

ILLINOIS INDEPENDENT TAX TRIBUNAL

COLORADO FUTURE ENTERPRISES LLC)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-103
)	Judge Brian Barov
THE ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

ANSWER

NOW COMES the Illinois Department of Revenue (“Department”), by and through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and Answers the Petition of Colorado Future Enterprises LLC (“Petitioner”) as follows:

PARTIES

1. For the tax year ending December 31, 2010 ("Year in Issue"), Petitioner was a West Virginia corporation whose principal business address was 1014 Osterman Avenue, Deerfield, Illinois 60015.

Answer: The allegations in Paragraph 1 are required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(A) (86 Ill. Adm. Code §5000.310), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations in Paragraph 1.

2. Petitioner is represented by Jordan M. Goodman and Samantha K. Breslow of Horwood Marcus & Berk Chartered; located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3225 or jgoodman@hmblaw.com; 312-606-3206 or sbreslow@hmblaw.com, respectively.

Answer: The allegations in Paragraph 2 are required by Rule 310(a)(1)(A), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations in Paragraph 2.

3. Petitioner's FEIN is 20-3311732.

Answer: The allegations in Paragraph 3 are required by Rule 310(a)(1)(A), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations 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: Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's Petition. The term "tax laws" is vague and ambiguous and therefore the Department denies all other allegations in Paragraph 4.

NOTICES

5. On March 30, 2015, the Department issued a Notice of Deficiency to the Petitioner in the amount of \$26,412.03. The Notice of Deficiency ("Notice") is attached hereto as Exhibit A.

Answer: Department admits the factual allegations in Paragraph 5. The notice speaks for itself.

6. Unless otherwise stated, the allegations in this Petition relate to the Year in Issue.

Answer: The allegation in Paragraph 6 is not a material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

JURISDICTION

7. 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 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. seq.

Answer: The allegations in Paragraph 7 are not allegations of material facts, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits that Petitioner is asserting jurisdiction pursuant to 35 ILCS 1010/1-1 et seq.

8. This 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 Notice.

Answer: Paragraph 8 contains a legal conclusion, not a material allegation of fact. Whether the taxpayer timely filed its petition and whether this Tribunal has jurisdiction are mixed questions of law and fact to be determined by this Tribunal. Department denies any factual allegations in Paragraph 8.

BACKGROUND

9. Petitioner is an insurance company registered to do business in West Virginia.

Answer: Department has insufficient information to either admit or deny the factual allegations in Paragraph 9.

10. Petitioner did not file an Illinois Corporation Income and Replacement Tax Return for the Year in Issue.

Answer: Department admits the factual allegations in Paragraph 10.

11. The Department initiated an audit of Petitioner's Business Income Tax on August 18, 2014.

Answer: Department admits the factual allegations in Paragraph 11.

12. As a result of the audit, the Department issued Petitioner a Notice of Deficiency on March 30, 2015. Exhibit A.

Answer: Department admits the factual allegations in Paragraph 12. As a result of Petitioner's failure to respond to the Department's audit, Department issued Petitioner the Notice of Deficiency.

13. In the Notice, the Department explained that it apportioned all federal ordinary income to Illinois, resulting in an Illinois tax liability of \$26,412.03.

Answer: Department denies the factual allegations in Paragraph 13. The Notice speaks for itself.

COUNT I

14. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 13, inclusive, hereinabove.

Answer: Department realleges and incorporates its Answers to Paragraph 1 through 13 as if fully set forth herein.

15. The Illinois Income Tax Act defines business income as all income that may be treated as apportionable business income under the Constitution of the United States. 35 ILCS 5/1501(a)(1).

Answer: Paragraph 15 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

16. Nonbusiness income is all income other than business income. 35 ILCS 5/1501(a)(13).

Answer: Paragraph 16 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

17. Business income of an insurance company shall be apportioned to Illinois by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this State, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. 35 ILCS 5/304(b)(1).

Answer: Paragraph 17 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

18. The term "direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Illinois Director of Insurance. 35 ILCS 5/304(b)(1).

Answer: Paragraph 18 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (“IITA”) (35 ILCS 5/101 et seq.) and states that such statute speaks for itself.

19. The Petitioner was not obligated to file an annual statement with the Illinois Director of

Insurance, because it did not have insurable risk in Illinois during the Year in Issue.

Answer: Department has insufficient information to either admit or deny the factual allegations in Paragraph 19.

20. The Petitioner did not file an annual statement with the Illinois Director of Insurance.

Answer: Department has insufficient information to either admit or deny the factual allegations in Paragraph 20.

21. If an insurance company does not file an annual statement with the Director of Insurance, "that company shall include in the numerator of the apportionment factor the direct premiums written for insurance on property or risk in this State, determined in accordance with the determination of gross taxable premium written under Section 409(1) of the Illinois Insurance Code [215 ILCS 5/409(1)]. Ill. Reg. 100.3400.

Answer: Paragraph 21 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the regulation cited in Paragraph 18 and states that such regulation speaks for itself.

22. Gross taxable premium written is defined as the gross amount received on direct business on contracts covering risks in this State. 25 ILCS 5/409(1).

Answer: Paragraph 22 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Insurance Code (215 ILCS 5/1 et seq.) and states that such statute speaks for itself.

23. Petitioner does not have any contracts covering risks in Illinois.

Answer: Department has insufficient information to either admit or deny the factual allegations in Paragraph 23.

24. Petitioner's income is not apportionable to Illinois.

Answer: Department denies the factual allegations in Paragraph 24.

25. The Department issuance of the Notice to Petitioner was in error and should be withdrawn.

Answer: Department denies the factual allegations in Paragraph 25.

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

- a. finds in favor of the Department;
- b. upholds the Department's Notice;
- c. enters judgment in favor of Department and against Petitioner; and
- d. grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

26. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 25, inclusive, hereinabove.

Answer: Department realleges and incorporates its Answers to Paragraph 1 through 25 as if fully set forth herein.

27. In its Notices, the Department assessed penalties in an amount totaling \$4,296, comprising both late payment and late filing penalties.

Answer: Department admits the factual allegations in Paragraph 27.

28. 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: Paragraph 28 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Uniform Penalty and Interest Act ("IITA") (35 ILCS 735/3-1 et seq.) and states that such statute speaks for itself. Department denies that the citation in Paragraph 28 is to the Uniform Penalty and Interest Act.

29. 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: Paragraph 29 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the regulation cited in Paragraph 29 and states that such regulation speaks for itself.

30. 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: Paragraph 30 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department admits the existence, force and effect of the regulation cited in Paragraph 30 and states that such regulation speaks for itself.

31. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois income tax because it did not issue direct premiums written for insurance on property or risk in this State.

Answer: Paragraph 31 contains a legal conclusion, not a material allegation of fact. Pursuant to Rule 310(b)(2), no Answer is required. To the extent an answer is required, Department denies the factual allegations in Paragraph 31.

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

Answer: Department denies the factual allegations in Paragraph 32.

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

- a. finds and declares that Petitioner failed to exercise reasonable cause;
- b. upholds the Notice;
- c. enter judgment in favor of the Department and against the Petitioner; and
- d. grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN,
Attorney General, State of Illinois

By: _____

Special Assistant Attorney General

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DATED: June 22, 2015

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COLORADO FUTURE ENTERPRISES LLC)	
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Petitioner,)	
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v.)	No. 15-TT-103
)	Judge Brian Barov
THE ILLINOIS DEPARTMENT OF REVENUE,)	
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Respondent.)	

**AFFIDAVIT OF MICHAEL STENSON
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

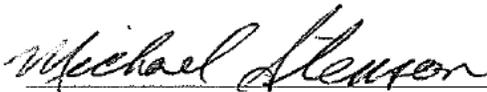
STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Michael Stenson, 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, in Income Tax Audit Technical Support.
3. I reviewed the Department's income tax audit records of Colorado Future Enterprises LLC (FEIN: 20-3311732) for the tax year ending December 31, 2010.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 9, 19, 20, and 23.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

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 as aforesaid that he verily believes the same to be true.



Michael Stenson
Revenue Auditor III
Illinois Department of Revenue

Date: 6-22-15

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Answer** to be served upon the other counsel of record herein by causing the same to be delivered by electronic mail before the hour of 5:00p.m. on the 22nd Day of June, 2015 to:

Jordan M. Goodman
Samantha K. Breslow
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Chicago, Illinois 60661

At: jgoodman@hmbllaw.com
At: sbreslow@hmbllaw.com

Jennifer Kieffer