

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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O & S CORP. d/b/a CITGO	)	
Petitioner,	)	
V.	)	Case No. 14 TT 151
	)	
ILLINOIS DEPARTMENT	)	Chief Judge James M. Conway
OF REVENUE	)	
Respondent,	)	

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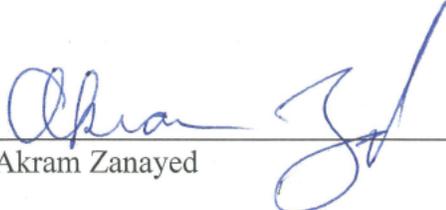
**NOTICE OF FILING**

To: Seth Schriftman	Michael R. Coveny
Special Assistant Attorney General	Special Assistant Attorney General
Illinois Department of Revenue	Illinois Department of Revenue
Seth.Schriftman@illinois.gov	Michael.Coveny@illinois.gov

PLEASE TAKE NOTICE THAT ON June 17, 2016 the undersigned filed or caused to be filed, the following:

**REPLY TO THE RESPONSE TO THE MOTION IN LIMINE**

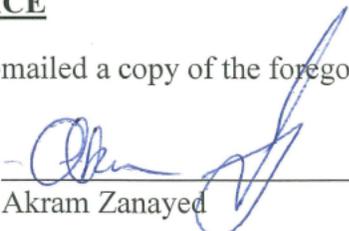
a copy of which is hereto attached for your reference.

  
 \_\_\_\_\_  
 Akram Zanayed

Akram Zanayed & Associates  
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Attorney No. 14635  
zanayedlaw@gmail.com

**CERTIFICATE OF SERVICE**

I, Akram Zanayed, an attorney, hereby certify that I e-mailed a copy of the foregoing to each party to whom it is addressed to on June 17, 2016.

  
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 Akram Zanayed

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**REPLY TO RESPONDENTS ANSWER TO THE MOTION IN LIMINE**

Now comes the Petitioner, O & S Corp. d/b/a Citgo, by and through their attorneys Akram Zanayed and Associates and files this Reply to Respondents Answer to the Motion in Limine requesting that certain evidence be prohibited from being offered into evidence in this case and in favor of said motion, Petitioner states as follows:

The Department of Revenue’s answer to the Motion in Limine does not provide any relevant case law or Statute that would support its position regarding this issue. The Department admits that the information and documents it is relying on to assess the tax were not obtained from MEI, the alleged source of sales. The response by the Department suggests that since there is more information than just the sales provided in the exhibits that the exhibits should be allowed. [REDACTED]

[REDACTED]

[REDACTED] First, there is no mention that the Petitioners invoices were individually checked.

[REDACTED]

[REDACTED]

[REDACTED] None of the additional information has any

relevance to our case unless it relates directly to the information provided by MEI and therefore should be excluded.

**EXHIBITS ARE INADMISSABLE HEARSAY**

The Department relies heavily on the “prima facie” presumption and Department Certification in suggesting that the exhibits should be admitted into evidence. Following their interpretation of the rules, any document or bit of information would be allowed without the right to question the validity of the documents so long as a certification is submitted. If the legislature and court intention was to accept all information provided by certification, there would be no presumption to overcome. It would be accepted as a matter of law without the right to rebut the presumption. Clearly, the Petitioner has the right to rebut the presumption and that right extends to questioning what was presented under certification as well as providing other evidence.

The Department states case law suggesting that the only way to negate the assessment is with taxpayer’s books and records. While it may be true that testimony alone without books and records cannot rebut qualified evidence, in our case, the evidence presented by the Department is not admissible as qualified evidence. It is impossible for the Petitioner to prove he did not purchase items from MEI. He cannot prove a “negative” or non purchase. Petitioner provided 5 boxes of records to the auditor. It is not questioned that there were just a few (approximately 5) invoices from MEI. [REDACTED]

[REDACTED]

The key element to determine whether evidence should be admitted is whether the proposed evidence is hearsay or not and if so is there an exception. They seek to rely upon Section 5 and 8 of the Retailers’ Occupation Tax Act (“ROTA”) and quote the Section. Within

Section 5 it clearly states

”... If computer print-outs of the Department’s records are offered as proof of such determination, the Director must certify that those computer print-outs are true and exact representations of records properly entered into standard electronic computing equipment, in the regular course of the Department’s business, at or reasonably near the time of the occurrence of the facts recorded, from trustworthy and reliable information.”

[REDACTED]

BUSINESS RECORDS EXCEPTION DOES NOT APPLY

Furthermore, the Department cannot argue that it is admissible under rule 803(6) (business records) Hearsay exception. [REDACTED]

[REDACTED] They are seeking to have proof that sales occurred between MEI and the Petitioner. For the exception to apply as stated under the rule, the information (proof of actual sales to Petitioner) must have been “made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity...” In our case, no person from MEI will testify [REDACTED]

[REDACTED]

Again case law provided by the Department does not address our matter. The information relied upon in our case came from MEI [REDACTED]

[REDACTED]

ADMINISTRATIVE PROCEDURES

Finally, the exhibits should not be accepted under Section 100/10-40 of the IAPA.

Department's exhibits provide no credible evidence of any sale to Petitioner. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

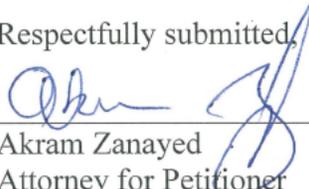
[REDACTED]

[REDACTED]

[REDACTED]

In conclusion, the Department has failed to provide any reason to allow the documentation into evidence and the Motion in Limine should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Akram Zanayed  
Attorney for Petitioner

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