

ILLINOIS INDEPENDENT
TAX TRIBUNAL

LANSAL, INC.,)	
)	
Petitioner,)	
v.)	No. 14 TT 4
)	
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	Judge Brian Barov
)	
Respondent.)	

DEPARTMENT’ S VERIFIED ANSWER TO PETITIONER’ S VERFIED PETITION

NOW COME the Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Petitioner’ s Verified Petition (“Petition”), hereby states as follows:

PARTIES

1. Petitioner is a Massachusetts corporation located at 134 Avocado Street, Springfield, Massachusetts, 01104–3306, and can be reached at 847–288–9183.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner is a wholly owned subsidiary of Hot Mama’ s Foods, Inc.

ANSWER:: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 and therefore neither admits or denies the allegations.

3. Petitioner is represented by Horwood Marcus & Berk attorney David A. Hughes, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312–606–3212 or dhughes@hmblaw.com.

ANSWER: The Department admits the allegations contained in paragraph 3.

4. Petitioner's Illinois Business Tax number is 4017-5103.

ANSWER: The Department admits the allegations contained in 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 ILCS 5/5-15.

ANSWER: The Department admits the allegations contained in paragraph 5.

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

ANSWER: The Department admits the allegations contained in paragraph 6.

7. Director Hamer 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: The Department admits the allegations contained in paragraph 7.

NOTICES

8. On November 20, 2013, Petitioner received two Notices of Tax Liability ("Notices"), the first of which covers reporting periods July 1, 2005 through June 30, 2009, and the second of which covers reporting periods July 1, 2009 through December 31, 2012. The periods from July 1, 2005 through December 31, 2012 are hereafter referred to as the "periods in issue." The Notices reflect \$81,148 in tax due, as well as \$30,920 in penalties and \$25,113.59 in interest. The Notices are attached hereto as Exhibits A and B respectively.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to Plaintiff's Petition as Exhibits A and B and referred to in paragraph 8 and state that such documents speak for themselves.

JURISDICTION

9. 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 Department admits the allegations contained in paragraph 9.

10. This Tribunal has jurisdiction over this matter pursuant to Sections 1–45 and 1–50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

ANSWER: The Department admits the allegations contained in paragraph 10.

BACKGROUND

11. Petitioner is a manufacturer of custom gourmet foods, which it sells at wholesale primarily to grocery stores and distributors.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 and therefore neither admits or denies the allegations.

12. During the periods in issue, Petitioner manufactured all of its custom gourmet food products at either its Franklin Park or Elk Grove, Illinois locations.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 and therefore neither admits or denies the allegations

13. Petitioner makes no retail sales of its food products.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 and therefore neither admits or denies the allegations

14. Defendants audited Petitioner's books and records for the periods in issue, including its fixed assets used in its business, and concluded that the equipment is subject to Illinois use tax.

ANSWER: The Department admits the allegations contained in paragraph 14.

15. Petitioner uses most of the equipment at issue in the process of manufacturing the food that it sells to retailers and wholesalers.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 and therefore neither admits or denies the allegations.

16. Petitioner did not file any Illinois sales and use tax returns for the periods in issue.

ANSWER: The Department admits the allegations contained in paragraph 16.

COUNT I

Petitioner's equipment qualifies for the manufacturing exemption

17. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 16, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-16 as if fully set forth herein.

18. Equipment generally used in manufacturing and assembly is exempt from use tax. 35 ILCS 105/3-5(18).

ANSWER: Defendants admit the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 18 and state such provision speaks for itself.

19. Equipment used in the production or processing of food, except for equipment used in the preparation of food and beverages by a retailer for retail sale, is exempt from sales and use tax in Illinois. 86 Ill. Admin. Code § 130.330(d)(3)(F).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 19 and state such regulation speaks for itself.

20. The equipment at issue was used in Petitioner's business of manufacturing food to be sold at wholesale.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 and therefore neither admits or denies the allegations.

21. Petitioner's equipment used in the manufacturing of Petitioner's food is exempt from use tax under the manufacturing exemption.

ANSWER: Although paragraph 21 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 21.

22. Contrary to the Department's audit determination, Petitioner's equipment used in manufacturing the food Petitioner sells at wholesale is not subject to Illinois use tax.

ANSWER: Although paragraph 22 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 22.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count I;
- B) That the Department's Notice of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT II

All penalties should be abated based on reasonable cause

23. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 22, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-22 as if fully set forth herein.

24. In its Notices, the Department assessed penalties in an amount totaling \$30,920, comprising both late payment and late filing penalties.

ANSWER: The Department admits the allegations contained in paragraph 24

25. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS § 734-8.

ANSWER: Defendants admit the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 25 and state such provision speaks for itself.

26. 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: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 26 and state such regulation speaks for itself.

27. 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: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 27 and state such regulation speaks for itself.

28. The equipment at issue was used in the process of manufacturing Petitioner's food products.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 and therefore neither admits or denies the allegations.

29. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois use tax on the equipment because the equipment qualified for the manufacturing exemption from use tax.

ANSWER: Although paragraph 29 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 29.

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

ANSWER: Although paragraph 30 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 30.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;
- B) That the Department's Notice of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
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100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-4142

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By: Michael Coveny,
Assistant Attorney General

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMAN)

VERIFICATION AND AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

DAN HALL, being first duly sworn, deposes and says that he is an employee and duly authorized agent of the Illinois Department of Revenue, that he has read the foregoing Department's Verified Answer to Petitioner's Verified Petition, that he is 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, he certifies that the statements set forth in that instrument are true and correct, except as to allegations claiming lack of sufficient knowledge pursuant to 735 ILCS 5/2-610(b), which he verily believes to be true.



Dan Hall
Manager, Audit Bureau
Illinois Department of Revenue

SIGNED and SWORN TO before me
this 10 day of March, 2014



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Verified Answer to Petitioner's Verified

Petition upon:

David A. Hughes
Horwood Marcus & Berk Chartered
500 West Madison Street
Suite 3700
Chicago, IL 606661

By email to dhughes@hmblaw.com on March 11, 2014.

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TAX TRIBUNAL**

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Petitioner,)	
v.)	No. 14 TT 4
)	
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	Judge Brian Barov
)	
Respondent.)	

Notice of Filing Answer

To: David A. Hughes
Horwood Marcus & Berk
500 West Madison Street / Suite 3700
Chicago, IL 60661

PLEASE TAKE NOTICE that on March 11, 2014, the Department of Revenue's Answer was filed with the Illinois Independent Tax Tribunal, by email to ITT.TaxTribunal@Illinois.gov, Chicago, IL 60601, a copy of which is attached hereto.

LISA MADIGAN
ATTORNEY GENERAL OF ILLINOIS
Michael Coveny
Special Assistant Attorney General
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-6697



Michael Coveny

Proof of Service

I, Michael Coveny, the attorney for the Department of Revenue, state that I have this 11th day of March, 2014, served the foregoing Notice of Filing and attached Answer upon the person(s) to whom said Motion is directed, by email to David A. Hughes at dhughes@hmbllaw.com.



Michael Coveny