

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

BP PRODUCTS NORTH AMERICA INC.,)	
Petitioner,)	
)	
)	No. 15-TT-151
)	
v.)	Chief Judge James M. Conway
)	
ILLINOIS DEPARTMENT OF REVENUE.)	
Respondent)	

ANSWER

Respondent, Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Petitioner’s Petition (the “Petition”) as follows:

INTRODUCTION

1. The Notices were issued on June 2, 2015, assessing Retailers' Occupation (sales) Tax liability in individual amounts in excess of \$15,000, exclusive of penalties and interest, for the periods July 1, 2007 through June 30, 2009, and July 1, 2009 through March 31, 2011, respectively. Copies of the Notices are attached to this Petition.

ANSWER: The Department admits the factual allegations contained within Paragraph 1.

2. Petitioner is a corporation with its principal place of business in Houston, Texas.

ANSWER: The Department admits the factual allegations contained within Paragraph 2.

3. It is located at 501 Westlake Park Blvd., Houston, Texas 77079, and its telephone number is 281-366-4886. Its taxpayer account number is 0867-3063.

ANSWER: The Department admits the factual allegations contained within Paragraph 3.

BACKGROUND FACTS

4. During the periods at issue, Petitioner marketed petroleum products and sundry items (*e.g.*, gum, candy, coffee, soft drinks, and cigarettes) from company-operated retail service stations throughout Illinois. Petitioner also marketed petroleum products throughout Illinois at retail service stations operated by independent businesses (known as "commission marketers"), who acted as agents for Petitioner in selling petroleum products.

ANSWER: The Department admits the factual allegations contained within Paragraph 4.

5. The Department audited Petitioner's marketing activity for these periods for compliance with the sales tax laws.

ANSWER: The Department admits the factual allegations contained within Paragraph 5.

6. Based on its audit, the Department determined that during this timeframe, Petitioner used the wrong rate in collecting and remitting local tax on some of its sales.

ANSWER: The Department admits the factual allegations contained within Paragraph 6.

7. Based principally on this determination, the Department issued the Notices at issue.

ANSWER: The Department states that the Notices at issue, which are referenced in Paragraph 7, speak for themselves.

ERROR I - Petitioner Collected and Remitted the Correct Local Tax

8. The corporate authorities of a home rule municipality may impose a local retailers' occupation (sales) tax, measured by gross receipts, on all persons engaged in the business of selling tangible personal property at retail in the taxing municipality. 65 ILCS 5/8-11-1.

ANSWER: The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 8 and states such provision speaks for itself.

9. As in effect during the periods at issue, a Department regulation provided in general that the local sales tax on gross receipts from a given transaction should be collected at the rate in effect in the municipality where the retailer accepted the purchase order. *See* 86 Ill. Admin. Code 270.115 (eff. until June 25, 2014).

ANSWER: The Department states that Paragraph 9 contains legal conclusions, not material allegations of fact, and as such require no answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b)(2). The Department admits the existence, force and effect of the regulation set forth or referred to in Paragraph 9 and states such provision speaks for itself.

10. Petitioner adhered to this rule in collecting and remitting the correct local sales tax on the gross receipts from the transactions giving rise to the assessments in the Notices.

ANSWER: The Department states that Paragraph 10 contains legal conclusions, not material allegations of fact, and as such require no answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

11. The Department erred in determining to the contrary.

ANSWER: The statement contained within Paragraph 11 is not a material allegation of fact, and as such requires no answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

ERROR II - In the Alternative, Petitioner's Tax Returns Were Not Prepared or Filed Negligently

12. If any sales tax return is prepared and filed negligently, but without fraudulent intent, in addition to any penalty imposed for late payment, a penalty is imposed in the amount of 20% of any resulting deficiency. 35 ILCS 735/3-5(a).

ANSWER: The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 12 and states such provision speaks for itself.

13. If the liability was for a taxable period ending after June 30, 2002 and before July 1, 2009, and the liability was eligible for amnesty under the Tax Delinquency Amnesty Act, and the taxpayer did not satisfy the deficiency during the amnesty period provided for in that Act, then the negligence penalty is imposed at twice the amount that would otherwise be imposed. 35 ILCS 735/3-5(e).

ANSWER: The Department admits the existence, force and effect of the statutory provision set forth or referred to in Paragraph 13 and states such provision speaks for itself.

14. For purposes of this penalty, negligence includes any failure to make a reasonable attempt to comply with the sales tax laws, including careless, reckless or intentional disregard of the laws or rules. 86 Ill. Admin. Code 700.320(b).

ANSWER: The Department admits the existence, force and effect of the regulation set forth or referred to in Paragraph 14 and states such provision speaks for itself.

15. Petitioner made a reasonable attempt to collect and remit the correct local tax on the sales at issue; it therefore was not negligent in preparing and filing its returns for the periods at issue.

ANSWER: The Department states that Paragraph 15 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

16. The negligence penalty is not imposed where an assessment results from a reasonable difference of opinion as to taxability. 86 Ill. Admin. Code 700.320(c).

ANSWER: The Department admits the existence, force and effect of the regulation set forth or referred to in Paragraph 16 and states such provision speaks for itself.

17. There is a reasonable difference of opinion regarding the correct rate of tax on the gross receipt from the transactions at issue.

ANSWER: The Department states that Paragraph 17 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

18. The Department erred in assessing the negligence penalties.

ANSWER: The Department states that Paragraph 18 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

19. If the assessments of tax are upheld, the negligence penalties should be waived accordingly.

ANSWER: The Department states that Paragraph 19 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

**ERROR III - In the Alternative, Petitioner Had Reasonable Cause
For Any Tax Underpayment**

20. The negligence penalty is not imposed if the failure to comply with the sales tax laws is due to reasonable cause. 35 ILCS 735/3-5(c); 86 Ill. Admin. Code 700.400(a).

ANSWER: The Department admits the existence, force and effect of the statutory provision and regulation set forth or referred to in Paragraph 20 and states such provisions speaks for themselves.

21. The paramount factor in determining whether a person meets this standard is the extent to which the person makes a good faith effort to determine the proper tax liability. 86 Ill. Admin. Code 700.400(b).

ANSWER: The Department admits the existence, force and effect of the regulation set forth or referred to in Paragraph 21 and states such provision speaks for itself.

22. Petitioner exercised ordinary business care and prudence in determining the rate of local tax to collect and remit on the gross receipts from the transactions at issue.

ANSWER: The Department states that Paragraph 22 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

23. Petitioner's failure, if any, to comply with the sales tax laws was due to reasonable cause.

ANSWER: The Department states that Paragraph 23 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

24. If the tax assessments are upheld, the negligence penalties should be abated as a result.

ANSWER: The Department states that Paragraph 24 does not contain material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations.

RELIEF REQUESTED

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department.
- 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.

Dated: September 9, 2015

Respectfully submitted,

Illinois Department of Revenue

By: /s/Michael Coveny
Michael Coveny
Special Assistant Attorney General

 /s/ Seth J. Schriftman
Seth J. Schriftman
Special Assistant Attorney General

Michael Coveny
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-6697
michael.coveny@ilinois.gov

Seth J. Schriftman
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-1591
seth.schriftman@ilinois.gov