

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SAM'S WHOLESALE, INC.,)	
)	
Petitioner,)	
v.)	No. 16 TT 4
)	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 8940 West 192nd Street, Mokena, Illinois, 60448, and can be reached at 708-296-1352.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The Department admits the allegations contained in paragraph 2.

3. Petitioner's Taxpayer Account ID is 40345580

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 November 6, 2015, Petitioner received a Notice of Tax Liability letter for Form RC-28, Cigarette Revenue Audit Report ("Notice") from the Department for an audit of the tax periods July 31, 2010 to June 30, 2013. The Notice reflects \$1,348,442 in tax due, \$1,744 in negligence penalty, \$664,862 in fraud penalty, \$269,688 in late payment penalty, and \$78,999 in interest, for a total of \$2,363,735. 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 cigarette wholesaler with customers located throughout the country.

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

9. Defendants audited Petitioner's books and records for the tax periods July 31, 2010 to June 30, 2013.

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

10. The audit liability contained in the Notice is based on the Department disallowing the interstate sales exemption for cigarettes sold to two (2) out of state customers located in Indiana and Missouri, even though Petitioner provided documentation to the Department that corroborated all of the interstate sales at issue in the Notice.

ANSWER: The Department admits that its audit determination was based on the disallowance of interstate sales claimed exempt on Petitioner's returns but deny the remaining allegations of Paragraph 10 as legal conclusions, not material allegations of facts.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation 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 disallowed multiple interstate sales even though Petitioner provided documentation to substantiate the interstate sales exemption.

ANSWER: The Department admits that its audit determination was based on the disallowance of interstate sales claimed exempt on Petitioner's returns but deny the remaining allegations of Paragraph 12 as legal conclusions, not material allegations of facts.

13. By disallowing Petitioner's interstate sales exemption during the audit tax periods, the Department unreasonably inflated Petitioner's audit liability.

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.

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

All penalties should be abated based on reasonable cause

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 multiple 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 tax liability during the audit period 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.

20. Finally, the fraud penalty is improper because it is based solely on the large amount of tax due and also because there is no intent to defraud since Petitioner maintained and provided interstate sales documentation to the Department during the audit.

ANSWER: Although paragraph 20 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 20.

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

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 By: Michael Coveny (312) 814-6697

Respectfully Submitted,

 LISA MADIGAN
 Illinois Attorney General



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 25, 2016.



Michael Coveny,
Assistant Attorney General