ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLLINOIS

BOB MELTON TRUCK SERVICE, INC.,	)	
Taxpayer,	)	
v.	)	**14-TT-0012**
	)	**JUDGE BRIAN F. BAROV**
ILLINOIS DEPARTMENT OF REVENUE,	)	
Department.	)	

NOTICE OF FILING

To: John R. Simpson
SORLING NORTHRUP
1 North Old State Capitol Plaza, Suite 200
Springfield, Illinois 62705
Email: jrsimpson@sorlinglaw.com

PLEASE TAKE NOTICE that on March 25, 2014, the undersigned filed with the Illinois Independent Tax Tribunal, 160 North LaSalle St., Room N506, Chicago, Illinois 60601, the

ILLINOIS DEPARTMENT OF REVENUE'S ANSWER,

a copy of which is attached hereto and served upon you.

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 Filing and the document therein mentioned on the party set forth above by email on March 25, 2014.

/s/ Faith Dolgin
Faith Dolgin

ILLINOIS INDEPENDENT TAX TRIBUNAL
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ILLINOIS DEPARTMENT OF REVENUE,	)	
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ANSWER

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

JURISDICTION, VENUE AND PARTIES

1. Petitioner brings this action pursuant to Emergency Rule Section 5000.310 of the Tax Tribunal 86 Ill.Admin.Code §5000.310.

ANSWER: The Department admits the allegations contained in Paragraph 1.

2. The Petitioner is Bob Melton Truck Service Inc., 611 Kingsley Street, Normal, Illinois 61761:

ANSWER: The Department admits that Bob Melton Truck Service Inc. is the Petitioner. The Department is without information sufficient to form a belief as to the remaining allegations contained in Paragraph 2.

3. The Petitioner's identification numbers are Account ID 4060-9030 and 00579-50336.

ANSWER: The Department admits the allegations contained in Paragraph 3.

4. The Department audited Petitioner and issued to petitioner certain Notices of Tax Liability which are attached as Exhibit A and which involve the periods January 1, 2007 through December 31, 2012 (Periods at Issue).

ANSWER: The Department admits the allegations contained in Paragraph 4. The Department further states that the liability proposed under each of the referenced Notices of Tax Liability (NTL's) is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due. *35 ILCS 105/12; 35 ILCS 120/4; 35 ILCS 120/5.*

5. The Tax Tribunal has jurisdiction over this matter pursuant to the Illinois Tax Tribunal Act of 2012, 35 ILCS 1010/1-1 et seq.

ANSWER: Paragraph 5 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the statute referred to in Paragraph 5 and states that such statute speaks for itself.

6. Petitioner is a corporation qualified to do business in Illinois.

ANSWER: The Department admits that Petitioner is a corporate entity registered with the Department. The Department is without information sufficient to form a belief as to

the truth of the allegation that Petitioner is "qualified" to do business in Illinois. The Department denies any remaining factual allegations contained in Paragraph 6.

STATEMENT OF FACTS

7. The tax involved herein is the Illinois use tax imposed under the Illinois Use Tax Act 35 ILCS 105/1 et seq.

ANSWER: The Department admits that the liability asserted against the Petitioner in each of the subject Notices of Tax Liability consists of assessments for unpaid taxes imposed under the Illinois Use Tax Act, *35 ILCS 105/1, et seq.*, plus related penalties and interest imposed under the Uniform Penalty and Interest Act, *35 ILCS 735/3-1, et seq.* The Department denies any remaining factual allegations contained in Paragraph 7.

8. Petitioner maintains its commercial domicile in Normal, Illinois.

ANSWER: Paragraph 8 contains a legal conclusion, not a material allegation of fact and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department further states that it is without information sufficient to form a belief as to the allegations contained in Paragraph 8.

9. Petitioner operates a business which provides transportation services, hauling, and delivery for tangible personal property.

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

10. Petitioner was registered with the Department during the Periods at Issue.

ANSWER: The allegations contained in Paragraph 10 are vague as to what is meant by "registered" and, therefore, the Department denies the allegations contained therein on that basis.

11. Illinois imposes a use tax upon the use of tangible personal property.

ANSWER: The Department admits the existence, force and effect of the Illinois Use Tax Act, *35 ILCS 105/1, et seq.* ("Use Tax Act").

12. During the Periods at Issue, Petitioner made purchases of trucks, motor vehicles, trailers, and repair and replacement parts upon which it did not self-assess and remit use tax (Purchases at Issue).

ANSWER: The Department admits that during the Periods in Issue, Petitioner purchased and used, in Illinois, certain trucks, motor vehicles, trailers, and repair and replacement parts (Rolling Stock Items) and various other tangible personal property (together with Rolling Stock Items, "Tangible Personal Property"). The Department admits that Petitioner failed to properly report and failed to remit the applicable use tax due in connection with its use of the Tangible Personal Property. The Department further states that Petitioner failed to keep adequate documentation concerning the extent of its purchase and use of Tangible Personal Property during the Periods at Issue, thereby, requiring the auditor to use her best judgment and information to determine Petitioner's liability. *35ILCS105/12; 35 ILCS 120/4; 35 ILCS 120/5*. The Department denies any remaining factual allegations contained in Paragraph 12.

13. During the Periods at Issue, Petitioner's purchases were intended for use as rolling stock for hire in interstate commerce.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and, therefore, denies the same.

14. Purchases of motor vehicles, trailers and related repair and replacement parts are not subject to Illinois use tax pursuant to Sections 3-55, 3-60 and 3-61 of the Illinois Use Tax, 35 ILCS 105/3-55,60 and 61 when purchased for use for hire in interstate commerce.

ANSWER: Paragraph 14 contains a legal conclusion, not a material allegation of fact and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department admits the full force and effect of Sections 3-55, 3-60 and 3-61 of the Illinois Use Tax Act, *35 ILCS 105/1, et seq.*

15. Petitioner used the Purchases at Issue for hire in interstate commerce by hauling grain and other property for numerous customers.

ANSWER: The Department admits that a certain percentage of the Rolling Stock Items were determined to qualify for the rolling stock exemption under *35 ILCS 105/3-55(b)* (Rolling Stock Exemption). The remaining allegations contained in Paragraph 15 as to what constitutes "use in interstate commerce" is a legal conclusion, not a material allegation of fact and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department denies any remaining factual allegations contained in Paragraph 15.

16. Some motor vehicle purchases for some years in the Periods at issue did not meet the tests contained in Section 3-61 of the Illinois use Tax Act, 35 ILCS 105/3-61.

ANSWER: The Department admits the allegations contained in Paragraph 16.

17. Petitioner used some purchases for rolling stock as an interstate carrier by making hauls between points in Illinois transporting for hire property whose shipments terminated outside Illinois. These shipments were principally hauls of grain for shipment outside Illinois.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 and, therefore, denies the same.

COUNT I

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 – 17, inclusive, hereinabove.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its answers to Paragraphs 1 through 17 as if fully set forth herein.

18. The Department failed to correctly determine the use tax "rolling stock" exemption (35 ILCS 105/3-55, 60 and 61) available to Petitioner's equipment purchases in that it failed to include all trips which continued interstate as allowed by the statute and Department's regulations. Section 130.340 Rolling Stock, 86 Ill. Admin. Code §130.340 under the complimentary Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq.

ANSWER: The Department denies the allegations contained in Paragraph 18.

19. As a result of the Department's failure, the Notices of Tax Liability overstate the Petitioner's liability.

ANSWER: The Department denies the allegations contained in Paragraph 19.

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying each prayer for relief in Count I of the Taxpayer's Petition;

b. finding that each of the Notices of Tax Liability are 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.

COUNT II

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1-19, inclusive, hereinabove.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its answers to Paragraphs 1 through 19 as if fully set forth herein.

20. The Department failed to correctly determine the percentage of repair and replacement parts that were eligible for the "rolling stock" exemption by using multiple years determinations rather than the years of purchase.

ANSWER: The Department denies the allegations contained in Paragraph 20.

21. The Department made a calculation of the percentage of motor vehicles in each year which qualified as rolling stock (which calculation was in error as alleged in Count I) for the entire Periods at Issue and applied that percentage to annual purchases of repair and replacement parts.

ANSWER: The Department admits that a percentage of repair and replacement parts used by Petitioner during the Periods in Issue was determined to qualify for the Rolling Stock Exemption. The percentage deemed to qualify was calculated according to the method described under the following Regulations: *86 Ill.Admin. Code § 130.340.(i)(3) and §130.340(j)(2).* The Department denies any remaining factual allegations contained in Paragraph 21.

22. The calculation for each year was based upon the entire Periods at Issue.

ANSWER: The term "calculation" is vague and, therefore, the Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22. To the extent it can answer, however, the Department admits that the calculation it used to determine the percent of Petitioner's exempt repair and replacement parts was based upon the threshold determination as to what percent of motor vehicles and trailers (in which those parts were incorporated) were deemed exempt under the Rolling Stock Exemption for that year. *86 Ill.Admin. Code § 130.340.(i)(3) and §130.340(j)(2).* The test for determining whether the motor vehicle or trailer was exempt under the Rolling Stock Exemption as an initial matter required a determination as to whether such equipment had been used in a qualifying manner for each and every consecutive 12 month period during which the statute of limitations remained open for

issuance of an NTL. See, *86 Ill.Admin. Code § 130.340(e)(1); 86 Ill.Admin. Code § 130.340(i).* If insufficient use was found for any one of those periods, exempt status was denied outright. *§130.340(e)(1)*. The Department denies any remaining factual allegations contained in Paragraph 22.

23. Said calculation was in error by using the entire Periods at Issue.

ANSWER: The Department denies the allegations contained in Paragraph 23.

24. Said calculation for each year should be based upon the percentage of motor vehicles used as interstate rolling stock for hire in that year. Regulation Section 130.340 j) 2) 86 Ill.Admin. Code §130.340 j)20.

ANSWER: The Department admits the existence, force and effect of the Regulation referred to in Paragraph 24 and states that such authority speaks for itself. The Department further admits that the test described in the cited Regulation, *§130.340(j)(2),* along with that described under Regulation *§130.340(i)(3),* sets forth the method to determine whether certain repair and replacement parts are exempt under the Rolling Stock Exemption. The remaining allegations contained in Paragraph 24 constitute a legal conclusion, not a material allegation of fact, and therefore do not require an answer pursuant to Rule 310(b)(2).

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying each prayer for relief in Count II of the Taxpayer's Petition;

b. finding that each of the Notices of Tax Liability are 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.

COUNT III

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1-17, inclusive, hereinabove.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its answers to Paragraphs 1 through 17 as if fully set forth herein.

25. The Department used purchase values for the taxable amount of non-qualifying equipment, such as motor vehicles, rather than fair market value when the equipment lost qualifying use in a year after the year of purchase.

ANSWER: For those motor vehicles that were deemed not exempt under either of *35 ILCS 105/3-55(b)(c); 35 ILCS 105/3-60; or 35 ILCS 3-61*, the auditor calculated use tax using the corresponding dollar values reported in the depreciable asset report given to her by the Petitioner's CPA. The Department further states that in order for a particular motor vehicle to have been eligible for exempt status, it must have been used in a qualifying manner for each and every consecutive 12 month period subject to the limitations period. If insufficient use was found for any one of those periods, exempt status was denied outright. *§130.340(e)(1)*. The Department denies any remaining factual allegations contained in Paragraph 25.

26. The statute and Departments' regulations provide for fair market value as the tax base. Section 3-10 of the Use Tax Act. 35 ILCS 105/3-10, Regulations Section 130.340 e)2) 86 Ill.Admin. Code §130.340 e) 2).

ANSWER: Paragraph 26 contains a legal conclusion, not a material allegation of fact and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of *35 ILCS 105/3-10* and the Regulation referred in Paragraph 26 and states that such authority speaks for themselves. To the extent an answer is required, the Department denies that fair market value is used to calculate use tax when a motor vehicle or trailer never gains exempt status under the Rolling Stock Exemption, *35 ILCS 105/3-55(b)(c),* when it cannot also meet the requirements set forth under *35 ILCS 3-60* and/or *35 ILCS 105/61* and all related Regulations. The Department further denies that the methodology provided under Regulation *§130.340(e)(2)* applies to any of the Rolling Stock Items examined in the audit. The Department denies any remaining factual allegations contained in Paragraph 26.

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying each prayer for relief in Count III of the Taxpayer's Petition;

b. finding that each of the Notices of Tax Liability are 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.

COUNT IV

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 – 26, inclusive, herein above.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its answers to Paragraphs 1 through 26 as if fully set forth herein.

27. By using values unrelated to the actual value of equipment when it lost exempt status and using multiple years to determine repair and replacement parts' exemption the Department violated principles of uniformity, due process and equal protection under the Illinois Constitution, statute and case law.

ANSWER: Paragraph 27 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies that any of the Rolling Stock Items "lost exempt status." The Department denies the remaining allegations contained in Paragraph 27.

28. The Department's calculations fail to meet the standards of reasonableness and non-arbitrary taxation by imposing taxes upon values not related to the time of non-qualifying use. Illinois Constitution 1970 Art. IX §2 Gejas v. Metropolitan, 153 Ill.2d 239, 606 NE2d. 1212, 1992.

ANSWER: Paragraph 28 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department

admits the existence, force and effect of the constitutional provision and the case law referred to in Paragraph 28 and states that each such authority speaks for itself. The Department denies any remaining factual allegations contained in Paragraph 28.

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying each prayer for relief in Count IV of the Taxpayer's Petition;

b. finding that each of the Notices of Tax Liability are 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.

COUNT V

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1-28, inclusive, hereinabove.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its answers to Paragraphs 1 through 28 as if fully set forth herein.

29. On October 16, 2013, Petitioner requested that the Department issue a subpoena duces tecum to Monsanto Company.

ANSWER: The Department admits the allegations contained in Paragraph 29.

30. The documentation to be requested under the subpoena duces tecum would have tended to demonstrate the shipments which terminated outside Illinois.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30. The Department, therefore, denies the allegations contained in Paragraph 30.

31. The Department refused to issue the subpoena duces tecum.

ANSWER: The Department admits the allegations contained in Paragraph 31.

32. The Department wrongfully refused to issue a subpoena duces tecum as provided by Section 10 of the Retailers' Occupation Tax Act, made applicable to the use Tax Act by Section 12 of the Use Tax Act, 35 ILCS 120/10 and 105/12.

ANSWER: Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of the statutes referenced in Paragraph 32 and states that each authority speaks for itself. The Department denies any remaining factual allegations contained in Paragraph 32. The Department further states that this Tribunal has the power to issue a subpoena duces tecum upon the request of any party to this proceeding. *35 ILCS 1010/1-60(b).*

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying each prayer for relief in Count V of the Taxpayer's Petition; and

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

COUNT VI

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 – 28, inclusive herein above.

ANSWER: Rule 310(a)(1)(F) requires the Taxpayer to separately number paragraphs. To the extent that an answer is required, here, the Department incorporates and repeats its Answers to Paragraphs 1 through 28 as if fully set forth herein.

33. Section 3-8 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-8 states:

> No penalties if reasonable cause exists. The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5 and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.

ANSWER: Paragraph 33 contains a legal conclusion, not a material allegation of fact, and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of *35 ILCS 7353-8* referred in Paragraph 33 and states that such statute speaks for itself. The Department denies any factual allegations contained in Paragraph 33.

34. Petitioner purchased the Purchases at Issue with full intention to use all equipment in interstate commerce.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 and, therefore, denies the same.

35. Petitioner has a long history of using equipment in interstate commerce.

ANSWER: The Department admits that, during the course of its filing history, the the Petitioner has made valid claims under the Rolling Stock Exemption with respect to certain property. The remaining allegations in Paragraph 35 are vague and the Department denies them on that basis.

36. Petitioner made shipments for its largest customers which while between points in Illinois terminated outside Illinois.

ANSWER: The Department is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 and, therefore, denies the same.

37. Petitioner was reasonable in relying on these facts and practices to substantiate its claims for exemption under the rolling stock exemption.

ANSWER: Paragraph 37 contains a legal conclusion, not a material allegation of fact and, therefore, does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations contained in Paragraph 37.

WHEREFORE, the Department prays that the Tribunal enter an order:

a. denying all relief requested in Count VI of the Taxpayer's Petition;

b. finding that each of the Notices of Tax Liability, including the imposition of related penalties, are 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
Attorney General for the State of Illinois

by: /s/ Faith Dolgin
Faith Dolgin
Special Assistant Attorney General

Faith Dolgin
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	)	**JUDGE BRIAN F. BAROV**
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Department.	)	

AFFIDAVIT OF KENDRA L. DYE
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, *735 ILCS 5/1-109*, I, Kendra Dye, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.

2. My current title is Revenue Auditor III

3. I audited Bob Melton Truck Service Inc. for each and every tax period asserted on each Notice of Tax Liability attached to and subject of Taxpayer's Petition.

4. I lack the personal knowledge required to either admit or deny the allegations contained in Paragraphs 6, 13, 17, 30, 34 and 36 of Taxpayer's Petition.

5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-1-9 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Kendra L. Dye
Revenue Auditor III

Subscribed and sworn to this 24 day of March, 2014.

Jennifer Laporte
Notary Public
My Commission: Expires 1/26/15
(Stamp)
DATED: 3/24, 2014

OFFICIAL SEAL
JENNIFER LAPORTE
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/26/15