

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

HOWARD SMITH D/B/A)	
ODYSSEY II LOUNGE,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-52
)	Conway
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
Respondent.)	

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:

PARTIES

1. Petitioner is a sole proprietor located at 7643 South Cottage Grove Avenue, Chicago, Illinois 60619, and can be reached at 773-415-9394.

ANSWER: The information contained in Paragraph 1 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 contained in Paragraph 1.

2. Petitioner is represented by The Law Offices 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 information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (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. Petitioner's Taxpayer (Account) ID is 1613-0693.

ANSWER: The information contained in Paragraph 3 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 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 law. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 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.

NOTICE

5. On February 10, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods of January 1, 2011 to December 31, 2013. The Notice reflect \$136,457 in tax due, plus late penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the allegations 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: Paragraph 6 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.

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: 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.

BACKGROUND

8. Petitioner operates two taverns located on the south side of Chicago.

ANSWER: The Department admits the allegations in Paragraph 8.

9. Defendant audited Petitioner's books and records for the tax periods January 1, 2011 to December 31, 2013.

ANSWER: The Department admits the allegations 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 selling prices of Petitioner's products, but the Department's projections are faulty because the liquor shot size used by the Department was understated and the allowance for theft, waste, "free drinks", etc. was insufficient.

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 of the basis of the audit findings and all other allegations in Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices without using the proper liquor shot size and without properly accounting for normal business inventory losses.

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 of the basis of the audit findings and any other allegations in Paragraph 12.

13. By applying such projections, the Department unreasonably inflated Petitioner's audit liability because the Petitioner poured a "stiff" drink during the audit period and the Petitioner also suffered normal business inventory losses that were ignored by the Department.

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 of the basis of the audit findings and any other allegations in Paragraph 13.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects 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.

COUNT II

All penalties should be abated based on reasonable cause.

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

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

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

ANSWER: The Department states that the Notices speaks for itself and therefore denies the characterization thereof and any and all other allegations 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: 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. The Department admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the 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: 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.

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: Paragraph 18 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.

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 projections.

ANSWER: Paragraph 19 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 10 requires an answer the Department denies the legal conclusions and/or allegations contained in Paragraph 19.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects 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: April 27, 2015

Respectfully submitted,
Illinois Department of Revenue

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