

ILLINOIS INDEPENDENT
TAX TRIBUNAL

GLOBAL FUNTASTICS, INC.,)	
)	
Petitioner,)	
)	
v.)	No. 14 TT 122
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	Judge Brian Barov
)	
Respondent.)	

DEPARTMENT’S ANSWER TO PETITION

NOW COME the Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Petitioner’s Petition (“Petition”), hereby states as follows:

PARTIES

1. Petitioner is an Ohio corporation located at 2000 w. Dorothy Lane, Dayton, OH 45439 and can be reached at Grant.Mackenzie@funtastic.com.au.

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

2. Petitioner is represented by Horwood Marcus & Berk attorney David A. Hughes of located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3212 or dhughes@hmblaw.com.

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

3. Petitioner's Illinois Business Tax number is 01019-42272.

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.

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

ANSWER: The Department admits the allegations contained 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. 20 ILCS 5/5-20.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 6 and state such provision speaks for itself.

NOTICES

7. On March 31, Petitioner received a Collection Action Notice ("Notice") indicating that Petitioner owes Illinois Use Tax in the amount of \$27,180.62, inclusive of penalties and interest for the reporting periods September 20, 2011 and October 20, 2011 ("Periods in Issue"). A true and accurate copy of the Notice is attached Exhibit A.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit A and referred to in paragraph 7 and state that such document speaks for itself.

8. On May 6, 2014, the Illinois Department of Revenue Office of Administrative Hearing granted Petitioner's request for a late discretionary

hearing. A true and accurate copy of the letter granting the late discretionary hearing is attached hereto as Exhibit B.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit B and referred to in paragraph 8 and state that such document speaks for itself.

JURISDICTION

9. 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 9.

10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act and 86 Ill.Admin.Code § 5000.310(a)(5) because Petitioner timely filed this petition within 60 days of the letter granting the late discretionary hearing.

ANSWER: The Department admits the allegations contained in paragraph 10.

BACKGROUND

11. Petitioner was in the business of selling tangible personal property, primarily furniture, to day care facilities throughout the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 and therefore neither admits or denies the allegations.

12. Petitioner did not have any employees or offices in Illinois.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 and therefore neither admits or denies the allegations.

13. Sometime prior to 2009, the assets of Petitioner’s only customer was sold to another entity.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 and therefore neither admits or denies the allegations.

14. After being sold, Petitioner's only customer stopped placing orders with Petitioner.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 and therefore neither admits or denies the allegations.

15. Petitioner conducted a liquidation sale of all its assets, and made its last sales in May, 2009, none of which were to Illinois buyers.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 and therefore neither admits or denies the allegations.

16. After the liquidation sale, Petitioner had no employees, assets, or offices in the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 and therefore neither admits or denies the allegations.

17. On February 12, 2009, Petitioner submitted a final Illinois sales and use tax return ("Final Return"). A true and accurate copy of Petitioner's Final Return is attached hereto as Exhibit C.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit C and referred to in paragraph 17 and state that such document speaks for itself.

18. Petitioner had approximately \$4,100 in sales in 2011.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18 and therefore neither admits or denies the allegations.

19. In 2011, Petitioner imported tangible personal property from Australia to a third party logistics center in Illinois to be distributed throughout the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 19 and therefore neither admits or denies the allegations

20. The Defendants, after discovering that Petitioner was sending property into Illinois, issued notices assessing use tax on the property to Petitioner's old office address, which has been closed for a number of years.

ANSWER: The Department admits sending the notices but is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 20 and therefore neither admits or denies those allegations.

21. The first notice Petitioner received was the Notice.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 and therefore neither admits or denies the allegations

22. Petitioner requested a late discretionary hearing from the Illinois Department of Revenue Office of Administrative Hearings, which was granted.

ANSWER: The Department admits the allegations contained in paragraph 22.

COUNT I

Petitioner is not Subject to Illinois Use Tax

23. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 22, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-22 as if fully set forth herein.

24. Petitioner never had a physical presence, including employees or offices, in Illinois.

ANSWER: Although paragraph 24 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 24.

25. Petitioner voluntarily registered to collect and remit sales tax on its Illinois destination sales to its only customer prior to liquidating its assets in 2009.

ANSWER: The Department admits that Petitioner voluntarily registered to collect and remit sales tax but is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 25 and therefore neither admits or denies those allegations.

26. Petitioner currently has no physical presence in the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 and therefore neither admits or denies the allegations.

27. During the Periods in Issue, Petitioner imported property to a third party logistics company that delivered that property to United States customers, totaling approximately \$4,100 in 2011 sales.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 and therefore neither admits or denies the allegations.

28. The remainder of the property shipped to the third party logistics company was sold in 2012 to customers throughout the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 28 and therefore neither admits or denies the allegations.

29. Petitioner is not subject to use tax on the property because it does not have substantial nexus with Illinois, as required by the Commerce Clause of the United States Constitution and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

ANSWER: Although paragraph 29 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 29.

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 Notices of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

Count II

Petitioner is not Subject to Use Tax on the Property Sent into Illinois Because it did not Use the Property

30. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 29, inclusive, hereinabove

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-29 as if fully set forth herein.

31. Petitioner sent the property at issue into Illinois to be delivered by a third party distributor to retail customers.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 31 and therefore neither admits or denies the allegations.

32. Illinois imposes a tax upon the privilege of using tangible personal property in Illinois. 35 ILCS 105/3

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 32 and state such provision speaks for itself.

33. Petitioner is not subject to use tax on the property at issue because it never used that property in Illinois.

ANSWER: Although paragraph 33 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 33.

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(s) of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT III

Petitioner is not Subject of Use Tax on the Property Sent into Illinois Because it RESold the Property

34. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 33, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-33 as if fully set forth herein.

35. In Illinois, sales of tangible personal property for purposes of resale are exempt. 35 ILCS 105/2.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 35 and state such provision speaks for itself.

36. Petitioner is not subject to use tax on the property at issue because it resold all of the property to retail customers throughout the United States.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 36 and therefore neither admits or denies the allegations.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter on Count III;
- B) That the Department's Notices of Tax Liability be determined to be correct.

- C) That this Tribunal grant such other additional relief it deems just and proper

Count IV

Petitioner's Sales are not Subject to Illinois Tax Because They were Made in Interstate Commerce

37. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 36, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-36 as if fully set forth herein.

38. Illinois does not impose tax upon the privilege of engaging in a business in interstate commerce. 35 ILCS 120/2-60.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 38 and state such provision speaks for itself.

39. Petitioner sent the property into Illinois to be delivered to customers throughout the United states by a third party distributor.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 39 and therefore neither admits or denies the allegations.

40. Nearly all of Petitioner's sales were to customers outside Illinois.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 40 and therefore neither admits or denies the allegations.

41. Petitioner is not subject to Illinois tax on the property sent into Illinois because the property was resold in interstate commerce.

ANSWER: Although paragraph 41 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 41.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count IV;
- B) That the Department's Notice(s) of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT V

All Penalties Should be Abated Based on Reasonable Cause

42. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 41, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-41 as if fully set forth herein.

43. In its Notice, the Department assessed penalties in an amount totaling \$4,696.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the Notice and attached to the Petition as Exhibit A and referred to in paragraph 43 and state that such document speaks for itself.

44. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS §734-8.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 44 and state such provision speaks for itself.

45. 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. Admin. 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 45 and state such regulation speaks for itself.

46. 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. Admin. 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 46 and state such regulation speaks for itself.

47. Petitioner made a good faith effort to determine its Illinois tax liability when it filed its Final Return as a result of no longer having a presence in the United States.

ANSWER: Although paragraph 47 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 47.

48. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois use tax on the equipment because the equipment qualified for the manufacturing exemption from use tax.

ANSWER: Although paragraph 48 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 48.

49. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

ANSWER: Although paragraph 49 is not an allegation of fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 49.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count V;

- B) That the Department's Notice(s) of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL. 60601
(312) 814-6697; FAX (312) 814-4344

Respectfully submitted,



Michael Coveny
Special Assistant Attorney General

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

I, WILLIAM GAFFIGAN, being first duly sworn, deposes and says that I am an employee of the Illinois Department of Revenue, that I have read the foregoing Department's Answer to Petitioner's Petition to the Illinois Independent Tax Tribunal, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that I lack the required personal knowledge to either admit or deny paragraphs 11-16, 18-21, 25-28, 31, 36, 39-40 pursuant to 735 ILCS 5/2-610(b) and Tribunal Rule 5000.310(b)(3). I hereby certify that the statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief.



William Gaffigan
Revenue Auditor III
Illinois Department of Revenue

Date: 9/17/2014

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 Verified Answer to
Petitioner's Verified Petition upon:

David A. Hughes
Horwood Marcus & Berk Chartered
500 West Madison Street
Suite 3700
Chicago, IL 60661

By email to dhughes@hmblaw.com on September 17, 2014.