

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

A E B PETROMART INC.,)	
Petitioner)	
v.)	15-TT-129
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (the “Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to A E B Petromart Inc.’s (the “Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 15836 Wood Street, Harvey, Illinois, 60426, and can be reached at 708-203-5699.

ANSWER: The Respondent admits that the Petitioner is an Illinois corporation located at 15836 Wood Street, Harvey, Illinois 60426, and that its telephone number is (708) 699-4249. The Respondent denies the remaining allegations in Paragraph 1.

2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The Respondent admits the allegations in Paragraph 2.

3. Petitioner’s License number is TP-00251.

ANSWER: The Respondent admits the 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: The Respondent admits the allegations in Paragraph 4.

NOTICE

5. On May 7, 2015, Petitioner received a Notice of Tax Liability letter (“Notice”) for Form TP-1A, Tobacco Products Tax Audit Return, for the tax periods November 1, 2010 to June 30, 2014. The Notice reflects \$69,473 in aggregate tax due, plus late penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Respondent admits the allegations in the first and second sentences of Paragraph 5. A copy of the Notice of Tax Liability issued by the Respondent to the Petitioner, for the reporting periods of November 1, 2010 through June 30, 2014 (the “Periods”), dated May 7, 2015 and with Letter ID CNXXX166723X2242, attached to the Petition (the “Notice”), is not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code 5000.310), but to the extent an answer is required, the Respondent admits issuing the Notice and states that the Notice 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 Respondent admits the allegations in Paragraph 6.

7. This 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: The Respondent admits the allegations in Paragraph 7.

BACKGROUND

8. Petitioner is a petroleum retailer located in the south suburbs of Chicago.

ANSWER: The Respondent admits that the Petitioner is located in the south suburbs of Chicago. The Respondent denies the remaining allegations in Paragraph 8, and affirmatively states that during the Periods the Petitioner operated a gas station and mini-mart which was engaged in the sale at retail of gasohol, cigars, chewing tobacco and other convenience store items.

9. Defendant audited Petitioner's books and records for Tobacco Products Tax for the tax periods November 1, 2010 to June 30, 2014.

ANSWER: The Respondent admits that it conducted a tobacco products tax audit of the Petitioner's books and records for the Periods. The Respondent denies any remaining allegations in Paragraph 9.

10. The audit liability contained in the Notice is not based on the Petitioner's books and records but instead is based on the estimates whereby the Defendant projected out-of-state purchases of other tobacco products from one vendor (MY ENTERPRISE) into all of the tax periods under audit even though that vendor closed during the audit period and the Petitioner made purchases from Illinois vendors during the audit.

ANSWER: The Respondent denies the allegations in Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation [sic] made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Respondent incorporates and repeats its answers to Paragraphs 1 through 10 as if fully set forth herein.

12. On audit, the Department estimated the audit liability by projecting out-of-state other tobacco product purchases from one vendor into the entire audit tax period even though that vendor closed during the audit period and the Petitioner made purchases of other tobacco products from Illinois vendors who properly charged Tobacco Products Tax.

ANSWER: The Respondent denies the allegations in Paragraph 12.

13. By utilizing estimates instead of actual books and records, the Defendant drastically and unreasonably inflated Petitioner's audit liability.

ANSWER: The Respondent denies the allegations in Paragraph 13.

WHEREFORE, the Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count I of the Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. order judgment in favor of the Respondent and against the Petitioner; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause

14. Petitioner realleges and incorporates by reference the allegation [sic] made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Respondent incorporates and repeats its answers to Paragraphs 1 through 13 as if fully set forth herein.

15. In its Notice, the Department assessed late penalties in excess of \$15,000.

ANSWER: The Respondent admits the allegations in Paragraph 15.

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: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Respondent admits the existence, force and effect of the statute cited in Paragraph 16 and states that the 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 and pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Respondent admits the existence, force and effect of the regulation cited in Paragraph 17 and states that 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. Admin. Code 700.400(b).

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Respondent

admits the existence, force and effect of the regulation cited in Paragraph 18 and states that the regulation speaks for itself.

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

ANSWER: The Respondent denies the allegations in Paragraph 19.

WHEREFORE, the Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count II of the Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. find that the Respondent's assessment of the penalties contained in the Notice was appropriate and conformed with the law;
- d. find that the Petitioner's failure to file tobacco products tax returns, and to pay the tax assessed in the Notice, was not due to reasonable cause. 35 ILCS 735/3-8;
- e. order judgment in favor of the Respondent and against the Petitioner; and
- f. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
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State of Illinois

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