

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>RPMG Inc.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Case No. 14-TT-149</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant.</b>	)	

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**ANSWER**

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

**PARTIES**

1. Petitioner is a Minnesota corporation that is owned by Renewable Products Marketing Group, LLC, a Minnesota limited liability company. Petitioner’s principal business address is 1157 Valley Park Dr. Ste. 100, Shakopee, MN, 55379-1925.

**ANSWER:** The Petitioner’s name and address is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(E) (86 Ill. Adm. Code §5000.310) 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 factual allegations contained in Paragraph 1.

2. Petitioner is represented by Fred Marcus and Christopher Lutz of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or [fmarcus@hmbllaw.com](mailto:fmarcus@hmbllaw.com).

**ANSWER:** The information contained in Paragraph 2 is required by Rule 310(a)(1)(B) 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 factual allegations contained in Paragraph 2.

3. Petitioner's FEIN is 26-0465198.

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

4. Petitioner markets ethanol, distiller's grain, corn oil, and corn syrup.

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

5. 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 that the Department is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in

Taxpayer's petition. The term "Illinois tax laws" is ambiguous; the Department therefore denies all other allegations related thereto.

### **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 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. seq.

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

7. This Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45 and 1-50 of the Tribunal Act.

**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 existence, force, and effect at all relevant times of the statutes set forth or referred to in Paragraph 7.

### **NOTICES**

8. On June 2, 2014, the Department issued two Notices of Tax Liability to Petitioner for the tax years ending September 30, 2008 and September 30, 2009 ("Years in Issue") in the amount of \$57,510.94. Each Notice exceeds \$15,000. The two notices ("Notices") are attached hereto as Exhibit A.

**ANSWER:** A copy of the Statutory Notice is required to be attached to the Taxpayer's petition pursuant to Rule 310(a)(1)(D) and is not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer

is required, the Department admits the Department issued Notices of Deficiency for the tax years ending September 30, 2008 and September 30, 2009 in the amounts of \$40,171.88 and \$17,339.06, respectively, each exceeding \$15,000.

9. Unless otherwise stated, the allegations in this Petition relate to the Years in Issue.

**ANSWER:** The Department admits the statement contained in Paragraph 9.

### **BACKGROUND**

10. Petitioner markets a variety of corn products throughout the United States.

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

11. Petitioner is a wholly owned subsidiary of Renewable Products Marketing Group, LLC (“Renewable Products”).

**ANSWER:** The Department admits the factual allegations contained in Paragraph 11.

12. Petitioner is taxed as a corporation.

**ANSWER:** Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

13. Renewable Products is taxed as a partnership.

**ANSWER:** Paragraph 13 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

14. Petitioner has nexus with Illinois and pays state corporate income and personal property replacement income tax in Illinois.

**ANSWER:** The Department admits that Petitioner has nexus with Illinois. However, the statement that Petitioner “pays state corporate income and personal property replacement income tax in Illinois” is ambiguous; the Department therefore lacks sufficient knowledge to either admit or deny such statement and demands strict proof thereof.

15. Renewable Products does not have nexus in Illinois and currently does not pay any Illinois business taxes.

**ANSWER:** The Department admits the allegation that “Renewable Products does not have nexus in Illinois” for the Years in Issue. The term “currently” is ambiguous; the Department therefore denies all allegations related thereto. The statement that Renewable Products “does not pay any Illinois business taxes” is ambiguous; the Department therefore denies all allegations related thereto.

16. Renewable Products has no Illinois locations or destination sales.

**ANSWER:** The Department admits the allegations in Paragraph 16.

17. On its Illinois income tax return, Petitioner calculated its income tax liability without regard to Renewable Products’s Illinois apportionment factor or income.

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

18. On audit, the Department combined Petitioner with Renewable Products after concluding that the two entities were engaged in a unitary business relationship.

**ANSWER:** The Department admits the factual allegations contained in Paragraph 18.

19. As a result of the Department's conclusion that the two entities are engaged in a unitary relationship, the Department combined the income of the two entities for purposes of Illinois income tax, resulting in a tax deficiency.

**ANSWER:** The Department admits the factual allegations contained in Paragraph 19.

### **COUNT I**

20. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 19, inclusive, hereinabove.

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 19 as if fully set forth herein.

21. Petitioner is taxable as a corporation.

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

22. Renewable Products is taxable as a partnership.

**ANSWER:** Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

23. By combining Petitioner's and Renewable Products's income, the Department subjected Renewable Products to income tax twice, once at the entity level, and again at the partner level.

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

24. Although the mere risk of double taxation does not necessarily invalidate a state tax scheme, double taxation deserves close scrutiny. *Container Corporation of America v. Franchise Tax Board*, 463 US 159 (1983).

**ANSWER:** Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

25. By forcing the combination of a corporation with its partnership parent, Illinois has guaranteed that the partnership's income will be taxed twice.

**ANSWER:** Paragraph 25 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

26. If the Department did not combine the corporation with its partnership parent, no double tax would result.

**ANSWER:** Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE**, the Department prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner and Renewable Products are engaged in a unitary business relationship and the Department may therefore combine Petitioner's and Renewable Products' income for purposes of Illinois income tax;
- (b) enters judgment in favor of the Department and against Petitioner; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

## COUNT II

27. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 26, inclusive, hereinabove.

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 26 as if fully set forth herein.

28. Under the Illinois Taxpayer Bill of Rights, it is the Department's responsibility to give taxpayers "correct and complete information to help [taxpayers] comply with tax laws in Illinois."

**ANSWER:** Paragraph 28 contains a legal conclusion, 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 existence, force, and effect of the Illinois Taxpayers' Bill of Rights Act referred to in Paragraph 28 and states that such law speaks for itself.

29. For the Years in Issue, the Department had promulgated rules which referred to instances in which a partnership is engaged in a unitary business with its corporate partner.

**ANSWER:** The statement that the Department promulgated “rules” is ambiguous; the Department therefore lacks sufficient knowledge to either admit or deny such statement and demands strict proof thereof.

30. The Department provided no guidance with respect to situations where a corporation is engaged in a unitary relationship with its partnership parent.

**ANSWER:** The term “guidance” is ambiguous; the Department therefore denies all allegations related thereto. The statement “with respect to situations” is ambiguous; the Department therefore denies all allegations related thereto. Ultimately, Paragraph 30 calls for a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2).

31. Of all of the examples provided in the Department’s regulations and the 2007 Schedule UB instructions, as well as the instructions for Schedule K-1-P, there is no guidance indicating that Petitioner should have been combined with Renewable Products.

**ANSWER:** Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

32. The Illinois partnership forms are clear on their face with respect to how a partnership should calculate its Illinois income, and do not provide that a partnership should calculate its Illinois income on a combined basis with a corporate subsidiary.

**ANSWER:** Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

33. The Department had not promulgated any such rules because, as described in Count I, such rules would have necessarily resulted in double taxation.

**ANSWER:** Paragraph 33 calls for a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statement contained in Paragraph 33.

34. On audit, the Department acknowledged that no such guidance existed, and accordingly abated all penalties associated with the under-reporting of tax.

**ANSWER:** The Department denies the allegation that the Auditor “acknowledged that no such guidance existed.” The Department admits that the Informal Conference Board abated the penalties associated with the under-reporting of tax.

35. The combination of Petitioner with its partnership parent is unsupported by the Department’s regulations and instructions.

**ANSWER:** Paragraph 35 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

36. The combination of Petitioner with its partnership parent violates the requirements in the Taxpayer Bill of Rights that taxpayers be provided correct and complete information necessary to help taxpayers comply with tax laws in Illinois.

**ANSWER:** Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** Department prays that the Tribunal enter and order that:

- (a) finds and declares that the Department's assessment does not violate Petitioner's rights under the Illinois Taxpayers' Bill of Rights Act;
- (b) enters judgment in favor of the Department and against Petitioner; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

### **COUNT III**

37. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 36, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 36 as if fully set forth herein.

38. Renewable Products does not have any taxable presence in Illinois and does not make any sales into Illinois.

**ANSWER:** The term "taxable presence" is ambiguous; the Department therefore denies all allegations related thereto. The Department admits the allegation that Renewable Products "does not make any sales into Illinois."

39. One hundred percent of Renewable Products's income is taxed at the partner level.

**ANSWER:** The term “taxed” is ambiguous; the Department therefore denies all allegations related thereto. Ultimately, the Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 39 and demands strict proof thereof.

40. By including Renewable Products’s income in Petitioner’s Illinois income tax returns, the Department inflated Petitioner’s Illinois presence despite the fact that Renewable Products does no business and has no sales in Illinois.

**ANSWER:** The Department denies the allegations contained in Paragraph 40.

41. By including Renewable Products’s income in Petitioner’s Illinois income tax returns, the Department guaranteed that Renewable Products’s income would be taxed twice even though it does no business in Illinois.

**ANSWER:** Paragraph 41 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

42. If the normal allocation and apportionment provisions do not fairly represent the extent of a person’s business activity in Illinois, the taxpayer is entitled to alternative treatment of its income. 35 ILCS 5/304(f).

**ANSWER:** Paragraph 42 contains a legal conclusion, 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 existence, force, and effect of 35 ILCS 5/304(f) referred to in Paragraph 42 and states that such law speaks for itself.

43. Among the alternative treatments permitted are separate accounting, as well as any other method which effectuates an equitable allocation and apportionment of the person's business income. 35 ILCS 5/304(f)(1) and (4).

**ANSWER:** Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 35 ILCS 5/304(f)(1) and (4) referred to in Paragraph 43 and states that such law speaks for itself.

44. If Renewable Products's income is removed from Petitioner's calculation of its Illinois income tax liability, Petitioner will be subject to tax that accurately reflects the business it does in Illinois and which does not result in double taxation.

**ANSWER:** Paragraph 44 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** Department prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not entitled to alternative treatment of its income;
- (b) finds and declares that Renewable Products should not be excluded from Petitioner's Illinois income tax calculation;
- (c) enters judgment in favor of the Department and against Petitioner; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

#### COUNT IV

45. Petitioner reallages and reincorporates the allegations in paragraphs 1 through 44, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 44 as if fully set forth herein.

46. On August 18, 2010, Illinois amended the Tax Delinquency Amnesty Act (“Tax Amnesty law”) by enacting Public Law 96-1435. 35 ILCS 745/10.

**ANSWER:** Paragraph 46 contains a legal conclusion, 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 existence, force, and effect of Public Law 96-1435 referred to in Paragraph 46 and states that such law speaks for itself. Further, the Department admits the existence, force, and effect of 35 ILCS 745/10 referred to in Paragraph 46 and states that such law speaks for itself.

47. Public Law 96-1435 provides for an additional period for the amnesty program beginning on October 1, 2010 and ending on November 8, 2010 (“2010 amnesty period”).

**ANSWER:** Paragraph 47 contains a legal conclusion, 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 existence, force, and effect of Public Law 96-1435 referred to in Paragraph 47 and states that such law speaks for itself.

48. Public Law 96-1435 provides that for the 2010 amnesty period, the amnesty program covers all taxes due for any taxable ending after June 30, 2002 and prior to July 1, 2009.

**ANSWER:** Paragraph 48 contains a legal conclusion, 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 existence, force, and effect of Public Law 96-1435 referred to in Paragraph 48 and states that such law speaks for itself.

49. Public Law 96-1435 also amends specific provisions of the Uniform Penalty and Interest Act to state that taxpayers that are eligible for amnesty, but that do not elect to take advantage of amnesty, are subject to interest and penalty imposed at twice the statutory rate (“double interest and penalty”). 35 ILCS 735/3-2(g); 35 ILCS 735/3-3(j).

**ANSWER:** Paragraph 49 contains a legal conclusion, 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 existence, force, and effect of Public Law 96-1435 referred to in Paragraph 49 and states that such law speaks for itself. Further, the Department admits the existence, force, and effect of 35 ILCS 735/3-2(g) and 35 ILCS 735/3-3(j) referred to in Paragraph 49 and states that such law speaks for itself.

50. Section 10 of the Tax Amnesty law states that “[a]mnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of this state.”

**ANSWER:** Paragraph 50 contains a legal conclusion, 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 existence, force, and effect of 35 ILCS 745/10 referred to in Paragraph 50 and states that such law speaks for itself.

51. The Department's emergency rules provide that taxpayers with matters pending in the Department's Office of Administrative Hearings, taxpayers currently under audit, and even taxpayers that have not yet been audited are eligible for amnesty. *See*, 86 Ill. Admin. Code §521.105(e), (f).

**ANSWER:** Paragraph 51 contains a legal conclusion, 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 existence, force, and effect of 86 Ill. Admin. Code §521.105(e), (f), referred to in Paragraph 51 and states that such law speaks for itself.

52. Under the Tax Amnesty Law, a taxpayer choosing not to participate in the tax amnesty is liable for double interest and penalty (should any penalty be assessed) if the taxpayer is ultimately unsuccessful with its tax position.

**ANSWER:** Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

53. Plaintiff was eligible to participate in tax amnesty for the Year at Issue.

**ANSWER:** Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

54. By depriving Plaintiff of its right to challenge the Department's assertion of tax through the statutorily prescribed administrative process without risking the imposition of interest and penalty at twice the statutory rate, the Tax Amnesty law in essence provides for the imposition of two potential penalties: one being double interest and the other being double penalty.

**ANSWER:** Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

55. Illinois law provides that a penalty shall not apply if the taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

**ANSWER:** Paragraph 55 contains a legal conclusion, 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 existence, force, and effect of 35 ILCS 735/3-8 referred to in Paragraph 55 and states that such law speaks for itself.

56. The most important factor to be considered in making a determination of whether a taxpayer acted with reasonable cause will be the extent to which the taxpayer made a good faith effort to file and pay the proper tax liability in a timely fashion. Ill. Admin. Code 700.400.

**ANSWER:** Paragraph 56 contains a legal conclusion, 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 existence, force, and effect of 86 Ill. Admin. Code §700.400 referred to in Paragraph 56 and states that such law speaks for itself.

57. Petitioner reasonable calculated its Illinois income tax liability based on the regulations and instructions provided by the Department.

**ANSWER:** Paragraph 56 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

58. The Department has already abated all other penalties based on reasonable cause.

**ANSWER:** The Department admits the allegation in Paragraph 58.

59. Because Petitioner acted with reasonable cause, double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability.

**ANSWER:** Paragraph 59 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** Department prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner lacks reasonable cause and is therefore not entitled to abatement of the double interest assessed pursuant to the Tax Amnesty Act;
- (b) enters judgment in favor of the Department and against Petitioner; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
State of Illinois

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ILLINOIS INDEPENDENT TAX TRIBUNAL

RPMG INC.,	)	
	)	
v.	)	14-TT-149
	)	
ILLINOIS DEPARTMENT OF REVENUE.	)	
	)	

AFFIDAVIT OF V. KATHLEEN DI PERNA  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, V. Kathleen Di Perna, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I reviewed Taxpayer's Illinois Corporate Income and Replacement Tax Returns for the tax years ending September 30, 2008 and September 30, 2009.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 14, 29, and 39.
5. I am an adult resident of the State of Minnesota and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

*V. Kathleen Di Perna*  
 V. Kathleen Di Perna  
 Revenue Auditor III  
 Illinois Department of Revenue

Date: 9/3/2014  
*September 3, 2014*