

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

KISHWAUKEE AUTO CORRAL, INC.,)

)

Petitioner,)

v.)

)

No. 15 TT 234

Chief Judge James M. Conway

)

**ILLINOIS DEPARTMENT OF)
REVENUE,)**

)

Respondent.)

DEPARTMENT’S ANSWER TO PETITION

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the “Petition”), hereby states as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 3336 Kishwaukee Street, Rockford, Illinois, 61109, and can be reached at 815-226-8966.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner is represented by Romanoff & Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558, and can be reached at 708-784-322 or jdickett@aol.com.

ANSWER: The Department admits the allegations contained in paragraph 2.

3. Petitioner’s Taxpayer (Account) ID is 3618-2060.

ANSWER: The Department admits the 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 laws. 20 ILCS 5/5-15.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

NOTICE

5. On October 26, 2015, Petitioner received a Notice of Tentative Claim Denial for Form ST-556 ("Notice") from the Department for multiple refund claims filed by Petitioner. The Notice reflects \$61,312.89 in amount claimed for refund by Petitioner. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit 1 and referred to in paragraph 5 and state that such document speaks for itself.

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 Department admits the allegations contained in paragraph 6.

7. The 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: Although paragraph 7 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 7.

BACKGROUND

8. Petitioner is a used car retailer.

ANSWER: The Department admits the allegations contained in paragraph 8.

9. Petitioner filed multiple refund claims for sales tax on vehicles that were self-financed by Petitioner and then repossessed by Petitioner prior to the end of the financing term.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. The Defendant denied all of Petitioner's refund claims in this matter because the Petitioner did not show its vehicle repossessions at bad debt on its corporate income tax returns even though the Petitioner is a cash-basis taxpayer that does not recognize sales on an accrual basis and therefore cannot deduct the bad debts because those amounts were never included in sales and also despite the fact that the Petitioner paid all of the sales tax due up front out of its own pocket on all of the refund claims at issue in the Notice.

ANSWER: The Department admits that it denied Petitioner's refund claims but denies the remaining allegations of Paragraph 10 as legal conclusions, not allegations of material facts.

COUNT I
Defendant's claim denial is not supported by law.

11. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Defendant denied the Petitioner's refund claims in the attached Notice because the Petitioner did not take a bad debt deduction on its income tax returns.

ANSWER: The Department admits that it denied Petitioner's refund claims but denies that such claims were subject to an audit.

13. By applying such audit methodology, the Defendant unreasonably denied the Petitioner's refund claims because the Petitioner is a cash-basis taxpayer that does not recognize sales on an accrual basis and therefore cannot deduct the bad debts since those amounts were never included in sales and also because the Petitioner self-financed all of the vehicles at issue in the Notice and paid the sales tax out of its own pocket up front at the time of sale.

ANSWER: Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count I of this matter;
- B) That the Department's multiple Notice(s) of Tentative Claim Denial be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697


By _____
Michael Coveny,
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on December 30, 2015.



Michael Coveny,
Assistant Attorney General