

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>SAHOURI-WAY-LO, INC.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-115</b>
	)	
<b>THE ILLINOIS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**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:

1. Petitioner is an Illinois corporation located at 2914 W. State Street, Rockford, Illinois 61102, and can be reached at 815-985-6595.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (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 1.

2. Petitioner is represented by attorneys Lane M. Gensburg and Anne J. Kim of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Lane M. Gensburg can be reached at 312-263-2200 or [lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com). Anne J. Kim can be reached at 312-263-2200 or [akim@dandgpc.com](mailto:akim@dandgpc.com).

**ANSWER:** The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (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 2.

3. Petitioner's Illinois Business Tax number is 3750-7141.

**ANSWER:** The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (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 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of the Illinois tax laws. See 20 ILCS 5/5-15.

**ANSWER:** Paragraph 4 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.

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

**ANSWER:** The Department admits the factual allegations in Paragraph 5.

6. 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.

**ANSWER:** Paragraph 6 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 factual allegations in Paragraph 6.

7. On May 6, 2014, the Department issued a Notice of Tax Liability (the "NTL") to Petitioner assessing a total Retailers' Occupation Tax/Use Tax ("ROT") liability of \$237,702.42, covering the period of January 2010 through December 2012 (the "period at

issue”). The total liability consists of \$187,714.00 in tax due, \$37,543.00 in late payment penalties and \$12,445.42 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

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

8. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the “Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*

**ANSWER:** Paragraph 8 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.

9. The 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 issuance of the NTL.

**ANSWER:** Paragraph 9 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.

10. Petitioner is a gas station and retailer of gas and other general merchandise. The Department audited Petitioner’s books and records for the period at issue.

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

11. The ROT audit liability stated in the NTL is based on projections whereby the Department: (1) multiplied Petitioner’s gas purchases by average pump prices as published by the U.S. Energy Information Administration to project Petitioner’s total gas sales; (2) multiplied Petitioner’s other high tax merchandise purchases by a 26 percent markup (26%) to determine Petitioner’s total other high tax merchandise sales; (3) disallowed Petitioner’s claimed low tax (food) sales and applied the high tax rate to those

sales; and (4) disallowed Petitioner's claimed deductions for newspaper sales and a portion of Petitioner's food stamp ("Link") sales and applied the high tax rate to those sales.

**ANSWER:** The Department admits the factual allegations in Paragraph 11.

### **COUNT I**

#### **Defendants' Audit Methodology Overstates Petitioner's ROT Liability**

12. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 11 above as this Paragraph 12.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 11 as though fully set forth herein.

13. On information and belief, the U.S. Energy Information Administration pump prices utilized by the Department to project Petitioner's gas sales were overstated for the following reasons:

- a. The U.S. Energy Information Administration pump prices utilized by the Department were higher than the average actual pump prices where Petitioner was located;
- b. Petitioner actually sold gas at a price between 5 and 10 cents per gallon lower than other gas stations in the area where Petitioner was located; and
- c. Petitioner also provided an additional 10 cent discount on cash gas sales and cash gas sales comprised nearly 50 percent of Petitioner's total gas sales.

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

14. The 26 percent markup utilized by the Department to project the Petitioner's other high tax merchandise sales was arbitrary and too high and overstated those sales. Petitioner's actual markup was less than 26 percent.

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

15. The Department further erred in failing to adjust Petitioner's purchase of general merchandise for spoilage and theft losses in estimating the other high tax merchandise sales. The Department further erred by failing to take into account Petitioner's sales promotions, where products were periodically sold at cost or below cost.

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

16. The Department also erred in disallowing Petitioner's reported low tax sales and applying the high tax rate to those sales.

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

17. The Department erred in disallowing Petitioner's deductions for newspaper sales and applying the high tax rate to those sales.

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

**WHEREFORE**, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in 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.

## **COUNT II**

### **All Failure to File and Pay Penalties Should be Abated for Reasonable Cause**

18. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 17 above as this Paragraph 18.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 17 as though fully set forth herein.

19. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

**ANSWER:** Paragraph 19 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 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

20. The most important factor to be considered in making a determination to abate a late filing or late payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

**ANSWER:** Paragraph 20 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.

21. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. See 86 Ill. Admin. Code 700.400(c).

**ANSWER:** Paragraph 21 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.

22. Petitioner's failure to timely pay its ROT liabilities during the period at issue was due to reasonable cause warranting abatement of the late filing and late payment penalties.

**ANSWER:** Paragraph 22 contains a legal conclusion, not a material allegation of fact, does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is therefore denied.

**WHEREFORE,** the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in 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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DEPARTMENT OF REVENUE  
ILLINOIS INDEPENDENT TAX TRIBUNAL  
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**NOTICE OF FILING**

TO: Lane M. Gensburg  
Anne J. Kim  
Dale & Gensburg  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606

**PLEASE TAKE NOTICE**, that on July 18, 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  
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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 18, 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:

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Anne J. Kim: [akim@dandgpc.com](mailto:akim@dandgpc.com)

/s/ Ashley Hayes Forte  
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