

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

RDDG, Inc.,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-95
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

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:

FACTIONAL STATEMENT

1. IDOR has issued a Notice of Tax Liability to the Petitioner pertaining to the period of January 20, 2010 to June 30, 2012 (Exhibit A).

ANSWER: A copy of the Notice is required by Section 310(a)(1)(D) of the Tax Tribunal Regulations and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 1.

2. The day to day operations of the business were conducted by a manager who was responsible for the keeping of all daily records pertaining to the business operations of RDDG.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 2 and therefore demands strict proof thereof.

3. The manager ordered cigarettes on Petitioner's wholesale accounts and transferred the cigarettes to a different location not owned by Petitioner.

ANSWER: The Department lacks sufficient information to either admit or deny the

allegations in Paragraph 3 and therefore demands strict proof thereof.

4. The manager was terminated and removed all sales documentation from the Retail Location.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 4 and therefore demands strict proof thereof.

5. In June 2013, the IDOR completed its audit of the business records of RDDG for the purpose of determining whether RDDG had paid the full amount tax due under the Retailers Occupation Tax. The impetus for this audit was the rampant industry wide underreporting of sales taxes due from the sales of motor fuels.

ANSWER: The Department admits it gave the taxpayer Informal Conference Review Board rights in June 2013 and completed the audit in April 2014, but denies the remainder of the allegations in paragraph 5.

I. RETAIL SALES PRICE FOR CIGARETTES UTILIZED BY IDOR WAS ARBITRARY AND CAPRICIOUS

6. During the audit the Department determined that RDDG had paid all sales taxes due on its sales of motor fuels.

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

7. While the actual sales documentation was unavailable, IDOR was able to compute sales data by verifying the gallons of fuel purchased and the amounts RDDG paid for the fuels from the wholesale distributor.

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

8. IDOR then referenced the published U.S. Energy Information Administration (“EIA”) Midwest average sales price for motor fuels in Cook County, Illinois to ensure that the reported sales price was at least equal to the average sales price of gasoline in Cook County, Illinois.

ANSWER: The Department denies it used the U.S. Energy Information Administration Midwest average sales prices for motor fuels but admits it used the U.S. Energy Information Administration Chicago average sales price for motor fuels and the point of sale reports. The Department admits the remainder of the factual allegations contained in Paragraph 8.

9. IDOR also audited the convenience store sales.

ANSWER: The Department admits the factual allegations contained in Paragraph 9.

10. As with the with the motor fuel sales, the IDOR obtained the number of cigarettes purchased and the wholesale price paid for the cigarettes from the wholesale distributors.

ANSWER: The Department admits the factual allegations contained in Paragraph 10.

11. There is no dispute regarding the number of cigarettes purchased or the wholesale price paid by RDDG for the cigarettes, but there is a dispute whether all cigarettes purchased by Petitioner's manager were actually sold from the Retail Location.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and therefore demands strict proof thereof.

12. While actual sales data was unavailable, IDOR was obligated to make a fair estimation of the cigarette sales generated during the audit period.

ANSWER: Paragraph 12 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. The Department admits the existence, force and effect of Section 2-5 of the Retailers' Occupation Tax Act.

13. The Petitioner's mark-up on cigarettes was 6%, which IDOR's auditor could have verified during its audit by checking the sales price of cigarettes at the location during the audit.

ANSWER: The Department denies all factual allegations contained in Paragraph 13 as pleaded.

14. IDOR ignored the actual mark-up Petitioner charged for its cigarettes and based its assessment of tax liability on a 16% mark up.

ANSWER: The Department denies all factual allegations contained in Paragraph 14 as pleaded.

15. Unlike the procedure followed in ascertaining the sales of motor fuels, IDOR did not base the markup it applied to cigarettes to any published independent industry data related to Cook County sales.

ANSWER: The Department denies all factual allegations contained in Paragraph 15 as pleaded.

16. IDOR arbitrarily and capriciously assumed a mark-up on cigarettes of 16%, a percentage mark-up in excess of 10% points over the standard mark-up being charged for cigarettes by the Petitioner.

ANSWER: The Department denies all factual allegations contained in Paragraph 16 as pleaded.

II. IDOR's FAILURE TO TAKE INTO ACCOUNT CIGARETTES REMOVED FROM THE RETAIL LOCATION AND SOLD AT OTHER RETAIL OUTLETS NOT OWNED BY PETITIONER WAS IN ERROR

17. IDOR's refusal to take into account the cigarettes removed from the Premises which were not sold from the Retail Location, despite the fact that the terminated manager owed retail tobacco shops and, on information and belief, is himself, currently subject to IDOR scrutiny, was in error and inflated the retail sales upon which the IDOR assessment was based.

ANSWER: The Department denies all factual allegations contained in Paragraph 17 as pleaded.

18. As a result of the inflated mark-up employed by IDOR and its failure to take into account that cigarettes delivered to Petitioner's Retail Location were removed from said location to a retail outlet owned by another, Petitioner received a Notice of Tax Liability for underreported sales taxes due from the sale of cigarettes in the amount of \$171,120.60, a Late Payment Penalty of \$34,224.00, a Negligence Penalty of \$34,224.00 and interest assessed in the amount of \$11,225.06.

ANSWER: The Department admits it issued the Notice of Tax Liability for underreported sales taxes due from the sale of cigarettes in the amount of \$171,120.60, a Late Payment Penalty of \$34,224.00, a Negligence Penalty of \$34,224.00 and interest assessed in the amount of \$11,225.06 but denies the remainder of the allegations as pleaded in Paragraph 18 as pleaded. Paragraph 18 also 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.

19. The total Tax Liability assessed as of May 19, 2014, is \$250,793.66.

ANSWER: The Department admits the factual allegations contained in Paragraph 19.

20. RGGD disputes and, hereby, protests the tax liability assessed by the Department in connection with the retail cigarette sales.

ANSWER: The information contained in Paragraph 20 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(G) (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 admits the factual allegations contained in Paragraph 20.

WHEREFORE, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in Counts I and II of the Petition;
- b. Find that the Department's Notices correctly reflect 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.

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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DEPARTMENT OF REVENUE)	
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**AFFIDAVIT OF MARY PISZCZOR
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Unit.
2. My current title is Revenue Auditor III.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner’s Petition paragraphs 2, 3, 4, and 11.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

Mary Piszczor
Revenue Auditor
Illinois Department of Revenue

DATED: _____

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CHICAGO, ILLINOIS**

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DEPARTMENT OF REVENUE)	
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CERTIFICATE OF SERVICE

Ashley Hayes Forte certifies that she is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that she is authorized to make this certificate; that on July 2, 2014, before the hour of 5:00 p.m. (C.S.T.) she served a true and exact copy of the foregoing instrument entitled ANSWER on the above Taxpayer/Petitioner by sending the same as an attachment to an electronic mail message addressed to Taxpayer/Petitioner at his designated email address:

Michael Lacy: lacy@lacyassociates.com

/s/ Ashley Hayes Forte
Ashley Hayes Forte
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**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

LA ESTRELLA GROCERY)	
STORE, INC.,)	
Petitioner,)	
)	
v.)	Case No. 14-TT-96
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

NOTICE OF FILING

TO: Michael Lacy
Lacy & Associates, LLC
Two Mid America Plaza, Ste. 800
Oakbrook Terrace, IL 60181

PLEASE TAKE NOTICE, that on July 2, 2014, the Department filed the enclosed **ANSWER** with the Administrative Clerk for the Illinois Department of Revenue, Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506 Chicago, Illinois 60601.

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

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