

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

KOCH INDUSTRIES, INC.)	
Petitioner)	
)	
v.)	15-TT-170
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

NOTICE OF FILING

TO: Baker & McKenzie, LLP
Roman Patzner
300 East Randolph Street, Suite 5000
Chicago, Illinois 60601

Roman.Patzner@bakermckenzie.com

The undersigned representative for the Illinois Department of Revenue (the “Department”) certifies that, on September 25, 2015, she filed the Department’s Answer with the Illinois Independent Tax Tribunal.



Susan Budzileni
Special Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned representative for the Illinois Department of Revenue certifies that, on September 25, 2015, she served the Department’s Answer on the individuals identified above, at the email addresses shown above.



Susan Budzileni
Special Assistant Attorney General

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ANSWER TO PETITION

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

PARTIES

1. Petitioner is a corporation with its principal place of business in Wichita, Kansas.
ANSWER: The information contained in paragraph 1 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the statements contained in Paragraph 1.

2. Petitioner’s federal identification number is 48-0484227.
ANSWER: The information contained in paragraph 2 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the statements contained in Paragraph 2.

3. Petitioner’s address is 4111 E. 37th Street N. Wichita, Kansas 67220-3203, and its telephone number is 316-828-5500.

ANSWER: The information contained in paragraph 3 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the statements contained in Paragraph 2.

4. Respondent is an agency of the State of Illinois responsible for administering and enforcing the revenue laws of the State of Illinois.

ANSWER: Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for administering and enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Petitioner's Petition. The term "revenue laws" is vague and therefore the Department denies all other allegations in Paragraph 4.

JURISDICTION

5. The Department issued Notices of Deficiency ("Notices") on June 17, 2015 assessing corporation income tax, penalty and interest for 2010 and 2011, letter IDs CNXXX13645X26728 and CNXXX11832X66721 respectively. Copies of the Notices are attached hereto as Exhibit B.

ANSWER: The Department admits that it issued the Notices referenced in Paragraph 5.

6. This Tribunal has original jurisdiction over all Department determinations reflected on the Notices of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS 1010/1-45.

ANSWER: The Department admits the statements contained in Paragraph 6.

7. The amount at issue in this matter exceeds \$15,000 exclusive of penalties and interest such that this Tribunal has original jurisdiction over the matter.

ANSWER: The Department admits the statements contained in Paragraph 7.

BACKGROUND

8. The Department audited Petitioner's 2010 and 2011 corporation income tax returns.

ANSWER: The Department admits the statements contained in Paragraph 8.

9. Based on its audit, the Department adjusted Petitioner's deductions for certain related party expenses.

ANSWER: The Department admits that it adjusted Petitioner's 2010 and 2011 corporation income tax returns and the adjustments are identified in the Reasons for Deficiency, which was attached to the Notices of Deficiency and a complete copy of the Notices of Deficiency are attached hereto as DOR Exhibit 1. The Department is unable to determine which deductions Petitioner is referring to because, during the audit, Petitioner did not provide any information to determine whether any safe harbor add-back statute applied. As to the remaining allegations contained in Paragraph 9, the Department lacks the requisite knowledge to either admit or deny any factual allegations.

10. Specifically, the Department adjusted the amount of affiliated company interest expense exempt from addition modification and properly deductible.

ANSWER: The Department admits that it adjusted Petitioner's 2010 and 2011 corporation income tax returns and the adjustments are identified in the Reasons for Deficiency, which was attached to the Notices of Deficiency, See DOR Exhibit 1. The Department denies that the interest expense was exempt from addition modification.

11. Based on this adjustment, the Department issued the Notices at issue

ANSWER: The Department admits that it adjusted Petitioner's 2010 and 2011 corporation income tax returns and the adjustments are identified in the Explanation of Adjustments, which is attached hereto as DOR Exhibit 1. Beyond the adjustments actually listed in the Notices, the Department denies the allegations contained in Paragraph 11 and demands strict proof thereof.

COUNT I

12. The Department's adjustment overstates Petitioner's related party expense addition by understating the amount of affiliated company interest expense that is exempt from addition modification.

ANSWER: The Department denies Paragraph 12 and demands strict proof thereof.

13. Illinois law requires taxpayers to add back to taxable income certain identified related party expenses, including affiliated interest. 35 ILCS 5/203.

ANSWER: Paragraph 13 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 35 ILCS 5/203 in its entirety speaks for itself.

14. This adjustment is required for interest paid to a foreign entity if that entity would be included in the unitary business group but for the fact that more than 80% of the business activity is outside of the United States. 35 ILCS 5/203(B)(2)(E-12).

ANSWER: Paragraph 14 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 35 ILCS 5/203(B)(2)(E-12) in its entirety speaks for itself.

15. Illinois law, namely 35 ILCS 5/203(b)(2)(E-12), provides several exemptions to the addition modification including, but not limited to when the interest:

(i) Is paid to any entity subject in a foreign country to a tax measured by net income;

(ii) When the taxpayer can establish based on clear and convincing evidence that the interest paid relates to an agreement entered into at arm's length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance; or

(iii) When the taxpayer can establish by clear and convincing evidence that the adjustments are unreasonable.

ANSWER: Paragraph 15(i-iii) contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 35 ILCS 5/203(b)(2)(E-12) in its entirety speaks for itself.

16. The Department erroneously adjusted the addition modification by not allowing one or more exemptions for which petitioner qualifies.

ANSWER: The Department denies Paragraph 16 and demands strict proof thereof.

17. Under 35 ILCS 5/203(b)(2)(E-12), Petitioner paid interest to an entity subject in a foreign country to a tax measured by net income.

ANSWER: The Department denies the statements contained in Paragraph 17 and demands strict proof thereof.

18. Under 35 ILCS 5/203(b)(2)(E-12)(iii), Petitioner's debt agreements were entered into at arm's length rates and terms and the principal purpose of such agreements and payment of interest was not federal or Illinois tax avoidance.

ANSWER: Petitioner did not provide any debt agreements to the Department's auditor. The Department denies the statements contained in Paragraph 18 and demands strict proof thereof.

19. Under 35 ILCS 5/203(b)(2)(E-12)(iv), the application of Illinois addition modification to Petitioner's related party interest expense is unreasonable.

ANSWER: The Department denies the statements contained in Paragraph 19 and demands strict proof thereof.

20. Petitioner qualifies for other exemptions to the addition modification provided under 35 ILCS 5/203(b)(2)(E-12) and Illinois law.

ANSWER: The Department denies the statements contained in Paragraph 20 and demands strict proof thereof.

21. The Department's denial of Petitioner's affiliated company interest expense deductions is in error and must be reversed.

ANSWER: The Department denies the statements contained in Paragraph 21 and demands strict proof thereof.

WHEREAS, the Department prays that this Tribunal enter an Order that:

- a. Finds the Notices of Deficiency are correct as issued;
- b. Orders judgment in favor of the Department and against the Taxpayer; and
- c. Grants any further relief this Tribunal deems just and appropriate.

COUNT II

22. Petitioner hereby restates and realleges the allegations contained in paragraphs 1 through 21 as if fully set forth herein.

ANSWER: Department restates and realleges its answers in paragraphs 1 through 21 as if fully set forth herein.

23. In the alternative, although the Department's adjustment to petitioner's amount of affiliated company interest expense exempt from addition modification is in error, if upheld, penalties must be abated.

ANSWER: The Department denies the statements contained in Paragraph 23 and demands strict proof thereof.

24. The Department's assessment imposes UPIA-5 late payment penalty for 2010 and 2011 in the amount specified in the notices.

ANSWER: The Department admits the statements contained in Paragraph 24.

25. The Department's assessment of penalties must be abated for reasonable cause.

ANSWER: The Department denies the statements contained in Paragraph 25 and demands strict proof thereof.

26. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 26 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 35 ILCS 735/3-8 in its entirety speaks for itself.

27. Under Illinois regulations, "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 his proper tax liability and to file and pay his proper liability in a timely fashion." 86 ILAC § 700.400(b).

ANSWER: Paragraph 27 contains a legal conclusion, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 86 Ill Adm. Code 700.400(b) in its entirety speaks for itself.

28. A taxpayer is considered to have made a good faith effort to determine and pay his tax liability if “he exercised ordinary business care and prudence in doing so.” 86 ILAC § A 700.400(e).

ANSWER: Paragraph 28 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 86 Ill Adm. Code 700.400(e) in its entirety speaks for itself.

29. The taxpayer’s filing history is also considered in determining whether the taxpayer acted in good faith. 86 ILAC § 700.400(d).

ANSWER: Paragraph 29 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 86 Ill Adm. Code 700.400(d) in its entirety speaks for itself.

30. Petitioner made a good faith effort to comply with all applicable laws in preparing the tax returns and timely submitting the tax due and was not reckless, careless or negligent in doing so.

ANSWER: Paragraph 30 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies any factual allegations contained in Paragraph 30 and demands strict proof thereof.

31. Petitioner exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability in a timely fashion.

ANSWER: Paragraph 31 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding

the above, the Department denies any factual allegations contained in Paragraph 31 and demands strict proof thereof.

32. Petitioner has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.

ANSWER: The Department admits that until the tax periods at issue, the Petitioner timely filed its IL-1120 corporate income and replacement tax returns but denies that the returns for 2010 and 2011 were timely filed.

33. Assessment of penalty is not appropriate where the assessment of tax results from reasonable differences or opinions as to the tax liability.

ANSWER: Paragraph 33 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies any factual allegations contained in Paragraph 33 and demands strict proof thereof.

34. Reasonable differences exist here such that even if assessment of the tax at issue is appropriate, assessment of penalty is not.

ANSWER: Paragraph 34 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies any factual allegations contained in Paragraph 34 and demands strict proof thereof.

35. The UPIA-5 late payment penalties imposed by the Department must be abated for reasonable cause.

ANSWER: The Department denies the statements contained in Paragraph 35 and demands strict proof thereof.

WHEREAS, the Department prays that this Tribunal enter an Order that:

- a. Finds the Notices of Deficiency are correct as issued;
- b. Orders judgment in favor of the Department and against the Taxpayer; and
- c. Grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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By: _____

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