

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

---

---

TTVM, INC.,	)	
	)	
Petitioner,	)	
v.	)	No. 14 TT 110
	)	Judge Brian F. Barov
	)	
ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
	)	
Respondent.	)	

---

---

**DEPARTMENT' S ANSWER TO PETITION**

Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the "Petition"), hereby states as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 201 West Main Street, DuQuoin, Illinois, 62832, and can be reached at 847-293-4803.

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

2. Petitioner is represented by Romanoff & Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558, and can be reached at 708-784-322 or jdickett@aol.com.

**ANSWER:** The Department admits the allegations contained in paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 3944-9777.

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

4. 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 existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

### **NOTICE**

5. On May 13, 2014, Petitioner received a Notice of Tax Liability ("Notice") from the Department for a sales/use tax audit for the tax periods January 1, 2010 to June 30, 2012. The Notice reflects \$ 191,506 in tax due, \$43,537 in late payment penalties and \$3,158 in late filing penalties, \$15,166 in interest, and payments/credits of \$21,566. The Notice is attached hereto as Exhibit 1.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit 1 and referred to in paragraph 5 and state that such document speaks for itself.

### **JURISDICTION**

6. 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 6.

7. The Tribunal has jurisdiction over this matter pursuant to Section 1-45, and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

**ANSWER:** Although paragraph 7 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 7.

## **BACKGROUND**

8. Petitioner is a petroleum retailer with multiple locations in the Illinois towns of DuQuoin, Alsip, Oak Forest, and Hoffman Estates.

**ANSWER:** The Department admits the allegations contained in paragraph 8.

9. Defendant audited Petitioner's books and records for the tax periods January 1, 2010 to June 30, 2012.

**ANSWER:** The Department admits the allegations contained in paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products (i.e., gas and mini-mart items.).

**ANSWER:** The Department admits that it used an industry publication to determine the appropriate markup on Petitioner's purchases in order to estimate Petitioner's actual selling price but affirmatively states that such information was the best and only information available as Petitioner provided very limited books and records to the Department's auditor in support of the amount of gross receipts claimed on its sales tax returns.

## **COUNT I**

### **Defendant's audit methodology overstates Petitioner's liability.**

11. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 10, inclusive, hereinabove.

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices.

**ANSWER:** The Department admits that it used an industry publication to determine the appropriate markup on Petitioner's purchases in order to estimate Petitioner's actual selling price but affirmatively states that such information was the best and only information available as Petitioner provided very limited books and records to the Department's auditor in support of the amount of gross receipts claimed on its sales tax returns.

13. By applying such estimated prices to Petitioner's purchases during the audit period, the Department drastically and unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department especially with respect to cigarette and also especially with respect to Petitioner's locations in DuQuoin, Illinois.

**ANSWER:** Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13. The Department further affirmatively states that Petitioner failed to provide most of the books and records it is required by law to maintain and that the very limited sample of Petitioner's books and records actually provided to its auditor were wholly inadequate.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count I of this matter;
- 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

14. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 13, inclusive, hereinabove.

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1–13 as if fully set forth herein.

15. In its Notice, the Department assessed late payment penalties.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 1 and referred to in paragraph 15 and state that such document speaks for itself.

16. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3–8.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 16 and state such statute speaks for itself.

17. 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.Adm.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 17 and state such regulation speaks for itself.

18. 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.Adm.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 18 and state such regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period based on its daily sales reports (and did not use estimates) to determine its sales.

**ANSWER:** Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 19.

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  
REVENUE LITIGATION BUREAU  
100 W. RANDOLPH ST., RM. 13-216  
CHICAGO, IL 60601  
By: Michael Coveny (312) 814-6697

Respectfully Submitted,

LISA MADIGAN  
Illinois Attorney General



By \_\_\_\_\_  
Michael Coveny,  
Assistant Attorney General

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 Answer to Petitioner's Petition upon:

James E. Dickett  
Romanoff & Dickett, Ltd.  
600 Hillgrove Avenue / Suite 1  
Western Springs, IL 60558

By email to jdickett@aol.com on July 28, 2014.



---

Michael Coveny,  
Assistant Attorney General