

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MY MART CITGO, INC.,)	
Petitioner)	
v.)	15-TT-153
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 My Mart Citgo, Inc.’s (the “Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 5728 North Nagle, Chicago, Illinois, 60646, and can be reached at 630-292-5604.

ANSWER: The Respondent denies the allegations in Paragraph 1, and affirmatively states that the Petitioner is an Illinois corporation located at 5726 North Nagle Avenue, Chicago, IL 60646, and can be reached at (773) 631-6333.

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 Taxpayer (Account) ID is 4007-9325.

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 June 2, 2015, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods July 1, 2011 to December 31, 2013. The Notice reflects \$30,917 in tax due, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Respondent admits the allegations in the first sentence of Paragraph 5. A copy of the Notice of Tax Liability issued by the Respondent to the Petitioner, for the reporting periods of July 1, 2011 through December 31, 2013 (the “Periods”), dated June 2, 2015 and with Letter ID CNXXXX3529225925, 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. The Respondent denies any remaining allegations in Paragraph 5.

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.

ANSWER: The Respondent admits that the Petitioner is, in part, a petroleum retailer. The Respondent denies any remaining allegations in Paragraph 8.

9. Defendants [sic] audited Petitioner's books and records for the tax periods July 1, 2011 to December 31, 2013.

ANSWER: The Respondent admits that it conducted a sales 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 based on projections whereby the Department multiplied the Petitioner's purchases by estimated industry standard selling prices of Petitioner's products (e.g., gas, cigarettes), but the Department's audit liability calculations do not account for Petitioner's inventory changes and inventory losses during the audit tax periods.

ANSWER: The Respondent objects to Paragraph 10 in that it is vague as to the phrase "estimated industry standard selling prices," and as to the term "projections." Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 10, and affirmatively states that the sales tax liability reflected in the Notice is the excess of the Petitioner's corrected taxable sales over the taxable sales reported on its Forms ST-1 for the Periods, where the corrected taxable sales consist of (a) in the case of gasohol, the product of the Petitioner's purchases and the selling price from the U.S. Department of Energy's Energy Information

Administration, and (b) in the case of all other sales, the product of the Petitioner's purchases and the selling prices from Risk Management Associates reports.

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 calculated the audit liability by multiplying Petitioner's purchases (without regarding the inventory changes and inventory losses during the audit period) by estimated selling prices.

ANSWER: The Respondent denies the allegations in Paragraph 12.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and also because Petitioner's inventory increased during the audit period and Petitioner also experienced inventory losses like theft and spoilage.

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 penalties based on the audit liability.

ANSWER: The Respondent admits the allegations in Paragraph 15.

16. Illinois law provides that late penalties do not 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).

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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(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).

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).

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period and did not use estimated selling prices.

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 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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