

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JIMMY JOHN’S FRANCHISE, LLC,)	
Petitioner,)	
v.)	Case No. 14-TT-50
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

**ILLINOIS DEPARTMENT OF REVENUE’S RESPONSE TO
PETITIONER’S FIRST SET OF REQUESTS FOR ADMISSION TO RESPONDENT**

Now comes the State of Illinois, Department of Revenue (“Department”), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and pursuant to Illinois Supreme Court Rule 216, responds to Petitioner’s First Set of Requests for Admission to Respondent as follows:

GENERAL OBJECTIONS

These General Objections are made in addition to the Specific Objections and no full or partial answer of a Request is intended to waive either these General Objections or any Specific Objection to Request. The Department incorporates the following General Objections into their Responses and Specific Objections below:

- (a) The Department objects to the extent Petitioner’s Request for Admissions seek disclosure of information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or doctrine.
- (b) The Department objects to the extent Petitioner’s Request for Admissions purport to impose obligations beyond those imposed by the Illinois Supreme Court Rules, Rules of the Illinois Independent Tax Tribunal, 86 Ill.Adm.Code § 5000.10, *et. seq.*, or any rules or orders of this Court.

(c) The Department objects to the extent Petitioner's Request for Admissions seek or call for a legal conclusion rather than the admission of a fact.

DEPARTMENT'S RESPONSE

1. Admit that JJF paid \$300,000 in Use Tax for the Aircraft under protest.

RESPONSE: The Department admits that JJF issued a check to the Department in the total amount of \$485,000 on August 21, 2013 as payment of the tax liability set forth in the subject Notice of Tax Liability dated July 17, 2013 ("NTL") and that \$300,000 of those funds were applied to the principal use tax liability proposed under the NTL. The Department can neither admit nor deny that such payment was "under protest" since such term is ambiguous and it is unclear to what the Petitioner is referring. The Department denies that the payment was made under the State Officers and Employees Money Disposition Act (Protest Monies Act)(30 ILCS 230/1, et seq.).

2. Admit that JJF paid \$120,000 in penalties under protest.

RESPONSE: The Department admits that JJF issued a check to the Department in the total amount of \$485,000 on August 21, 2013 as payment of the tax liability set forth in the subject Notice of Tax Liability dated July 17, 2013 ("NTL") and that \$120,000 of those funds were applied to the penalty liability proposed under the NTL. The Department can neither admit nor deny that such payment was "under protest" since such term is ambiguous and it is unclear to what the Petitioner is referring. The Department denies that the payment was made under the State Officers and Employees Money Disposition Act (Protest Monies Act)(30 ILCS 230/1, et seq.).

3. Admit that JJF paid \$65,770.56 in interest under protest.

RESPONSE: The Department admits that JJF issued a check to the Department in the total amount of \$485,000 on August 21, 2013 as payment of the tax liability set forth in the subject Notice of Tax Liability dated July 17, 2013 (“NTL”) and that \$65,770.56 of those funds were applied to the interest amount so far accrued and proposed under the NTL. The Department can neither admit nor deny that such payment was “under protest” since such term is ambiguous and it is unclear to what the Petitioner is referring. The Department denies that the payment was made under the State Officers and Employees Money Disposition Act (Protest Monies Act)(*30 ILCS 230/1, et seq.*).

4. Admit that on or about June 17, 2009, JJF purchased the Aircraft.

RESPONSE: The Department admits that the bill of sale presented to the Department’s auditor reflects that the Aircraft was purchased on June 17, 2009 but that the RUT-25 Use Tax Transaction Return filed by the Petitioner relating to the Aircraft reflects a purchase date of June 18, 2009.

5. Admit that on or about January 1, 2010, JJF entered into a written Aircraft Charter Lease Agreement and leased the Aircraft.

RESPONSE: Admit.

6. Admit that during 2009, 2010 and 2011 taxable years, JJF used the Aircraft in interstate commerce.

RESPONSE: Admit.

7. Admit that, for aircraft purchased prior to January 1, 2014, You have issued no public guidance on what constitutes “regular and frequent” use of an aircraft in interstate commerce.

OBJECTION: The Department objects to this Request on the basis that the term “public guidance” is vague and ambiguous and it is unclear to what the Petitioner is referring. The Department further objects to this Request since whether it has issued “public guidance” on what constitutes “regular and frequent” use of an aircraft in interstate commerce” is irrelevant as to whether or not Petitioner’s use of aircraft in interstate commerce was sufficiently “regular and frequent” and, therefore, the Request is beyond the relevant scope of discovery pursuant to Ill. Sup. Ct. R. 201(b)(1). See, *National School Bus Service, Inc. vs. The Department of Revenue*, 302 Ill. App. 3d 820, 825 (1st Dist. 1998)(“[Not] all statements of agency policy must be announced by means of published rules. When an administrative agency interprets statutory language as it applies to a particular set of facts, adjudicated cases are a proper method of announcing agency policies.” [citations omitted]). .

RESPONSE: Subject and without waiving the objection, the Department denies Request #7. See, for example: Private Letter Ruling ST 12-0010-PLR; *Department of Revenue vs. John Doe*, Ill. Admin. Hearing Decision UT 07-04 (July 13, 2007).

8. Admit that, for aircraft purchased prior to January 1, 2014, You have issued no public guidance on how aircraft can qualify for the Rolling Stock Exemption to Illinois’ Use Tax.

OBJECTION: The Department objects to this Request on the basis that the term “public guidance” is vague and ambiguous and it is unclear to what the Petitioner is referring. The Department further objects to this Request since whether it has issued “public guidance” on how aircraft can qualify for the Rolling Stock Exemption to Illinois’ Use Tax” is irrelevant as to whether or not Petitioner qualified for such exemption under applicable statute and, therefore, the Request is beyond the relevant scope of discovery pursuant to Ill. Sup. Ct. R. 201(b)(1). See, *National School Bus Service, Inc. vs. The Department of Revenue*, 302 Ill. App. 3d 820, 825 (1st Dist. 1998)(“[Not] all statements of agency policy must be announced by means of published rules. When an administrative agency interprets statutory language as it applies to a particular set of facts, adjudicated cases are a proper method of announcing agency policies.” [citations omitted]).

RESPONSE: Subject and without waiving the objection, the Department denies Request #8. Deny. See, for example: Private Letter Ruling ST 12-0010-PLR; *Department of Revenue vs. John Doe*, Ill. Admin. Hearing Decision UT 07-04 (July 13, 2007).

9. Admit that You have denied requests from taxpayers for guidance regarding the Rolling Stock Exemption.

OBJECTION: The Department objects to this Request because it is vague and ambiguous. It is unknown to what the Petitioner refers when it refers to “requests from taxpayers for guidance”. This could mean, for example, a request by telephone call and/or various other types of oral or written requests. The Department, as such, cannot adequately respond until there is clarification. The Department, additionally, objects to this Request since the Petitioner has not included a relevant time period.

RESPONSE: Subject and without waiving the objection, the Department states that pursuant to its regulation on letter rulings, the decision to issue or decline to issue a letter ruling is within the Department's discretion. *86 Ill. Adm. Code § 1200.110(a)(4)*. The Department further states that there are a number of circumstances under which it will decline to issue a letter ruling but that it will, nevertheless, respond to all requests for ruling either by issuance of a ruling or by explanation as to why no ruling can be issued. *Id.*

10. Admit that the Illinois Legislature has not established a standard to determine whether an aircraft purchased prior to January 1, 2014 has moved in interstate commerce in order to qualify for the Rolling Stock exemption.

OBJECTION: The Department objects to this Request because it appears to be a request to acknowledge statutes or laws passed by the Illinois General Assembly. Such a Request is not a proper request to admit because it seeks the admission of law, not a fact. The Department admits the existence, force and effect, at all relevant times, of all statutes duly enacted by the Illinois General Assembly and states that such statutes speak for themselves.

RESPONSE: For the reasons given, the Department declines to answer this Request.

11. Admit that prior Your determination that JJF's use of the Aircraft in interstate commerce did not qualify for the Rolling Stock Exemption, the use of an aircraft 14 times for qualifying interstate trips a 9 month period was found to have qualified for the Rolling Stock Exemption.

OBJECTION: The Department objects to this Request as it is vague and ambiguous. Specifically, the Request fails to identify what is meant by the phrase "was found to have qualified . . ." The Department, for example, cannot determine whether the Request refers to a

finding in an audit, a letter ruling, an example set forth in a Department Regulation, a Recommendation for Disposition or, perhaps, even a litigation settlement document. As a result of the vague reference in the Request, the Department cannot adequately search its records or respond. This Request, additionally, is ambiguous because it fails to specify the total number of trips that were taken in the nine month period out of which 14 qualifying interstate trips allegedly gave rise to a finding of exemption.

RESPONSE : To the extent that the Department can answer, however, it admits that in the case of *Department of Revenue vs. ABC, LLC d/b/a XYZ, Inc.*, Ill. Admin. Hearing Decision (April 11, 2006) the ALJ found, based on the facts of that case and in light of certain Regulations in effect at that time, that the use by that taxpayer of its aircraft for hire in interstate commerce 14 times during the 9-month periods was sufficient to qualify for the exemption.

12. Admit that in Your Notice of Proposed Audit Findings, You indicated that the Aircraft failed to qualify for the Rolling Stock Exemption because it was not used to transport property or persons in interstate commerce for hire on a regular and frequent basis.

RESPONSE: The Department admits the existence, force and effect, at all relevant times, of the Notice of Proposed Audit Findings issued to petitioner and states that such document speaks for itself.

13. Admit that the criteria of whether a vehicle was used in interstate commerce for more than 50% of the total trips or miles in a 12 month consecutive period does not apply to aircraft.

OBJECTION: The Department objects to this Request because it appears to be a request to acknowledge a specific statutory or regulatory provision without specifically citing or referencing the provision. Such Request is not a proper request to admit because it seeks the admission of law or requires a legal conclusion rather than the admission of a fact

RESPONSE: For the reasons given, the Department declines to answer this Request.

14. Admit that the criteria of whether a vehicle was used in interstate commerce for more than 50% of the total trips or miles in a 12 month consecutive period only applies to motor vehicles.

OBJECTION: The Department objects to this Request because it appears to be a request to acknowledge a specific statutory or regulatory provision without specifically citing or referencing the provision. Such Request is not a proper request to admit because it seeks the admission of law or requires a legal conclusion rather than the admission of a fact.

RESPONSE: For the reasons given, the Department declines to answer this Request.

15. Admit that the Aircraft was under a lease of one year or longer to a certified instate carrier.

RESPONSE: Admit.

16. Admit that the Aircraft was used by an interstate carrier for hire.

RESPONSE: Admit that the Aircraft was used by JJF, the lessor, under a lease to an interstate carrier for hire, the lessee.

Respectfully submitted,

/s/ Faith Dolgin

Faith Dolgin
Special Assistant Attorney General
Illinois Department of Revenue
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CERTIFICATE OF SERVICE

I, Faith Dolgin, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Response to Taxpayer's First Set of Requests for Admission to Respondent upon:

Brian A. Smith
Freeborn & Peters LLP
311 South Wacker Drive
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Todd J. Ohlms
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By email to the email addresses listed above on September 5, 2014.

/s/ Faith Dolgin

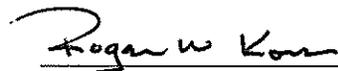
Faith Dolgin

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

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 Response to Petitioner's Requests for Admission, 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, the undersigned certifies that the matters and things contained in it are true to the best of my knowledge, information and belief.

Dated: September 5, 2014

 9/5/14

Roger Koss
Sales Tax Division Manager
ILLINOIS DEPARTMENT OF REVENUE