

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

CHINA HUT 3, INC.,)	
)	
Petitioner,)	
)	
v.)	Case No. 15-TT-35
)	BAROV
THE ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

ANSWER TO PETITION

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:

INTRODUCTION

1. On September 11, 2014 the letters of Notice of Deficiency was issued by the Department.

ANSWER: The Department admits the allegations in Paragraph 1.

2. The above letters of Notice of Deficiency (Attached) are based on Business Income Tax Liabilities and are identified as follows:

Letter ID: CNXXX191216X5280 Total Deficiency \$11,681.63

Letter ID: CNXXX153X5221283 Total Deficiency \$9,021.51

ANSWER: The Department admits the allegations in Paragraph 2.

3. The late discretionary hearing was granted on January 29, 2015 by Judge Terry D. Charlton.

ANSWER: The Department admits the allegations in Paragraph 3.

4. There is a currently pending before the Illinois Independent Tax Tribunal under the case number 14 TT 164 with Judge Barov with respect to Petitioner's sale tax liabilities.

ANSWER: The Department admits the allegations in Paragraph 4.

5. Petitioner is a corporation with its place of business in 7100 N. Clark Street, Chicago, IL 60626-2408. Its telephone number is 312-636-6823. The Petitioner is represented by James T. Hyun, Attorney at Law whose contact number is 847-501-2900. The Taxpayer ID is 27-0515232.

ANSWER: The information contained in Paragraph 5 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A), (B), and (C)(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 5.

6. A copy of the letters of Notice of Deficiency is attached hereto as Exhibit A.

ANSWER: The Department admits the allegations in Paragraph 6.

JURISDICTION

7. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, and among other notices, where the amount issue exceeds \$15,000, exclusive of penalties and interest. 35 Ill. Comp. Stat. section 1010/1-45.

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.

STATEMENT OF CLAIMS

8. The Petitioner operates a restaurant in Chicago, Illinois.

ANSWER: The Department admits the allegations in Paragraph 8.

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

ANSWER: The Department admits the allegations in Paragraph 9.

10. Petitioner also sells to the general public food and drinks.

ANSWER: The Department admits the allegations in Paragraph 10.

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

ANSWER: Paragraph 11 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.

12. The Petitioner applied a “mark up” in varying percentages to the food and drinks it seeks which is considered standard in restaurant industry.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and therefore demands strict proof thereof.

13. The Petitioner was audited by the Illinois Department of Revenue for a period of January 1, 2010 to April 30, 2012.

ANSWER: The Department denies the allegations in Paragraph 13. The audit period was from 01/01/2010 to 12/31/2011.

14. During the course of the audit, representatives of the Illinois used incorrect methods and formulas to determine petitioner’s tax liability; rejected all of the POS system daily sales report; incorrectly calculated sales from the vendor’s invoices (EDI-20) and bank systems; and incorrectly assumed that all checks written by Petitioner as “cash” or himself were counted as cost of goods sold which resulted in gross mark-up of sales during 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 and all other allegations contained in Paragraph 14.

15. As a result of the Illinois Department of Revenue wrongful audit procedure, the petitioner was assessed an incorrect and inflated tax liability.

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 15.

16. The current Business Income Tax Liability arises from the sales tax audit findings which is currently pending under the case number 14 TT 164.

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 16.

17. That the Petitioner has made a good faith effort to determine its proper tax liability in a timely manner pursuant to 86 Ill. Admin Code 700.400(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. To the extent an answer is required, the Department denies the allegations in Paragraph 17.

WHEREFORE, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notices correctly reflect 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: March 11, 2015

Respectfully submitted,
Illinois Department of Revenue

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