

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

COSMOS GRANITE & MARBLE CORP.,)	
Petitioner)	
v.)	15-TT-148
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 Cosmos Granite & Marble Corp.’s (the “Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

1. The Notice was issued by the Department on May 20, 2015, assessing \$323,426 in Retailers Occupational Tax, \$64,691 as late payment penalty, \$161,728 as a fraud penalty, \$2,168 as late filing penalty, and \$21,896.39 in interest for the taxable periods January 1, 2011 through March 31, 2013. A copy of the notice is attached.

ANSWER: A copy of the Notice of Tax Liability issued by the Respondent to the Petitioner, for the reporting periods of January 2011 through March 2013 (the “Periods”), dated May 20, 2015 and with Letter ID CNXXX16X92546725, attached to the Petition as the first page of the exhibit thereto (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. The Respondent denies any remaining allegations in Paragraph 1.

2. Petitioner is a corporation with it principal place of business in Wood Dale, Illinois.

ANSWER: The Respondent admits that the Petitioner is a corporation with a place of business in Wood Dale, Illinois. The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 2.

3. Petitioner is located at 811 Lively Blvd., Wood Dale, Illinois 60191.

ANSWER: The Respondent admits that the Petitioner has a location at 811 Lively Blvd., Wood Dale, Illinois 60191. The Respondent denies any remaining allegations in Paragraph 3.

4. The Taxpayer Account Number is 3903-7436.

ANSWER: The Respondent admits the allegations in Paragraph 4.

5. Or or about June 1999, Mr. Srinivas Nallapati emigrated [sic] to the United States from his home country of India. He worked as an IT consultant.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 5.

6. On May 1, 2007, Mr. Nallapati incorporated Cosmos Granite & Marble Corp. in Illinois.

ANSWER: The Respondent admits that the Petitioner was incorporated in Illinois on May 1, 2007. The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6.

7. Mr. Nallapati is the president and sole shareholder of Cosmos Granite & Marble Corp.

ANSWER: The Respondent objects to Paragraph 7, to the extent it seeks an answer concerning a tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objection, and without waiving the same, the Respondent admits that Srinivas Nallapati (“Mr. Nallapati”) was the president and a shareholder of

the Petitioner during the Periods. The Respondent denies the remaining allegations in Paragraph 7.

8. In the incorporation, Mr. Nallapati was assisted by Natwar Patel, of Des Plaines, Illinois, who held himself out to be an accountant and experienced in corporate and tax matters.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 8.

9. Mr. Patel did not explain the requirements of complying with sales tax to Mr. Nallapati.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 9.

10. After a few months of operating his business, Mr. Nallapati became aware of the requirement to register for a sales tax number and the duty to collect and remit sales tax. He promptly applied for a sales tax number.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 10.

11. Mr. Nallapati then consulted with Mr. Patel, who took care of the process of filing returns and remitting the collected sales tax.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 11.

12. In approximately 2008, Mr. Nallapati became aware of the requirement inquire [sic] as to whether a purchaser was exempt. He was not aware of the requirement to collect a CRT-61 nor verify [sic] the sales tax exemption number.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 12.

13. Mr. Nallapati would verbally ask the purchaser if they were exempt. If they said yes, Mr. Nallapati would ask for and record the exemption certificate number that was provided.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 13.

14. It wasn't until the Department audited the Taxpayer's sales tax returns, that Mr. Nallapati learned of the need to collect the CRT-61.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 14.

15. At that time, Mr. Nallapati went to his customers that had stated they were exempt from sales tax and requested the CRT-61. Most customers did not provide the form.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 15.

16. Later in the audit, Mr. Nallapati learned of the need to verify the number that was provided. Mr. Nallapati asked both his current CPA, Ron Jachim of Catalano Caboor & Co. and the auditor how to verify the number and neither were able to provide direction. Mr. Nallapati searched online to find out how to verify the exemption number and was not able to find the needed information. Finally, the [sic] Mr. Jachim found the information.

ANSWER: The Respondent denies that Mr. Nallapati asked Savannah Brooks ("Ms. Brooks"), the auditor for the sales tax audit in this matter, how to verify the sales tax exemption certificate numbers that the Petitioner's customers provided. The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 16.

17. When Mr. Nallapati attempted to verify the exempt certificate numbers that were provided to him, Mr. Nallapati discovered that most of the numbers provided to him by his purchasers were not valid.

ANSWER: The Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 17.

18. At no time did Mr. Nallapati's advisor tell Mr. Nallapati about the requirement to collect Form CRT-61 or the requirement to check the validity of the sales tax exemption number online.

ANSWER: The Respondent objects to Paragraph 18 in that it is vague as to the term "advisor," and as to the identity of such person or entity. Notwithstanding said objections, and without waiving the same, the Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 18.

19. The Taxpayer has remitted all collected sales tax funds to the State.

ANSWER: The Respondent objects to Paragraph 19, to the extent it seeks an answer concerning a tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objection, and without waiving the same, the Respondent denies the allegations in Paragraph 19.

20. The Taxpayer had retained the required records and during the audit, provided most of the documents requested by the Department.

ANSWER: The Respondent objects to Paragraph 20 in that it is vague and ambiguous as to the phrase "required records," and in that it is vague as to the term "most." Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 20.

**ERROR I - THE DEPARTMENT ERRONEOUSLY ASSESSED FRAUD PENALTIES
AGAINST THE TAXPAYER**

21. Fraud means “actual, intentional wrongdoing, and the intent required is the specific purpose to evade a tax believed to be owing.” *Mitchell v. Commissioner*, 118 F.2d 308, 310 (5th Cir. 1941); *Pavlic v. Commissioner*, T.C. Memo 1984-182. Fraud will never be presumed or imputed. *Goldberg v. Commissioner*, 239 F.2d 316, 321 (5th Cir. 1956). The required state of mind is one which, “if translated into action, is well calculated to cheat or deceive the government.” 10 Mertens, *Law of Federal Income Taxation* @55.10, p. 46 (1984). *Harrison v. IRS*, 1991 Bankr. LEXIS 152, *32 (Bankr. N.D. Ind. 1991)

ANSWER: Paragraph 21 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

22. The fraud addition is properly applied in cases where (1) there is an underpayment of tax and (2) the taxpayer intended to conceal, mislead, or otherwise prevent the collection of taxes. *Steinsmith v. Commissioner*, 60T.C. Memo 1990-397; *Thomas v. Commissioner*, 60 T.C. Memo 1990-365; *see also, Candela v. United States*, 635 F.2d 1272, 1274 (7th Cir. 1980); *accord, Zell v. Commissioner*, 763 F.2d 1139, 1143 (10th Cir. 1985) (“the required state of mind is one which, if translated into action, is well calculated to cheat or deceive the government”). *Id.*

ANSWER: Paragraph 22 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

23. The standard used by Illinois Court [sic] in evaluating the application of a fraud penalty in the context of sales tax is “clear and convincing evidence.” While the taxpayer bears the burden of proving that an assessment proposed by the Department is not correct, when the issue relates to the imposition of a fraud penalty, the Department bears the

burden of showing the existence of fraud by clear and convincing evidence. *The Department of Revenue of State of Illinois v. "Anaheim Liquors, Inc."*, ST 00-11, 8 (2000).

ANSWER: Paragraph 23 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

24. Mr. Nallapati was not accustomed to the business practices of Illinois when he first started his business.

ANSWER: The Respondent objects to Paragraph 24 in that it is vague and ambiguous as to the phrase "business practices of Illinois," and in that it is vague as to the "business" to which it is referring. Notwithstanding said objections, and without waiving the same, the Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 24.

25. Upon learning of the sales tax, Mr. Nallapati took reasonable steps to hire professionals to help him comply with the laws.

ANSWER: The Respondent objects to Paragraph 25 in that it is vague and ambiguous as to the phrases "sales tax" and "reasonable steps," and in that it is vague as to the terms "professionals" and "laws." Notwithstanding said objections, and without waiving the same, the Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in Paragraph 25.

26. Mr. Nallapati's [sic] reasonably relied on the advisors he hired to inform him about the requirements of sales tax compliance.

ANSWER: The Respondent objects to Paragraph 26 in that it is vague and ambiguous as to the phrase "sales tax compliance," and in that it is vague as to the term "advisors."

Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 26.

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

- a. deny each prayer for relief in the Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 1) is correct as issued;
- c. find that the Respondent's assessment of the fraud penalty contained in the Notice (as that term is defined in the Answer to Paragraph 1) was appropriate and conformed with the law;
- d. order judgment in favor of the Respondent and against the Petitioner; and
- e. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Daniel A. Edelstein
Daniel A. Edelstein
Special Assistant Attorney General

Daniel A. Edelstein
Special Assistant Attorney General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
Telephone: (312) 814-3120
Facsimile: (312) 814-4344
Email: Daniel.Edelstein@Illinois.gov

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v.)	15-TT-148
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

AFFIDAVIT OF SAVANNAH BROOKS
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Savannah Brooks, 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.
3. I reviewed Cosmos Granite & Marble Corp.'s (the "Petitioner") Illinois sales tax audit for the periods of January 2011 through March 2013.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in the Petitioner's Petition, Paragraphs 2, 5, 6, 8-18, 24 and 25.
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 she verily believes the same to be true.

Savannah Brooks
Savannah Brooks
Revenue Auditor
Illinois Department of Revenue

Date: 9/3/15