The Department admits the factual allegations contained in Paragraph 11.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, and at least one of the vendors provided purchase amounts in excess of the actual invoices during the audit tax periods.

ANSWER: The Department denies the factual allegations contained in Paragraph 12.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, 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 Department denies the factual allegations contained in Paragraph 13.

WHEREFORE, The Department respectfully requests this Tribunal

- (a) Order judgment in favor of the Department and against the Petitioner;
- (b) Grant the Department the right to take any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) Grant any further relief this Tribunal deems appropriate.

COUNT II

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

ANSWER: The Department admits the factual allegations contained in Paragraph 14.

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

ANSWER: The Department admits the factual allegations contained 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: The Department denies this as legal conclusions not facts and asserts that the cited 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 700.400(b).

ANSWER: The Department denies this as legal conclusions not facts and asserts that the cited 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: The Department denies this as legal conclusions not facts and asserts that the cited regulation speaks for itself.

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

ANSWER: The Department denies the factual allegations contained in Paragraph 19 and demands strict proof thereof.

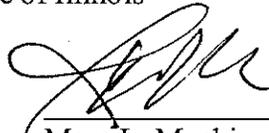
WHEREFORE, the Department respectfully requests this Tribunal:

- (a) Find and declare that all penalties should be finalized;
- (b) Grant the Department the right to take any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice; and
- (c) Grant any further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

By:



Marc L. Muchin
Special Assistant Attorney General

Date:

3/6/15

Illinois Department of Revenue
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