

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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| AHMED INC., |) | | |
| |) | | |
| |) | | |
| v. |) | Case No. 15-TT-185 | |
| |) | | |
| DEPARTMENT OF REVENUE |) | | |
| OF THE STATE OF ILLINOIS, |) | | |
| Respondent. |) | | |

ANSWER

PARTIES

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

1. Petitioner is a corporation formerly located at 800 West Golf Road, Schaumburg, Illinois, 60193 and can be reached at 773-524-8825.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained 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 information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal

Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Account ID is 3904-1751.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained 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 law. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

5. On April 26, 2013, the Department issued a Notice of Tax Liability letter to Petitioner for \$525,056 in tax plus penalties and interest. The Notice is attached hereto as Exhibit 1, and the Department's late discretionary hearing approval letter dated July 17, 2015 is attached hereto as Exhibit 2.

ANSWER: The Department admits the factual 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: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner obtained a late discretionary hearing from the Department dated July 17, 2015 (Exhibit 2), and then timely filed this Petition within 60 days of the Department's letter granting the late discretionary hearing for Petitioner.

ANSWER: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

8. Petitioner is a corporation that formerly operated as a petroleum retailer.

ANSWER: The Department admits the factual allegations in Paragraph 8.

9. The Department audited Petitioner for the sales tax periods July 1, 2009 to March 31, 2012.

ANSWER: The Department admits the factual allegations in Paragraph 9.

10. The Department calculated the audit liability by estimating the corporation's sales based on marking-up the corporation's purchases by industry average prices found in a book at the library.

ANSWER: The Department admits the factual allegations in Paragraph 10.

11. However, the Department made a substantial (over \$350,000 in tax) math error in computing the audit liability regarding the estimated mini-mart high rate sales.

ANSWER: The Department denies the allegations in Paragraph 11.

12. The Department's audit liability is also overstated because it does not account for any low rate sales or tax exempt sales like LINK, lottery, and newspapers.

ANSWER: The Department denies the allegations in Paragraph 12.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

13. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 12 as though fully set forth herein.

14. On audit, the Department estimated the audit liability by marking-up the corporation's purchases, but the Department made at least one huge math error as well as several other audit methodology errors.

ANSWER: The Department denies the factual allegations in Paragraph 14.

15. By utilizing this audit methodology, the Defendant drastically and unreasonably inflated Petitioner's audit liability.

ANSWER: The Department denies the factual allegations contained in Paragraph 15.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice(s) correctly reflect the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

COUNT II

All penalties should be abated based on reasonable cause.

16. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 15, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 15 as though fully set forth herein.

17. In its Notice, the Department assessed late and negligence penalties.

ANSWER: The Department admits the factual allegations in Paragraph 17.

18. Illinois law provides that late payment 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 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

19. 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 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

20. 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 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

21. 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: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent Paragraph 21 requires any further answer, the Department denies factual allegations contained in Paragraph 21.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice(s) correctly reflect the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: October 13, 2015

Respectfully submitted,
Illinois Department of Revenue

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