

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

DJ'S SPORTS BAR AND GRILL INC.)	
Petitioner,)	
v.)	No. 15-TT-72
CONSTANCE BEARD in her official capacity as))	
DIRECTOR OF THE ILLINOIS)	Judge Brian F. Barov
DEPARTMENT OF REVENUE, and the)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Defendants.)	

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. Petitioner is an Illinois Corporation located at 14202 Cottage Grove, Dalton, IL, 60419 and can be reached at 708-307-9980.

ANSWER: The information contained in Paragraph 1 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 denies that the Petitioner's telephone number is 708-307-9980, as the audit file states that the Petitioner's telephone number is 708-387-9980. The Department also denies that the Petitioner is located in Dalton, IL, as it should likely be Dolton, IL. Otherwise, the factual allegations contained within Paragraph 1 are admitted.

2. Petitioner is represented by Mansoor Ansari located at 500 N. Michigan Avenue., Suite 600, Chicago, Illinois, 60611, who can be reached at 312-265-5626 or

ANSWER: The information contained in Paragraph 2 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. Further answering, the Department admits the factual allegations contained within Paragraph 2.

3. Petitioner's Illinois business tax number is 3966-2020.

ANSWER: The information contained in Paragraph 3 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. Further answering, the Department admits the factual allegations contained within Paragraph 3.

4. Petitioner was formed a Corporation on July 9th, 2009, to operate a restaurant and bar.

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

5. 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 ILCS5/5-15.

ANSWER: Paragraph 5 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.

6. Director Beard is the current Director of the Department.

ANSWER: The Department admits the factual allegations contained within Paragraph 6.

7. Director Beard is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the director of the Department. 20 ILCS 5/5-20.

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.

NOTICE

8. On January 2nd, 2015, the Defendants issued one Notice of Tax Liability ("Notice") totaling tax, penalties and interest of \$32,137.99 for the period of March 31st, 2012. True and accurate copies of the Notices are attached hereto as Exhibit A.

ANSWER: The Department denies the factual allegations contained within Paragraph 8. Further answering, Exhibit A to the Petition is a January 2, 2015 Collection Action Notice for \$32,137.99. Attached hereto to this Answer, as Exhibit A, as requested by the Tribunal's April 13, 2015 Order, is a May 22, 2014 Notice of Tax Liability ("Notice") for the periods of October 01, 2009 through March 31, 2012. This Notice assessed tax of \$21,474.00, a late payment penalty increase of \$4,295.00, a negligence penalty of \$4,295.00, a late filing penalty increase of \$114.00, and interest of \$1,462.95. These amounts totaled \$31,640.95.

JURISDICTION

9. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: Paragraph 9 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.

10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45, and 1-50 of the Tribunal Act because Petitioner timely filed a protest with the Department's Office of

Administrative hearings within 60 days of the Notices and elected to transfer the case to the Tribunal before May 10th, 2015.

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. Further answering, as indicated in the attachment to the Petition, a late discretionary hearing was granted in this matter as the original Notice was dated May 22, 2014.

BACKGROUND

11. Petitioner's business was created to operate a Bar serving liquor.

ANSWER: The Department objects to the expression “was created to” as vague and ambiguous, and denies that expression on that basis. To the extent the Department can answer, Petitioner is a bar and restaurant which does serve liquor. To the extent there are any other factual allegations contained within Paragraph 11, they are denied.

12. The Department audited the Petitioner's books and records for the Periods at Issue.

ANSWER: The Department objects to the term “Periods at Issue” as being vague and ambiguous and denies that term on that basis. To the extent the Department can answer, the Department admits that it audited the Petitioner for the period of October 2009 through March 2012. The Department admits that it audited the limited books and records which the Petitioner made available, as indicated in the audit file, including the audit narrative. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's

“best judgment and information.” *See 35 ILCS 120/4.* To the extent there are any other factual allegations contained within Paragraph 12, they are denied.

13. In addition to performing an audit of the Petitioner's sales, the Department's auditor also utilized a sample period and extrapolated those figures to the entire 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 of the basis of the audit findings. The Department denies the remainder of the allegations in Paragraph 13. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's “best judgment and information.” *See 35 ILCS 120/4.*

14. The Department made several adjustments to Petitioner's sales and use tax returns that resulted in the assessed liability at issue.

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. The Department denies the remainder of the allegations in Paragraph 14. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's “best judgment and information.” *See 35 ILCS 120/4.*

15. The Department has not taken into account merchandise that has been deemed spoiled and not fit for resale for which the Petitioner has not attained a profit.

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. The Department denies the remainder of the allegations in Paragraph 15. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's "best judgment and information." See 35 ILCS 120/4.

16. The Department has not taken into account merchandise that is given away for promotion at a 100% loss for each piece of merchandise, which accounts for 10% of all cost of goods purchased.

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. The Department denies the remainder of the allegations in Paragraph 16. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's "best judgment and information." See 35 ILCS 120/4.

17. The Department used projected profitability, referred to as mark-ups, as being 75% higher than the actual profit margin.

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. The Department denies the remainder of the allegations in Paragraph 17. The Department further states that the liability proposed under the Notice is deemed *prima facie*

correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's "best judgment and information." *See 35 ILCS 120/4.*

18. The Department has levied burdensome penalties on the client's business as a result of the underreporting.

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. To the extent an Answer is necessary, denied.

19. On February 26, 2015, Petitioner timely filed a request for a late discretionary hearing, specifically reserving the right to transfer the case from the IDOR to the Illinois Independent Tax tribunal. A true and accurate copy of Petitioner's protest is attached hereto as Exhibit B.

ANSWER: The Department objects to the characterization that the Petitioner "timely filed a request" for a late discretionary hearing. The Department is without sufficient knowledge or information to either admit or deny the factual allegations contained within the first sentence of Paragraph 19. The Department denies the factual allegations contained within the second sentence of Paragraph 19, as Exhibit B to the Petition does not contain Petitioner's Protest. To the extent that there are any other factual allegations contained within Paragraph 19, they are denied.

COUNT 1- Improper method of calculating sales must not be used to determine liability.

20. Petitioner alleges that the sampling method cannot be used to extrapolate sales.

ANSWER: Paragraph 20 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's "best judgment and information." See 35 ILCS 120/4. To the extent a further answer is necessary, denied.

21. That the costs of goods sold vary and the sampling method yields a higher figure than the actual sale price.

ANSWER: Paragraph 21 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's "best judgment and information." See 35 ILCS 120/4. To the extent a further answer is necessary, denied.

22. That there are a substantial amount of returns to the Petitioner from their customers, for drinks that did not meet their standard for both taste and temperature - referred to as spoilage.

ANSWER: Paragraph 22 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor's

“best judgment and information.” *See 35 ILCS 120/4.* To the extent a further answer is necessary, denied.

23. The Department has incorrectly used consumables such as napkins and other items not for resale to project values for

ANSWER: The Department objects to the term “incorrectly” and denies the factual allegations contained within Paragraph 23 on that basis. Further, Paragraph 23 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor’s “best judgment and information.” *See 35 ILCS 120/4.* To the extent a further answer is necessary, denied.

COUNT 2 - Penalties

24. Petitioner alleges that the penalties of \$8804.00 must not be applied.

ANSWER: Paragraph 24 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 an answer is necessary, denied.

25. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois sales tax on the full amount of assessment.

ANSWER: Paragraph 25 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 necessary, denied.

26. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

ANSWER: Paragraph 26 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 necessary, denied.

COUNT 3 - Mark-ups on products

27. The Department's determined percentage of mark-up on products is incorrect.

ANSWER: The Department objects to the term “incorrect” and denies the factual allegations contained within Paragraph 27 on that basis. Further, Paragraph 27 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor’s “best judgment and information.” *See 35 ILCS 120/4.* To the extent a further answer is necessary, denied.

28. That the correct mark-up amount does not mirror that of the locality in which Petitioner's establishment is located.

ANSWER: The Department objects to the term “correct mark-up amount” and denies the factual allegations contained within Paragraph 28 on that basis. Further, Paragraph 28 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. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor’s “best judgment and information.” *See 35 ILCS 120/4.* To the extent a further answer is necessary, denied.

COUNT 4- Prior Audit

29. The Department alleges a "prior audit percentage," however, the Petitioner has never been audited by the IDOR.

ANSWER: The Department denies the factual allegations contained within Paragraph 29. Further, as indicated in the audit file, the auditor used a prior entity owned at the same location. The Department further states that the liability proposed under the Notice is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due based on the auditor’s “best judgment and information.” *See 35 ILCS 120/4.*

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: May 11, 2015

Respectfully submitted,
Illinois Department of Revenue

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

Seth Jacob Schriftman
Illinois Department of Revenue
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Chicago, IL 60601
312-814-1591
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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

VERIFICATION

I, Roger Koss, being first duly sworn upon his oath, deposes and says that I am an employee of the Illinois Department of Revenue and as such I am the duly authorized agent for the Illinois Department of Revenue, that I have read the foregoing Department of Revenue's Answer, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that the matters and things contained in it are true to the best of my knowledge, information and belief.

Roger W. Koss

Roger Koss

Sales and Miscellaneous Taxes Division Manager

ILLINOIS DEPARTMENT OF REVENUE

Dated: May 8, 2015

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TAX TRIBUNAL**

DJ'S SPORTS BAR AND GRILL INC.)	
Petitioner,)	
v.)	No. 15-TT-72
CONSTANCE BEARD in her official capacity as)		
DIRECTOR OF THE ILLINOIS)	Judge Brian F. Barov
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ILLINOIS DEPARTMENT OF REVENUE,)	
Defendants.)	

**AFFIDAVIT OF JANET BONDS
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, Janet Bonds, 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 Auditor.
3. I compiled the audit information regarding the assessment 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 19 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.

Janet Bonds
Revenue Auditor

05/07/15
Date

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BXNKMVG
CNXXX29X5279681#
DJS SPORTS BAR & GRILL INCORPORATED
14202 COTTAGE GRV
DOLTON IL 60419

May 22, 2014



Letter ID: CNXXX29X5279681

Account ID: 3966-2020

We have audited your account for the reporting periods October 01, 2009, through March 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	21,474.00	0.00	21,474.00
Late Payment Penalty Increase	4,295.00	0.00	4,295.00
Negligence Penalty	4,295.00	0.00	4,295.00
Late Filing Penalty Increase	114.00	0.00	114.00
Interest	1,462.95	0.00	1,462.95
Assessment Total	\$31,640.95	\$0.00	\$31,640.95

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is July 21, 2014. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

EXHIBIT A