

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MOHAMMED & ROHEE RAHMAN,)	
<i>Petitioner</i>)	
)	15-TT-189
)	
STATE OF ILLINOIS)	Chief Judge James M. Conway
DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

ANSWER

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. Petitioners are individuals located at 9107 South Thomas Avenue, Bridgeview, Illinois, 60455, and can be reached at 708-796-7432.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(1)(A) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 1.

2. Petitioners are 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 Independent Tax Tribunal Regulations (“Rule”) 310(a)(1)(B) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 2.

3. Petitioners' Taxpayer (Account) ID is XXX-XX-XXXX (redacted).

ANSWER: The information contained in Paragraph 3 is required by Illinois Independent Tax Tribunal Regulations ("Rule") 310(a)(1)(C) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation 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 laws. 20 ILCS 5/5-15.

ANSWER: Department admits the factual allegations contained in Paragraph 4.

NOTICE

5. On July 24, 2015, Petitioner received three Notices of Deficiency letters for Form IL-1040 ("Notices") for tax years 2010 and 2011. The Notices, in aggregate, reflect more than \$15,000 in tax due, plus penalties and interest. The Notices are attached hereto as Exhibit 1.

ANSWER: Department admits the factual allegations contained in Paragraph 5, except that there were two notices - not three.

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: Department admits the factual allegations contained 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: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegations contained in Paragraph 7.

BACKGROUND

8. One of the Petitioners (Mohammed Rahman) is the owner of an S corporation that was a petroleum retailer formerly located in Chicago.

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

9. Defendant audited the S corporation's books and records for sales tax for the periods 2010 and 2011, and, based on that audit, the Department projected the individual income tax assessments at issue herein without providing the proper allowance for cost of goods sold for the corporation.

ANSWER: The information contained in Paragraph 9 is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2)(A). Respondent denies the factual allegation contained in paragraph 9. Any issues involving the sales tax audit or a subsequent reconstruction of the S corporation's income must be resolved in litigation connected to the Notice of Deficiency issued to the S corporation, and only the final outcome of that litigation is relevant here.

COUNT I

Defendant's audit methodology overstates Petitioners' liability.

10. Petitioners reallege and incorporate by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: Department restates the answers provided herein to paragraphs 1 through 9, inclusive, hereinabove.

11. The Department assessed the tax liabilities contained in the Notices based on the sales tax audit results without providing the proper allowance for cost of goods sold.

ANSWER: Department admits the income tax audit was a spinoff of a sales tax audit, but denies the allegations as contained in paragraph 11.

12. By applying the Department's corporate sales tax audit results to the business income tax Notices herein, the Department drastically and unreasonably inflated Petitioner's individual income tax liability.

ANSWER: Department denies the allegations contained in Paragraph 12, and demands strict proof thereof.

COUNT II

All penalties should be abated based on reasonable cause.

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

ANSWER: Department restates the answers provided herein to paragraphs 1 through 12, inclusive, hereinabove.

14. In its Notices, the Department assessed late filing and late payment penalties.

ANSWER: Department admits the factual allegations contained in Paragraph 14.

15. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 15 and demands strict proof thereof.

16. 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, and 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 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 16 and demands strict proof thereof.

17. Petitioner exercised ordinary business care and prudence when they reasonably determined its business income liability during the audit periods and clearly did not use the Department's proposed sales tax audit results.

ANSWER: Department denies the allegations contained in Paragraph 17, and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

1. Deny Petitioner's prayer for relief;
2. Find that the two (2) Notices correctly reflects Petitioner's liability for tax, penalty and interest for the tax years ending December 31, 2010 and 2011.
3. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
4. Grant any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /S/ Ralph Bassett
Ralph Bassett
Special Assistant Attorney General
ARDC No. 6180788

Ralph Bassett, SAAG
Illinois Department of Revenue
JRTC State of Illinois Center
100 W. Randolph St.
7th Floor
Chicago, IL 60601
Ph: 312-814-7039
Fax: 312-814-4344
Email: ralph.bassett@illinois.gov