

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>J&amp;R COCKTAIL LOUNGE INC.,</b>	)	
	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 15 TT 57</b>
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	<b>Judge Brian F. Barov</b>
	)	
<b>Respondent</b>	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. Petitioner is an Illinois business located at 612 East 79<sup>th</sup> Street, Chicago, Illinois, 60619, and can be reached at 708-354-4415.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

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](mailto:jdickett@aol.com).

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. Petitioner’s Taxpayer (Account) ID is 1520-5843.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

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 allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

5. On March 4, 2015, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods of July 1, 2011 to December 31, 2013. The Notice reflects \$88,253 in tax liability, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits that on March 4, 2015 that Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department. The Department states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 5 of the petition.

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 allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

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 allegations in paragraph 7 of the petition consist of legal conclusions and are thus denied.

8. Petitioner is a tavern located on the south side of Chicago.

ANSWER: The Department admits the allegations in paragraph 8 of the petition.

9. Defendants audited Petitioner’s books and records for the tax periods July 1,

2011 to December 31, 2013.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

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 do not factor in the correct liquor shot size and the audit also inadequately accounts for inventory losses like over-pours, waste, theft, and "comps".

ANSWER: The Department admits that after having determined that the Petitioner did not maintain cash register z-tapes, that it used an alternative approach for determining and establishing receipts. The Department also admits that as part of this alternative approach that it used a mark-up analysis which involved multiplying purchases by a determined mark-up percentage. The Department denies any and all remaining allegations in paragraph 10 of the petition.

#### COUNT I

11. Petitioner realleges and incorporates by reference the allegation 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.

ANSWER: The Department admits that after having determined that the Petitioner did not maintain cash register z-tapes, that it used an alternative approach for determining and establishing receipts. The Department also admits that as part of this alternative approach that it used a mark-up analysis which involved multiplying

purchases by a determined mark-up percentage. The Department denies any and all remaining allegations in paragraph 12 of the petition.

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 allegations in paragraph 13 of the petition.

**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 and should be finalized as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

## COUNT II

14. Petitioner realleges and incorporates by reference the allegation 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 Notice speaks for itself and therefore denies the allegations in paragraph 15 of the answer.

16. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The allegations in paragraph 16 of the petition consist of legal conclusions and are thus denied.

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 00.400(b).

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

18. A taxpayer will be considered to have made a good faith effort to pay its proper tax liability if it used ordinary business care and prudence. 86 Ill. Admin. Code 700.400(b).

ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

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

ANSWER: The allegations in paragraph 19 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

20. Petitioner also did not intend to defraud the Department during the audit tax periods because the audit tax liability is extremely overstated for the aforementioned reasons.

ANSWER: The Department denies the allegations in paragraph 20 of the petition.

**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 and should be finalized as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

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