

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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**ALLIANCE BUSINESS ENTERPRISES, )  
INC., )**

**Petitioner, )**

**v. )**

**No. 15 TT 251**

**Judge Brian F. Barov**

**ILLINOIS DEPARTMENT OF )  
REVENUE, )**

**Respondent. )**

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**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 15901 Crawford Avenue, Markham, Illinois, 60428, and can be reached at 219-588-4607.

**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 3427-4774.

**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 or about May 19, 2011, the Department mailed two (2) Notice of Tax Liability letters ("Notices") to the Petitioner that became final assessments in July 2011 for the tax periods January 1, 2007 to December 31, 2009. The Department's Notice of PROPOSED Liability dated January 21, 2011 is attached hereto as Exhibit 1. At present we do not have copies of the actual Notice of Tax Liability letters

**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 corporation formerly located in the far west suburbs of Chicago that was audited by the Department for sales tax for the tax periods January 1, 2007 to December 31, 2009.

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

9. The Department's audit is severely overstated because the Department erroneously double-counted the Petitioner's gasohol sales in the Department's audit workpapers whereby the gasohol and diesel sales are the *exact same amount* even though the taxpayer only sold tax-exempt biodiesel in very low quantities during the audit tax periods. If the Department's error is corrected, the audit liability is \$36,060, not \$187,031.

**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 allegations 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 on a mathematical error.

**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. Based on the Department's math error, the Department drastically and unreasonably inflated Petitioner's sales tax audit liability.

**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 document attached to the Petition as Exhibit 1 and referred to in paragraph 14 and state that such document speaks for itself.

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 sales tax liability during the audit period and clearly did not use the Department's mathematically incorrect sales tax audit results.

**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

Respectfully Submitted,

LISA MADIGAN  
Illinois Attorney General

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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 19, 2016



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Michael Coveny,  
Assistant Attorney General