ILLINOIS INDEPENDENT
TAX TRIBUNAL

SAMER T INC.,	)	
	)	
Petitioner,	)	
v.	)	**No. 15 TT 267**
	)	**Chief Judge James M. Conway**
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 Illinois corporation located at 2959 West Fulton Street, Chicago, Illinois, 60612, and can be reached at 708-277-5708.

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 3651-4497.

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 November 23, 2015, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods of July 1, 2010 to December 31,2012. The Notice reflect $142,695 in tax plus interest and penalties. The Notice is attached hereto as Exhibit **1**

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 petroleum retailer located in Chicago.

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

9. Defendants audited Petitioner's books and records for the tax periods July 1, 2010 to December 31,2012.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. The audit liability contained in the Notice is based in part on projections whereby the Department multiplied the Petitioner's purchases (i.e., gas and mini-mart items) by estimated industry standard selling prices of Petitioner's products.

ANSWER: The Department admits the allegations contained in paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Department calculated a portion of the audit liability by multiplying Petitioner's purchases by estimated selling prices, but the average gas price used by the Department is overstated and the Department's computations for the mini-mart are overstated (especially with respect to low rate sales) due to the location of the business.

> **ANSWER**: The Department denies that its proposed assessment overstates petitioner's actual liability but declines to answer the remaining allegations of Paragraph 12 pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b) as they are not material allegations of fact.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and Petitioner's low rate sales were higher due to Petitioner's cashiers' use of the "grocery even" button on the cash register.

> **ANSWER:** Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13. The Department further affirmatively states that Petitioner failed to provide some of the books and records it is required by law to maintain so the auditor was required to use his best judgment and information.

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 Notice of Tax Liability be determined to be correct.

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

COUNT II

<u>All penalties should be abated based on reasonable cause</u>

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

> **ANSWER**: The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

15. In its Notice, the Department assessed penalties based on the audit liability.

> **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 15 and state that such document speaks for itself.

16. Illinois law provides that neither late penalties nor negligence penalties 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 16 and state such statute speaks for itself.

17. 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. 86 Ill.Adm.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 17 and state such regulation speaks for itself.

18. 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.Adm.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 18 and state such regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period based on its daily sales reports (and did not use estimates) to determine its sales.

ANSWER: Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 19.

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 Notice 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

By _____
Michael Coveny,
Assistant Attorney General

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
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100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697

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 9, 2016.

_____
Michael Coveny,
Assistant Attorney General