ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

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

NOTICE OF MOTION

To: **Brian A. Smith**
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Please be advised that on August 14, 2014 at 9:45 a.m., the undersigned will appear before Chief Judge James M. Conway, or any other Judge of the Illinois Independent Tax Tribunal, 160 N. LaSalle, Room 504, Chicago, Illinois, and shall then and there present the **Illinois Department of Revenue's Motion for Leave to Amend its Answer *Instanter*,** a copy of which is attached and served upon you.

State of Illinois, Department of Revenue
by: LISA MADIGAN, Illinois Attorney General

by: /s/ Faith Dolgin
Faith Dolgin, SPAAG
100 W. Randolph St., 7th Floor
Chicago, Illinois 60601
(312) 814-3185

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served a copy of this Notice of Motion and the document therein mentioned on the parties set forth above, by U.S. Mail and by email on August 7, 2014.

/ Faith Dolgin
Faith Dolgin

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ILLINOIS DEPARTMENT OF REVENUE'S
MOTION FOR LEAVE TO FILE AMENDED ANSWER *INSTANTER*

NOW COMES the State of Illinois, Department of Revenue ("Department), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and moves this Tribunal for an order granting it leave to file its Amended Answer *instanter*. In support of this Motion, the Department states as follows:

1. This matter originated in the Illinois Department of Revenue's Office of Administrative Hearings upon Petitioner's protest of a Notice of Tax Liability issued on July 17, 2013 proposing liability against it for use taxes under the Illinois Use Tax Act, *35 ILCS 105/1, et seq.* ("NTL").

2. The Petitioner exercised its statutory election to remove the proceeding to this forum and on, January 29, 2014, an Order was entered by the Administrative Law Judge granting Petitioner's Motion to Transfer the case to this Tribunal.

3. This Tribunal entered an Order on April 1, 2014 accepting Petitioner's Petition and ordering the Department to file its Answer by May 1, 2014.

4. On April 29, 2014, the Department timely filed its Answer to the Petition.

5. Following a status conference on July 10, 2014, an Order was entered which provides that the parties are to issue written discovery by August 11, 2014.

6. During the course of preparing the Department's discovery requests, counsel for the Department discovered that, in her Answer, she inadvertently omitted Petitioner's Paragraph 8 allegation and the Department's Answer thereto and inadvertently transposed the text of Petitioner's allegations from subparagraphs 8(c) and 8(d) of the Petition as the allegations of and corresponding Answers to subparagraphs 7(c) and (d) which resulted in an omission of an Answer to subparagraphs 7(c) (d) and (e).

7. Section 2-616 of the Illinois Code of Civil Procedure allows for pleadings to be amended at any time before final judgment on just and reasonable terms. *735 ILCS 5/2-616.*

8. The Department has prepared an Amended Answer which corrects the Department's original filing by adding the Paragraph 8 allegation and the corresponding Answer as well as correcting and adding the text and corresponding Answers to subparagraphs 7(c) (d) and (e). No other item has been modified. A copy of the Amended Answer is attached.

9. The Department's omission of and transposition of text was an innocent oversight and it seeks leave from this Tribunal to file its Amended Answer *instanter*.

10. The Department submits that there would be no prejudice to the Petitioner and that §2-616 warrants the filing of the amended answer given the early stages of the proceedings, that the Amended Answer is prepared, attached and seeks only to correct an inadvertent oversight by the Department and since final judgment has not been rendered. Such constitutes just and reasonable cause.

11. Further, should this Tribunal prohibit the Department from amending its Answer, the Department would be severely prejudiced because Taxpayer's assertion of reasonable cause

for the abatement of penalties would be deemed admitted by the Department, even though the issue of reasonable cause is a legal one.

WHEREFORE, the Illinois Department of Revenue respectfully requests that an order be entered (1) granting it leave to file the attached Amended Answer *instanter;* and (2) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

State of Illinois, Department of Revenue

by: LISA MADIGAN, Illinois Attorney General

by: /s/ Faith Dolgin

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AMENDED ANSWER

NOW COMES the Department of Revenue of the State of Illinois ("Department"), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and for its Answer to the Taxpayer's Petition respectfully pleads as follows:

1. The Petitioner is a limited liability company formed pursuant to the laws of the State of Illinois with legal residence at 2212 Fox Drive, Champaign, Illinois 61820. The Petitioner's federal employer tax identification number is 36-3885839.

ANSWER: The Department denies that the Taxpayer is registered with the Department under the federal employer identification number referenced in Paragraph 1. The Department admits that Taxpayer is registered at the address referenced in Paragraph 1. The Department is without information sufficient to form a belief as to the remaining allegations contained in Paragraph 1.

2. The Notice of Tax Liability (a copy of which including so much of the statement and schedules accompanying the Notice as is material, is attached hereto and marked as Exhibit

A) was mailed to the Petitioner on July 17, 2013, and was issued by the Respondent Illinois Department of Revenue.

ANSWER: The Department admits that a Notice of Tax (NTL) was issued and mailed to Taxpayer by the Department on July 17, 2013 and that a copy of the NTL is attached to the Petition as Exhibit A. The remaining allegation as to the materiality of documentation is a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. The deficiencies as determined by the Respondent are in Aircraft use Tax and associated penalties relating to the purchase of a Challenger Lear Jet (the "Lear Aircraft") on or about June 17, 2009. A deficiency was assessed in the amount of $300,000.00 of aircraft use tax, $120,000.00 of penalties, and $65,770.56 of interest.

ANSWER: The Department denies the allegations contained in Paragraph 3. The Department further states that the liability proposed under the subject NTL is for unpaid use tax arising under Illinois' Use Tax Act, *35 ILCS 105/1, et seq.,* plus related penalties and interest under the Uniform Penalty and Interest Act, *35 ILCS 735/1, et seq.,* and the Tax Delinquency Amnesty Act, *35 ILCS 745/1, et seq.,* imposed in connection with Taxpayer's purchase of a 2007 Learjet 45 aircraft (N15UB), purchased and brought into Illinois on June 18, 2009. The Department admits that the liability asserted under the NTL is for use tax in the amount of $300,000.00; penalties in the amount of $ 120,000.00; and interest in the amount of $65,770.56.

4. In disputing the attached Notice of Tax Liability, Petitioner brought an action before the Illinois Department of Revenue, Office of Administrative Hearings, Docket No. 13-ST-0074, disputing the assessed aircraft use tax deficiency and associated penalties and interest.

ANSWER: The Department admits allegations contained in Paragraph 4.

5. Pursuant to Petitioner's motion to remove the proceeding to the Tax Tribunal pursuant to 35 ILCS 1010/1-15, the Illinois Department of Revenue, Office of Administrative Hearings issued an Order dated January 29, 2014 granting Petitioner's election and transferring jurisdiction to the Tax Tribunal. A copy of this order is attached hereto as Exhibit B.

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

6. Pursuant to 35 ILCS 1010/1-45, the Tax Tribunal maintains jurisdiction over the present action, which involves determinations of the Department of Revenue set forth in a Notice of Tax Liability involving the Aircraft Use Tax that exceeds $15,000, exclusive of penalties and interest.

ANSWER: The Department admits that this Tribunal has jurisdiction to review the liability proposed under the subject NTL. The Department denies, however, that the NTL asserts liability for aircraft use tax.

7. The determination of tax and penalties set forth in the said Notice of Deficiency is based upon the following errors by Respondent:

a. Respondent erred in its determination that Petitioner failed to qualify for the rolling stock exemption from Aircraft Use Tax under 35 ILCS 105/3-55 and assessing Aircraft Use Tax as set forth in the attached Notice of Tax Liability.

b. Respondent erred in its applying the "regular and frequent" standard found in the rolling stock exemption under 35 ILCS 105/3-55 to Petitioner unconstitutionally as applied to Petitioner.

c. Respondent erred in determining that Petitioner is liable for penalty imposed by 35 ILCS 120/5 for failure to pay Aircraft Use Tax.

d. Respondent erred in determining that Petitioner is liable for the penalty imposed by 35 ILCS 120/5 despite Petitioner's reasonable cause for failure to pay tax.

e. Respondent erred in determining that Petitioner is liable for the amnesty penalty imposed under 35 ILCS 735/3-3.

ANSWER: The Department denies that its determination of liability under the NTL is in error and, otherwise, denies all allegations contained in Paragraph 7, including all of the subparts. The Department further answers the subparagraphs of Paragraph 7 as follows:

a. The Department denies the allegations made in subparagraph 7a.

b. The Department denies the allegations made in subparagraph 7b.

c. The Department denies that the liability proposed under the NTL is for Aircraft Use Tax and, otherwise, denies that it erred in its determination that Petitioner is liable for penalties in connection with its failure to pay the taxes imposed under the NTL. The Department denies any remaining allegations contained in subparagraph 7c.

d. The Department denies that it erred in determination of penalties proposed under the NTL, denies that there is any basis to abate penalties based upon "reasonable cause" and denies any remaining allegations contained in subparagraph 7d.

e. The Department denies the allegations contained in subparagraph 7e.

8. The facts upon which the Petitioners rely as the basis of their case are as follows:

a. On or about June 17, 2009, Taxpayer purchased a Lear Aircraft for use in interstate commerce.

b. During the 2009, 2010 and 2011 taxable years, Petitioner used the Lear Aircraft on a regular and frequent basis in interstate commerce qualifying the purchase for the rolling stock exemption to Illinois' Aircraft Use Tax.

c. In the face of limited guidance from the Department on what constitutes "regular and frequent," Petitioner took all available prudent steps and good business care in making a determination that Aircraft Use Tax was not due and owing under the rolling stock exemption.

d. Taxpayer's taxable period relating to the Aircraft use Tax ends on July 17, 2009, outside of the amnesty period ending July 1, 2013, making the amnesty penalty inapplicable to the Aircraft Use Tax Liability assessed against Petitioner under 35 ILCS 735/3-3.

ANSWER: The Department is without information sufficient to form a belief as to what facts the Petitioner relied upon as the basis of their case and, therefore, denies the allegations in Paragraph 8, including all of the subparts to the extent that it requires an Answer on that basis. The Department further answers the subparagraphs of Paragraph 8 as follows:

a. The Department admits that the Taxpayer purchased a Lear Aircraft on or about June 17, 2009. The Department denies that it was used sufficiently in interstate commerce for hire to qualify for exemption under *35 ILCS 105/3-55.*

b. The Department denies the allegations contained in subparagraph 8b.

c. The Department denies that it provides "limited guidance" on what constitutes "regular and frequent" usage for purposes of the rolling stock exemption, *35 ILCS 105/3-55,* and, therefore, denies the remaining allegations contained in subparagraph 8c since they are premised on a fact which has been denied.

d. The Department denies the allegations made in subparagraph 8d. The Department further states that the applicable taxable period for purposes of the Illinois Tax Delinquency Amnesty Act with respect to transactional use tax liabilities is the date of delivery. ILL. ADMIN. CODE tit. 86, §520.105(i)(1)(B).

WHEREFORE, the Illinois Department of Revenue prays that the Tribunal enter an order**:**

a. denying each and every prayer for relief in Taxpayer's Petition;

b. finding that the Notice of Tax Liability is correct as issued;

c. ordering judgment in favor of the Department and against the Taxpayer; and

d. granting such further relief as this Tribunal deems appropriate.

Respectfully Submitted,

LISA MADIGAN, Illinois Attorney General

By: /s/ Faith Dolgin

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