

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>CALLA CALIS, LLC,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-041</b>
	)	<b>Barov</b>
	)	
<b>DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS,</b>	)	
<b>Respondent.</b>	)	

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**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:

1. Jurisdiction before the Independent Tax Tribunal is appropriate, as this Petition arises from Notices of Tax Liability issued on December 22, 2014 by the Illinois Department of Revenue against Petitioner for an Illinois tax liability in excess of \$15,000.00 in the aggregate.

**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.

2. On December 22, 2014 the Department issued three Notices of Tax Liability (Letter #CNXXX1X726249120; Letter #CNXXX1341X6X3686; and Letter #CNXXX187793128X2) (the “Notices”), proposing an assessment of the following taxes for the following periods, plus penalties and interest:

**ANSWER:** The Department states the Notices speaks for themselves and therefore deny the characterization thereof. The Department admits it issued the Notice of Tax Liability dated December 22, 2014, attached to Petitioner’s Petition.

3.

Letter #CNXXX1X726249120			
	Liability	Payments/Credit	Unpaid Balance
Tax	92,766.00	0.00	92,766.00
Late Payment Penalty Increase	18,875.00	0.00	18,875.00
Fraud Penalty	36,344.00	0.00	36,344.00
Interest	200.00	0.00	200.00
<b>Assessment Total</b>	<b>\$151,641.73</b>	<b>\$0.00</b>	<b>\$151,641.73</b>

Letter #CNXXX1341X6X3686			
	Liability	Payments/Credit	Unpaid Balance
Tax	4,239.00	0.00	4,239.00
Late Payment Penalty Increase	848.00	0.00	848.00
Fraud Penalty	1,972.00	0.00	1,972.00
Interest	124.24	0.00	124.24
<b>Assessment Total</b>	<b>\$7,183.24</b>	<b>\$0.00</b>	<b>\$7,183.24</b>

Letter #CNXXX187793128X2			
	Liability	Payments/Credit	Unpaid Balance
Tax	3,540.00	0.00	3,450.00
Late Payment Penalty Increase	708.00	0.00	708.00
Fraud Penalty	1,607.00	0.00	1,607.00
Interest	104.06	0.00	104.06
<b>Assessment Total</b>	<b>\$5,959.06</b>	<b>\$0.00</b>	<b>\$5,959.06</b>

Copies of the Notices are attached hereto as Exhibits A, B, and C, and are incorporated herein by reference.

**ANSWER:** The Department states the Notices speaks for themselves and therefore deny the characterization thereof. The Department admits it issued the Notice of Tax Liability dated December 22, 2014, attached to Petitioner's Petition.

FACTUAL BACKGROUND

4. Petitioner is a limited liability company whose address is 760 E Grand Ave, Carbondale, Illinois 62901-3368 and whose phone number is (618) 529-5494.

**ANSWER:** The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A)(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 in Paragraph 4.

5. Petitioner is engaged in the business of operating a bar and grill in Carbondale, Illinois.

**ANSWER:** The Department admits the factual allegations in Paragraph 5.

6. Petitioner's Taxpayer Identification Number is 27-0276315.

**ANSWER:** The information contained in Paragraph 6 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(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 in Paragraph 6.

7. Respondent issued assessments of additional sales tax liability for the periods of July 1, 2011, through September 30, 2013; October 1, 2013 through October 31, 2013; and November 1, 2013, through November 30, 2013.

**ANSWER:** The Department states the Notices speaks for themselves and therefore deny the

characterization thereof. The Department admits it issued the Notices of Tax Liability dated December 22, 2014, attached to Petitioner's Petition.

ERROR IN DETERMINATION OF PETITIONER'S LIABILITY

8. Respondent erroneously determined that Petitioner underreported its tax liability for the periods identified in the Notices.

**ANSWER:** The Department denies the allegations in Paragraph 8.

9. Respondent erroneously determined that Petitioner is liable for the failure to pay penalty under 35 ILCS 735/3-3 of the Illinois Uniform Penalty and Interest Act.

**ANSWER:** The Department denies the allegations in Paragraph 9.

10. Section 3-8 of the Uniform Penalty and Interest Act states that the penalty under §3-3 does not apply if the taxpayer exercised reasonable cause. Reasonable cause exists if the taxpayer made a good faith effort to determine the proper tax liability by exercising ordinary business care and prudence.

**ANSWER:** Paragraph 10 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.

11. The Petitioner in this case exercised ordinary business care and prudence and made a good faith effort to determine the proper tax liability.

**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. To the extent Paragraph 11 requires an Answer the Department denies the allegations in Paragraph 11.

12. If it is determined that an underpayment exists, the underpayment is due to reasonable cause,

and no penalty applies.

**ANSWER:** Paragraph 12 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 Paragraph 12 requires an Answer the Department denies the allegations in Paragraph 12.

13. Respondent also erroneously determined that Petitioner is liable for a fraud penalty under §3-6 of the Uniform Penalty and Interest Act.

**ANSWER:** The Department denies the allegations in Paragraph 13.

14. The fraud penalty only applies to a taxpayer who filed a return with intent to defraud. 35 ILCS 735/3-6.

**ANSWER:** Paragraph 14 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.

15. Respondent has the burden of establishing intent to defraud by clear and convincing evidence. *Brown Specialty Co. v. Allphin*, 75 Ill. App. 3d 845 (1979).

**ANSWER:** Paragraph 15 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.

16. Respondent has not presented clear and convincing evidence that Petitioner filed any return with intent to defraud.

**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. To the extent Paragraph 16 requires an Answer the Department denies the

allegations in Paragraph 16.

**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 Tax 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 27, 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