

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

One Stop Enterprises, Inc.)	
)	
Petitioner,)	Case No. 15 TT 65
)	
v.)	Judge Brian F. Barov
)	
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:

INTRODUCTION

1. The Notice was issued by the Department on November 13, 2014, for the years January 1, 2011 through September 30, 2013 a copy of said notice is attached hereto and marked as "Petitioner's Exhibit A".

ANSWER: The Department denies that the attached Notice of Tax Liability is marked as “Petitioner’s Exhibit A”. Otherwise, the Department admits the factual allegations contained within Paragraph 1.

2. Said Notice assessed Sales Tax liability in the amount of \$129,933.00, leaving an unpaid balance of \$116,193.00.

ANSWER: The Department admits the factual allegations contained within Paragraph 2.

3. Said Notice assessed a Late Payment Penalty Increase of \$23,239.00 and a Late Filing Penalty Increase of \$190.00.

ANSWER: The Department admits the factual allegations contained within Paragraph 3.

4. Said Notice assessed Interest at \$5,769.00.

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

5. The petitioner is an Illinois Corporation with its principal place of business located at 15600 Frances Lane, Orland Park, Illinois 60462 with its telephone number or (708) 259-4539. The taxpayer Account Number is: 3839-3298.

ANSWER: The information contained in Paragraph 5 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department is without sufficient information or knowledge to either admit or deny that the Petitioner's telephone number is (708) 259-4539. Otherwise, the factual allegations contained within Paragraph 5 are admitted.

BACKGROUND AND RELEVANT FACTS

6. The Petitioner timely filed its Illinois Sales Tax Returns for the periods of January 1, 2011 through September 30, 2013.

ANSWER: The Department denies that the Petitioner timely filed all of its Illinois Sales Tax Returns for the periods January 1, 2011 through September 30, 2013, as detailed in the audit file, including the audit narrative.

7. Thereafter, the petitioner became the subject of an audit by the Illinois Department of Revenue.

ANSWER: The Department admits the factual allegations contained within Paragraph 7.

8. The petitioner operates a gasoline station and convenience store. It sells both gasoline, food, beverages and ancillary items.

ANSWER: The Department objects to the term “convenience store” as vague and ambiguous, and denies that term on that basis. Otherwise, the Department admits the factual allegations contained within the first Paragraph 8.

8. Said audit was conducted in a way that was inconsistent with proper accounting procedure in the following ways:

ANSWER: The Department states that the second Paragraph 8 does not contain a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, to the extent an answer may be needed, the Department objects to the characterization that the audit was “inconsistent”, and denies any factual allegations on that basis. Further, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.*

ERRORS

9. The petitioner states that the Illinois Department of Revenue committed the following

errors:

ANSWER: The Department states that Paragraph 9 does not contain a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, to the extent an answer may be needed, the Department objects to the characterization that the audit contained “errors,” and denies any factual allegations within Paragraph 9, and its subparts A through D, on that basis. Further, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.* To the extent further answers are required, Paragraph 9 incorporates by reference its answers to the subparts of Paragraph 9 (A through D) below.

A. The auditor disallowed the total reported food sales by the petitioner in the amount of \$610,669.00. The auditor received confirmation from third party vendors which provided food and beverages to the petitioner of said sales and was taxed and reported by the petitioner at the low sales tax rate of 2%. The auditor disallowed any reductions for food as low sales tax and assessed the high sales tax of 9% to all food resulting in an additional tax liability of \$58,240.19.

ANSWER: As stated, the Department objects to the characterization that the auditor’s assessment was in “error” and denies the factual allegations on that basis. Also, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.* To the extent that the Department can answer, the Department admits that due to a lack of required and requested documentation, the auditor made adjustments for food/non-food,

gasoline, and other items, as indicated in the audit file. Otherwise, the Department denies the factual allegations contained within Paragraph A.

B. The auditor considered 100% of all items purchased or reported by third party vendors to be actually sold to the customer disallowing any deduction for food spoilage, waste, inventory shrinkage or any other inventory control issue. The petitioner should have been allowed to declare 3% waste or shrinkage.

ANSWER: As stated, the Department objects to the characterization that the auditor's assessment was in "error" and denies the factual allegations on that basis. Also, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.* The Department also states that the last sentence of Paragraph B does not contain 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 that the Department can answer, the Department admits that due to a lack of required and requested documentation, the auditor made adjustments in making her assessment, as indicated in the audit file. Otherwise, the Department denies the factual allegations contained within Paragraph B.

C. The auditor accepted the amount of the gallons of gasoline sold, but rejected the reported price of the sales of gasoline by gallon. The auditor imputed the average price of gasoline upon the gallons sold without considering the location or competition or type of gasoline sold. This approach is incorrect both from an accounting/audit approach as well as a statistical approach.

ANSWER: As stated, the Department objects to the characterization that the auditor's assessment was in "error" and denies the factual allegations on that basis. The Department also objects to the assertion contained within Paragraph C that the Department's approach was "incorrect" and denies the factual allegations contained within the last sentence of Paragraph C on this basis. Also, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.* The Department also states that the last sentence of Paragraph C does not contain 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 that the Department can answer, the Department admits that due to a lack of required and requested documentation, the auditor made adjustments in making her assessment, as indicated in the audit file. Otherwise, the Department denies the factual allegations contained within Paragraph C.

D. The auditor considered all items purchased for the garage parts as sold to customers without any allocation to year end inventory, thus imputing tax on items added to inventory but not sold.

ANSWER: As stated, the Department objects to the characterization that the auditor's assessment was in "error" and denies the factual allegations on that basis. Also, due to a lack of required books and records, as indicated in the audit file, including the audit narrative, the auditor needed to use her best judgment and information to make her audit assessment. *See 35 ILCS 120/4.* To the extent that the Department can answer, the Department admits that due to a lack of required and requested documentation, the auditor made adjustments in making her assessment, as indicated in the audit file. Otherwise, the Department denies the factual allegations contained within Paragraph D.

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 30, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
Seth Jacob Schriftman
Special Assistant Attorney General

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**AFFIDAVIT OF PATRICIA HOYT
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

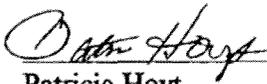
STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Patricia Hoyt, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Audit Supervisor.
3. I compiled the audit information regarding the taxes asserted in the Notice of Tax Liability subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some of the allegations contained in Paragraph 5 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



Patricia Hoyt
Revenue Audit Supervisor

4/30/2015
Date