

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MAAY TOBACCO, INC.,)	
)	
Petitioner,)	
v.)	No. 15 TT 239
)	Judge Brian F. Barov
)	
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 corporation that can be contacted at 309 Claridge Circle, Bolingbrook, Illinois, 60440, and can be reached at 630-865-7178.

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 is4014-5921.

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 17, 2013, the Department issued two (2) Notice of Tax Liability letters ("Notices") to the Petitioner that became final assessments in December 2013 for the tax periods of May 2013 and June 2013 only. The tax assessed on both Notices was \$24,647. Petitioner never received copies of the Notices because the business closed in June 2013

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents referred to in paragraph 5 and state that such documents speak for themselves. The remaining allegation in paragraph is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

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. 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 October 22, 2015, and then timely filed this Petition within 60 days of the Department's letter granting the late discretionary hearing for Petitioner (see Exhibit 1 for copy of 10/22/15 letter granting late discretionary hearing; see also Exhibit 2 for 2/6/15 Collection Action letter containing the two months of the Notices (May 2013 and June 2013)).

ANSWER: Although paragraph 7 is not an allegation of a material facts but legal conclusions, the Department admits the allegations/legal conclusion contained in paragraph 7.

BACKGROUND

8. Petitioner is a corporation that closed in the middle of June 2013 and failed to file or pay its last two monthly sales tax returns for May 2013 and June 2013.

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

9. The Department estimated Petitioner's sales tax liability for May 2013 and June 2013 and issued the Notices to Petitioner's closed address so they were never received, but the Department's estimates are overstated in both months (especially June 2013 because the business closed in the middle of the month).

ANSWER: Although paragraph 9 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 9.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-9 as if fully set forth herein.

11. The Department assessed the tax liabilities contained in the Notices based estimates which are overstated especially in June 2013.

ANSWER: Although paragraph 11 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 11.

12. By applying such estimates, the Department drastically and unreasonably inflated Petitioner's sales tax liability for May 2013 and June 2013

ANSWER: Although paragraph 12 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 12.

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 Notices of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT II

All penalties should be abated based on reasonable cause

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-12 as if fully set forth herein.

14. In its Notice, the Department assessed penalties.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents referred to in paragraph 14 and state that such documents speak for themselves.

15. Illinois law provides that 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: The Department admits the existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 15 and state such statute speaks for itself.

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: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 16 and state such regulation speaks for itself.

17. Petitioner exercised ordinary business care and prudence when it reasonably determined its business income liability during the audit periods and clearly did not use the Department's over-estimated sales tax assessment amounts.

ANSWER: Although paragraph 17 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 17.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;
- B) That the Department's Notices of Tax Liability be determined to be correct;

C) That this Tribunal grant such other additional relief it deems just and proper

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Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



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 February 24, 2016



Michael Coveny,
Assistant Attorney General