

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

INTEGRATED MEDICAL)	
SYSTEMS INC.,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-247
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

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:

PARTIES

1. Petitioner is an Illinois corporation located at 12600 Holiday Drive in Alsip, Illinois 60803; Petitioner’s telephone number is (708) 597-7105.

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 requiring 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 John Pembroke & Associates LLC, located at 422 N. Northwest Highway, Suite 150, Park Ridge, Illinois 60068, who can be reached at (847) 696-0060 or jpembroke@pembrokelaw.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 requiring 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 identification number is: 3861-2267.

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 requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 3.

NOTICES

4. On October 2, 2015, the Department issued a Notice of Tax Liability resulting from an audit of Petitioner's account for the reporting periods of January 1, 2009 through June 30, 2009, assessing tax of \$12,571.00, penalties of \$2,765.00 and interest of \$2,355.39, for a total amount of \$17,691.39 ("Notice #1"). A true and correct copy of Notice # 1 is attached hereto as Exhibit 1.

ANSWER: The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits Notice # 1 is attached to the Petition.

5. On October 2, 2015, the Department issued a Notice of Tax Liability resulting from an audit of Petitioner's account for the reporting periods of July 1, 2009 through September 30, 2012, assessing tax of \$61,663.00, penalties of \$13,740 and interest of \$7,647.43, for a total amount of \$83,050.43 ("Notice #2"). A true and correct copy of Notice # 2 is attached hereto as Exhibit 2. (Notice #1 and Notice #2 collectively referred to as "Notices").

ANSWER: The information contained in Paragraph 5 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D) (86 Ill. Admin. Code §5000.310) and is not a material

allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits Notice # 2 is attached to the Petition. The Department further states that for clarity, the tax on the notice is assessed at \$75,317.00 and that a credit of \$13,645.00 has been applied to that tax reducing it to \$61,663.00.

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. The Tribunal has jurisdiction over this matter pursuant to Section 1-45 of the Tribunal Act providing it with original jurisdiction over all determinations of the Department reflected on a Notice of Tax Liability or multiple Notices of Tax Liability where the amount at issue exceeds \$15,000.00.

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.

BACKGROUND

8. Petitioner is a national distributor of a broad line of medical disposables from various manufacturers within the healthcare industry.

ANSWER: The Department admits the allegations in Paragraph 8.

9. Products distributed by Petitioner include equipment transport bags, oncology supplies, respiratory products, surgical supplies, blood collection, solutions, wound care, sharps

containers, pharmacy supplies, personal protection, enteral feeding supplies, empty containers, dispensing pins, clean room supplies, IV administration, chemotherapy supplies, urological items, skin care, patient care items, batteries, and prefilled syringes.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore demands strict proof thereof.

10. Petitioner distributes products that are subject to the general merchandise rate of 6.25% (“high rate”), as well as products that are subject to the lower rate of 1% (“low rate”) imposed on medical appliances under Section 2-10 of the Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/2-10 (the “Retailers’ Tax Act”).

ANSWER: Paragraph 10 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.

11. On November 5, 2012, the Department initiated an audit of Petitioner for the period of September, 2011 through September, 2012, which culminated in a Summary Analysis dated June 5, 2014, imposing additional tax liability on Petitioner of \$52,091.16 (“Initial Proposed Liability”). See Exhibit 3 attached hereto.

ANSWER: The Department admits the Initial Proposed Liability is attached to the Petition as Exhibit 3 and states the Initial Proposed Liability speaks for itself. The Department also admits a Notice of Audit Initiation dated November 5, 2012 for periods 09/2011-09/2012 was issued to Petitioner. The Department denies the Initial Proposed Liability is attached to the Petition and denies any remaining allegations in Paragraph 11.

12. The audit concerned primary sales to 25 customers of Petitioner for which Petitioner did not have a Certificate of Resale, or the certificates contemplated by ST 09-0144- GIL 10/30/2009

MEDICAL APPLIANCES or ST 10-0054-GIL 06/11/2010 MEDICAL APPLIANCES, where the customer would identify, based on historical use, the percentage of medical appliances being purchased that qualify as low rate items. The resulting tax asserted on these customers comprised all but \$810.02 of the \$108,836.47 proposed in an interim Summary Analysis dated 7/7/2014. See Exhibit 5 attached hereto.

ANSWER: The Department denies the allegations in Paragraph 12.

13. The Department calculated the Initial Proposed Liability based on a prior audit of Petitioner for the period of January, 2002 through June, 2008 (“2008 Audit”), which resulted in the total liability to Petitioner of \$36,483.00, and which Petitioner paid without protest.

ANSWER: The Department admits the allegations in Paragraph 13.

14. The 2008 Audit was based on 100% of the actual transactions of Petitioner for the period under audit and the Department concluded that approximately 26% of the mix products sold by Petitioner were high rate products and approximately 74% were low rate products.

ANSWER: The Department denies the allegations in Paragraph 14.

15. On July 11, 2014, after receiving a response from Petitioner, the Department notified Petitioner through a Notice of Proposed Liability which covered the period of January, 2009 through September, 2012, that it assessed an additional liability on Petitioner of \$139,959.00 (“Final Proposed Liability”). See Exhibit 4 attached hereto.

ANSWER: The Petitioner’s allegation that the Department received a response from Petitioner is vague and therefore denied. The Department admits it issued a Notice of Proposed Liability on July 11, 2014. The Department denies this is a final, collectable liability given the Petitioner’s appeal rights under 35 ILCS 1010/1-1 *et seq.* The Department also denies the presence of any Exhibit 4 attached to the Petition.

16. To arrive at the Final Proposed Liability, the Department reevaluated Petitioner's mix of high rate and low rate products and determined, according to the Petitioner's calculations, that the high rate products constituted 75.04% of the total and the low rate products constituted 24.96% of the total. See Exhibit 5 attached hereto.

ANSWER: The Department denies the allegations in Paragraph 16.

17. On August 13, 2014, Petitioner met with the Department representatives ("Representatives"), who notified Petitioner that there were few, if any pronouncements by the Department on the subject of what qualifies for low rate products and high rate products, and the Representatives therefore reviewed "de novo" which products sold to the 25 customers qualified as low rate products and which did not, by reviewing product descriptions on the internet and in product catalogues.

ANSWER: The Department admits an August 13, 2014 meeting occurred. The Department denies the remaining allegations in Paragraph 17.

18. During the August 13, 2014, meeting, the Representatives also informed Petitioner that penalties for the period through June, 2009, were calculated at double the applicable penalty rate because Petitioner did not take advantage of the Department's tax amnesty program. After inquiry by taxpayer's representative, the Representative confirmed that, unlike many other businesses in Illinois, IMS in fact was never issued the letter advising of the availability of the amnesty.

ANSWER: The Department admits amnesty penalties applied to the Petitioner. The Department denies it was required to inform Petitioner by letter or any other medium of the Department's tax amnesty program under 86 Ill. Adm. Code 520.105(a). Any remaining allegations in Paragraph 18 are denied.

19. Subsequent to Petitioner's meeting with the Representatives, the Department issued an updated Notice of Proposed Liability which increased Petitioner's taxable sales by \$3,323.70. See Exhibit 6 attached hereto.

ANSWER: The Department denies the allegations in Paragraph 19.

20. Petitioner requested a review of the liability issued by the Department by the Informal Conference board ("ICB"), and, in connection with the review, Petitioner submitted to the ICB various documents supporting its position, including a list of 15 medical devices sold to the 25 customers that the Department proposed to tax at the high rate. See Exhibit 7 attached hereto.

ANSWER: The Department admits Petitioner requested review by the ICB of the liability issue. The Department lacks information to admit or deny the remaining allegations in Paragraph 20 and demands strict proof thereof. The Department does not have access to ICB files or information under Section 215.120(e) of the Department's Administrative Hearing Rules (86 Ill Adm. Code 215.120). The Department denies the presence of any Exhibit 7 attached to the Petition.

21. Petitioner also requested from the ICB an abatement of the doubling of any applicable penalties because Petitioner received no mailing from the Department regarding the amnesty program, as confirmed by Representatives.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 21 and therefore demands strict proof thereof. The Department does not have access to ICB files or information under Section 215.120(e) of the Department's Administrative Hearing Rules (86 Ill Adm. Code 215.120).

22. The ICB conference took place on February 10, 2015, and the ICB issued its decision on

May 20, 2105, concluding that one item should be taxed at the low rate and that penalties and interest are to be imposed at the non-amnesty tax rates. See Exhibit 8 attached hereto.

ANSWER: The Department lacks sufficient information to either admit or deny when the ICB conference was held and demands strict proof thereof. The Department does not have access to ICB files or information under Section 215.120(e) of the Department's Administrative Hearing Rules (86 Ill Adm. Code 215.120). The Department admits the ICB issued an Action Decision dated May 20, 2015. The Department denies the presence of any Exhibit 8 attached to the Petition.

23. Petitioner received the Notice from the Department and Petitioner is now filing this Petition in accordance with the Tribunal Act to request the relief indicated below.

ANSWER: Paragraph 23 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.

APPLICABLE LAW

24. Section 2-10 of the Retailers' Tax Act imposes a tax at the rate of 6.25% of gross receipts from sales of tangible personal property made in the course of business.

ANSWER: Paragraph 24 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.

25. Section 2-10 of the Retailers' Tax Act also provides that with respect to "...prescription and nonprescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a person with a disability, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, the tax is imposed at the

rate of 1%.”

ANSWER: Paragraph 25 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.

26. Section 130.311 of Title 86 of the Illinois Department of Revenue Regulations, 86 Ill. Adm. Code 130.311, provides in relevant part that a “medical appliance is an item that becomes part of the human body by substituting for any part of the body that is lost or diminished because of congenital defects, trauma, infection, tumors or disease is considered a medical appliance.”

ANSWER: Paragraph 26 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.

27. Examples of medical appliances under Section 130.311 that qualify for the low rate of tax include: breast implants that restore breasts after loss due to cancer; heart pacemakers; artificial limbs; dental prosthetics; crutches and other orthopedic braces; dialysis machines (including the dialyzer); wheelchairs; and mastectomy forms and bras.

ANSWER: Paragraph 27 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.

28. In addition, Section 130.311 provides that “corrective medical appliances such as hearing aids, eyeglasses, contact lens and orthodontic braces qualify as medical appliances subject to the low rate of tax” as well as “sterile band-aids, dressings, bandages and gauze ... because they serve as a substitute for skin.”

ANSWER: Paragraph 28 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.

29. Under Section 130.311, diagnostic equipment is not deemed to be a medical appliance, except that insulin, urine testing materials, syringes and needles used in treating diabetes in human beings qualify for the reduced rate of tax. However, other medical tools, devices and equipment such as x-ray machines, laboratory equipment and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as medical appliances.

ANSWER: Paragraph 29 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.

30. The Department has ruled in a Private Letter Ruling that some catheters that directly substitute for a malfunctioning part of the body, that is, catheters that introduce fluid directly into the body (for instances, catheters used to pump blood back into the circulatory system in open heart surgery or in hemodialysis, or enteral catheters) or remove fluids from the body (urological or drainage catheters, or neurological catheters relieving intracranial pressure in hydrocephalics) are subject to low rate of tax; catheters that are used diagnostically (e.g., interventional angioplastic catheters) or as medical tools (e.g., as part of a drug delivery system) do not qualify for the low rate and are fully taxable. III. PLR No. 93-0526 (“1993 PLR”).

ANSWER: Paragraph 30 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.

31. The Department has also stated that “infusion pumps do not substitute for a malfunctioning part of the human body or act as a corrective appliance, such as hearing aids or eyeglasses. Rather, infusion pumps are medical tools used in the treatment of patients. We understand that they are normally used to administer drugs. Drug administration systems do not qualify as medical appliances that are subject to the low State rate of tax.” ST 10-0045-GIL 05/20/2010 MEDICAL APPLIANCES (“2010 GIL”).

ANSWER: Paragraph 31 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.

COUNT I

The Department Should Apply The Percentages Of High And Low Rate Items Determined During The 2008 Audit To Determine Petitioner’s Liability, If Any, In The Current Audit

32. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 31, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 31 as though fully set forth herein.

33. During Petitioner’s meeting with the Department Representatives, the Representatives told Petitioner that they reviewed “de novo” which products sold by Petitioner qualify as low rate items, however, the review process was subjective and uninformed because the Representatives relied on looking up product descriptions on the internet and in catalogues, not on any actual descriptions of usage of the product by Petitioner’s customers.

ANSWER: The Department denies the allegations in Paragraph 33.

34. As the majority of the 15 items sold to the 25 customers of the Petitioner are IV infusion

systems, the Representatives referred to the 2010 GIL which concluded that infusion pumps did not qualify as low rate items because they are drug administration systems.

ANSWER: Paragraph 35 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 denies the allegations in Paragraph 34.

35. Petitioner asserts that the conclusion in the 2010 GIL and the decision made by the Department is flawed because, as described in more detail below, the majority of the infusion systems sold to Petitioner's clients are used in such a manner that they actually substitute for a malfunctioning part of the patient's body without which the patient's body could not process the medicine, fluid or nutrition in order for the body to continue to function.

ANSWER: Paragraph 35 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 denies the allegations in Paragraph 35.

36. Petitioner's IV infusion systems are comparable to prefilled syringes used by diabetics, which do qualify for the low rate of tax.

ANSWER: Paragraph 36 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.

37. The infusion system used by Petitioner serves as a temporary extension of a patient's body that is necessary for the body to absorb the necessary fluids, nutrition or medication.

ANSWER: Paragraph 37 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.

38. In addition, the Department's "de novo" inquiry into what items constitute low rate items is unnecessary, as the Department has already made this determination in the 2008 audit of Petitioner and all of the components of the IV infusion systems sold by Petitioner should qualify as low rate items on the basis of *stare decisis*.

ANSWER: Paragraph 38 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 further states that each audit stands on its own and is not controlling with respect to other audits.

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 reflects 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 Of The Fifteen Products Listed By Petitioner Qualify As Low Rate Items

39. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 38, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 38 as though fully set forth herein.

40. The Department incorrectly classified all of the items listed below as high rate items and, as explained in more detail below, Petitioner believes that all of items should be classified as low rate items because, based on their use, they meet the definition of "medical appliances" under Section 130.311 of the Illinois Department of Revenue Regulations.

ANSWER: The Department denies the allegations in Paragraph 40. Further, Paragraph 40 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.

41. **Needles-Sterile.** Needles serve as an extension of the body when they are used to deliver medicine not susceptible to oral delivery. They become incorporated into the body at the time of injection. Needles serve the same function as the patient's mouth serves for delivery of oral medication.

ANSWER: Paragraph 41 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.

42. **Syringes-Sterile, either empty or prefilled.** In the same manner as needles, syringes function as part of the body when they are used to deliver medicine not susceptible to oral delivery. Together with the needle, a syringe becomes an extension of the body that is necessary to take the medicine into the patient's body.

ANSWER: Paragraph 42 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.

43. **Vacutainer Blood Transfer Device-Sterile.** This device becomes part of the body to fulfill the function of delivering blood back to the body because the body is not able to perform this function by itself. This may be analogized to catheters that introduce fluids into the body and which the Department has previously approved as low rate items in the 1993 PLR.

ANSWER: Paragraph 43 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.

44. **Catheters.** These types of catheters are threaded through a vein to administer life sustaining medications, fluids or nutrition which can only be administered intravenously and which the body could not process without this device. When these catheters are inserted into the vein, they directly substitute for a malfunctioning part of the patient's body and become incorporated into the body. The Department has previously approved catheters that introduce fluids into the body or remove fluids from the body as low rate items.

ANSWER: Paragraph 44 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.

45. **Needles for Access Ports- Sterile, part of delivery system for medication.** As discussed above, needles become an extension of the body once injected and functions as a passage mechanism that allows the body to receive the medicine it needs to function.

ANSWER: Paragraph 45 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.

46. **Huber needles.** These needles are used to access ports implanted under the skin of chronically ill patients for repeated access to veins for the withdrawal of blood and infusion of medication, nutritional solutions, blood products, and imaging solutions. The needles become a part of an extension of the body when they are inserted into the ports implanted under the skin.

ANSWER: Paragraph 46 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.

47. **IV Administration Sets, infusion related tubing, bandages and/or devices to hold tubing in place, and clamps.** All IV administration sets are sterile and deliver fluids, medication or Total Parenteral Nutrition (TPN), which is used for patients who cannot get their nutrition through eating. These devices directly substitute for the part of the body that is malfunctioning due to disease and treatment is necessary to sustain life. The IV sets function as a passage way in a manner similar to the patient's mouth for delivery of food and/or medication.

ANSWER: Paragraph 47 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.

48. **CholarPrep 3 ml applicator.** Only sales to one customer were marked as high rate items, thirteen others were marked as low rate items by the Department. Petitioner submits that this is arbitrary and capricious treatment by the Department, and consistent with the others, the sale of this item to the particular customer should be treated as subject to the low rate of tax.

ANSWER: Paragraph 48 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.

49. **ICU products-Sterile.** Sterilization is necessary for avoidance of complications to the body that may otherwise be introduced when procedures are performed.

ANSWER: Paragraph 49 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.

50. **Eclipse Home Pump.** Disposable ambulatory infusion system to deliver prescribed medications. Becomes part of the body when it is used to deliver medication to the parts of the body diminished by disease so the body can sustain itself.

ANSWER: Paragraph 50 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.

51. **Foley Tray, Catheter.** This kit was marked as a high rate item while two others were marked as low rate items. Petitioner submits that this is arbitrary and capricious treatment by the Department and this item should be treated consistent with the others as a low rate item.

ANSWER: Paragraph 51 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.

52. **Huber Pro Safety Huber Set.** Part of delivery mechanism for prescribed medication. Becomes part of the body when it is used to deliver medication to the parts of the body diminished by disease so the body can sustain itself.

ANSWER: Paragraph 52 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.

53. **IV Start Kits- Sterile, used for infusions.** Becomes part of the body when it is used to deliver medication to the parts of the body diminished by disease so the body can sustain itself.

ANSWER: Paragraph 53 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.

54. **Port Access Set.** A port is a small medical appliance installed beneath the skin. A catheter connects the port to a vein, used mostly to treat hematology and oncology patients. This device is directly incorporated into the body and substitutes for the malfunctioning part of the body that allows fluids to enter the body.

ANSWER: Paragraph 54 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.

55. **Sterile IV Wings.** Only one of these items is marked as high rate by the Department. Thirteen others are marked as low rate items. Petitioner submits that this is arbitrary and capricious treatment by the Department and that this item should be treated consistent with the others as a low rate item.

ANSWER: Paragraph 55 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.

56. Another example of disagreement between Petitioner and the Department is medical, sterile gloves sold by Petitioner to health care personnel delivering IV infusions.

ANSWER: The Department admits the allegations in Paragraph 56.

57. The Department incorrectly analyzed that the product does not replace a malfunctioning body part of the patient.

ANSWER: The Department denies the allegations in Paragraph 57.

58. Petitioner believes that the Department is looking at the wrong person benefiting from the use of the product as the gloves are used to protect the health care worker and replace the

worker's bare skin, which left unprotected would expose the worker to known health risks.

ANSWER: Paragraph 58 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 58 requires any further answer, the Department denies the allegations in Paragraph 58.

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 reflects 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 III

Any Applicable Penalties Should Be Calculated Based On The Amnesty Program Rates

59. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 58, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 58 as though fully set forth herein.

60. During the meeting with the Department Representatives, the Representatives informed Petitioner that Petitioner was being charged double the applicable rate for penalties through June, 2009, because Petitioner did not take advantage of the Department's amnesty program.

ANSWER: The meeting referred to in Paragraph 60 is vague but the Department admits Petitioner was subject to double interest and penalties pursuant to the Department's Amnesty Program before the ICB's May 20, 2015, Action Decision adjusting interest and penalties to the non-amnesty rates. The Department further states it was not required to inform Petitioner

by letter or any other medium of the Department's tax amnesty program under 86 Ill. Adm. Code 520.105(a).

61. After inquiry by Petitioner, one of the Representatives confirmed that, unlike many other businesses in Illinois, Petitioner in fact was never issued the letter advising of the availability of amnesty.

ANSWER: The Department admits a Department Representative confirmed that Petitioner was never issued a letter advising Petitioner of the Department's amnesty program. The Department denies it was required to inform Petitioner by letter or any other medium of the Department's tax amnesty program under 86 Ill. Adm. Code 520.105(a).

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 reflects 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: January 13, 2016

Respectfully submitted,
Illinois Department of Revenue,

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

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CHICAGO, ILLINOIS**

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SYSTEMS INC.,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-247
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DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

**AFFIDAVIT OF LISA FOX
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Auditor II.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition Paragraph 9.

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 that he (she) verily believes the same to be true.



Lisa Fox
Revenue Auditor II
Illinois Department of Revenue

DATED: 1/13/16