

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

DERSE, INC.,)	
)	
Petitioner,)	
v.)	No. 16 TT 30
)	Chief Judge James 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, and for its Answer to Petition (“Petition”), hereby states as follows:

A. Jurisdiction and Venue

1. This timely petition involves a Notice of Tax Liability ("NTL") that assesses an amount in excess of \$15,000 in tax, penalty and interest under a tax identified in Section 1-45 of the Tax Tribunal Act.

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

2. Derse accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

ANSWER: Paragraph 2 is not an allegation of material fact but a statement of Petitioner’s belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

B. Facts Common to all Counts

1. The Parties

a. Petitioner Derse

3. Derse is a corporation that maintains its principal office at 3800 West Canal Street, Milwaukee, Wisconsin.

ANSWER: The Department admits the allegations contained in paragraph 3.

4. Derse carries on the business begun in 1948 by The Derse Company, a sign painting business founded by James F. Derse in the back of his mother's Milwaukee garage. Derse is now comprised of 475 employees in six full-service divisions, through which Derse drives client programs in 50 countries. Derse's business is to bring a smarter approach to trade shows, auto shows, marketing environments, and marketing events with capabilities that include: (i) strategic planning; (ii) portfolio planning; (iii) engagement training, (iv) accountability assessment; (v) iQ lead collection; (vi) experiential marketing; (vii) 3D / 2D / multimedia design; (viii) fabrication; (ix) program management; (x) project management; (xi) rental; (xii) warehousing; (xiii) international projects and partnerships; and (xiv) on-site labor.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 and therefore neither admits or denies the allegations.

5. Derse maintains six full-service facilities operating on the same platform, capable of pulling resources and people, as workloads demand, in: (1) Las Vegas, Nevada; (2) Dallas, Texas; (3) Waukegan, Illinois; (4) Milwaukee, Wisconsin; (5) Atlanta, Georgia; and (6) Pittsburgh, Pennsylvania.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 and therefore neither admits or denies the allegations.

6. Derse has the resources-including design, fabrication, program management, logistics and warehousing-to coordinate programs of any size, in 5,000 shows per year between 500 clients.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 and therefore neither admits or denies the allegations.

7. Derse's collective expertise of experiential, architectural, multimedia and strategic professionals strives to turn a client's exhibit into an immersion that promotes the client's brand and business.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7 and therefore neither admits or denies the allegations.

b. Respondent IDOR

8. The Department is an executive agency authorized, among other functions, to administer and enforce the provisions of the Illinois Retailers' Occupation Tax Act, and the Illinois Use Tax Act. 20 ILCS 2505/2505-25; 20 ILCS 2505/2505-90.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provisions set forth or referred to in paragraph 8 and states such provisions speak for themselves.

2. Derse's Trade Show Exhibit Manufacture, Sales and Related Services

9. Derse's services with respect to exhibits it designs and manufactures are separately priced and negotiated for even though the services may relate to the same exhibit or trade show.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 and therefore neither admits or denies the allegations.

10. Derse does not bundle or package multiple services into a single price, so manufacturing, transportation by third parties to trade-show locations, logistics services, set-up and other on-site services, transportation by third parties from trade-show locations, and storage, cleaning, and refurbishing of exhibits, etc. are separately bid and negotiated.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 and therefore neither admits or denies the allegations.

11. The sale and pricing of Derse's construction and other services are not contingent on, and not on account of, Derse's customer acceptance or declination of any of the services offered by Derse.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 and therefore neither admits or denies the allegations.

12. Derse manufactures trade show exhibits and "permanent installs" at its facilities throughout the United States, including in Waukegan, Illinois.

ANSWER: The Department objects to the term "permanent installs" as vague. The Department admits trade show exhibits were manufactured at the Waukegan, IL and Milwaukee, WI locations but is without knowledge or information sufficient to confirm or deny activities performed at the remaining four locations.

13. A purchasing customer may use a trade show exhibit at multiple trade shows in multiple locations.

ANSWER: The Department admits the allegations contained in paragraph 13.

14. Derse customers have the option to separately agree for Derse to arrange transport for their exhibit to various locations after a trade show, or to provide or contract with a third party for transportation to their chosen location.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 and therefore neither admits or denies the allegations.

15. Derse's customers may use their trade show exhibit at multiple trade shows before needing to provide storage for their exhibit until its next use.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 and therefore neither admits or denies the allegations.

16. If not agreed to at the time of the initial sale of the exhibit, Derse customers may decide at any time after the sale of the exhibit whether Derse will store their exhibit in between uses of the exhibit and, if desired, may designate the location of storage.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 and therefore neither admits or denies the allegations.

17. After Derse sells a trade show exhibit, except as provided by contract with Derse's customer, and then only pursuant to such contract terms, Derse has no control over a trade show exhibit sold to a customer once the exhibit is purchased by the customer.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 and therefore neither admits or denies the allegations.

18. In addition to the sale of the trade show exhibit, Derse also builds custom crates to safely transport the various components of the exhibit to its destinations. The custom crates are separately priced and paid for by Derse's customer, and are reused by Derse pursuant to the services agreement with the customer when the disassembled exhibit is returned to its destined storage location. The customer's custom crates for its trade show exhibits continue to be reused during the life of the exhibit. If damaged or if needed as a result of ordinary wear and tear, the customer's custom crates are refurbished by Derse at a charge to the customer to allow the customer's continued use of the trade show exhibit.

ANSWER: The Department admits the allegations contained in paragraph 3.

19. Derse's standard shipping terms dictate that prices are F.O.B. Shipping Point unless otherwise noted. Under most circumstances, Derse's exhibits are transported via contract carrier such that possession of the exhibit transfers to the customer at the location of first delivery. Transportation of an exhibit to a trade show may be arranged by either Derse or the purchasing customer.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 19 and therefore neither admits or denies the allegations.

20. Because the cost of assembly and set-up of an exhibit can cost several thousand dollars, a customer's first inspection of a completed trade show exhibit occurs upon the delivery of the exhibit at its first delivery destination where it is first assembled and positioned.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 and therefore neither admits or denies the allegations.

21. Typical billing for trade show exhibits requires payment of a 50% deposit for Derse to begin its construction, with the remaining amount due from Derse's customer within the agreed upon credit terms (e.g., 30 days) after the delivery of the trade show exhibit. Payment terms may vary based on the customer's credit history or profile.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 and therefore neither admits or denies the allegations.

22. A customer's trade show exhibit returned to a Derse facility for storage undergoes a pull, prep, and receive service to clean the exhibit for its next show, remove and store any graphic arts on the exhibit that may be reused or replaced upon its next delivery, all at a charge to the customer as a separate service from the agreed storage charge.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 and therefore neither admits or denies the allegations.

23. During the course of its use, a trade show exhibit may be returned to several Derse facilities for interim storage, based on the trade show itinerary contemplated for the exhibit.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 and therefore neither admits or denies the allegations.

a. Derse's Trade Show Exhibit Tax Compliance

24. Derse charged the tax on the customer's purchase of the trade show exhibit that is applicable in the State or locality to which the trade show exhibit will be first transported and delivered.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24 and therefore neither admits or denies the allegations.

25. Derse did not charge Illinois Service Occupation Tax on exhibits manufactured in Illinois and transported and first delivered outside Illinois because the sale of the item was for delivery to the purchaser outside Illinois and thus qualified for the so-called "interstate commerce exemption" offered by the Service Occupation Tax Act.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegation that Derse failed to charge Illinois Service Occupation Tax on all exhibits, therefore neither admits nor denies such allegations. However, the Department denies the allegation that such transactions were not taxable.

26. Derse did not charge Illinois use tax on its separately negotiated charges to customers for temporary storage in Illinois of trade show exhibits purchased by Derse customers.

ANSWER: The Department admits the allegations contained in paragraph 26.

b. Derse's Special Order Transactions

27. Derse custom builds certain items for certain particular customers' needs, to the specifications of the customers, which renders the items of use by and value to only to the purchasing customer.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 27 and therefore neither admits or denies the allegations.

28. Derse charged Illinois Service Occupation Tax on the cost of materials incident to the custom build service for any exhibits transported and delivered to the customer in Illinois.

ANSWER: The Department denies the allegations contained in paragraph 28.

c. Derse's Contractor Transactions

29. Derse built and installed custom show cases attached to the Illinois building structure of a particular customer.

ANSWER: The Department denies the allegations contained in paragraph 29.

30. The custom show case is not capable of being removed from the building structure of the customer without destroying its functionality for further use.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30 and therefore neither admits or denies the allegations.

31. Derse charged Illinois Service Occupation Tax on the cost of materials incident to its custom construction and installation of the show case.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 31 and therefore neither admits or denies the allegations.

C. The Controversy

32. The IDOR conducted a sales and use tax audit of Derse for the tax periods July 1, 2010 through December 31, 2012.

ANSWER: The Department admits the allegations contained in paragraph 32.

33. On December 17, 2015, the Department issued a Notice of Tax Liability ("NTL") to Derse Inc. assessing Tax in the amount of \$276,078.00, Excess Tax and Excess 911 Surcharge in the amount of \$7,280.00, Late Payment Penalty in the amount of \$21,487.00, and interest in the amount of \$26,786.00, for a total assessment amount of \$331,631.00.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit A and states such document speaks for itself.

1. Trade Show Exhibits

34. The Department disallowed Derse's use of the interstate commerce exemption under the Service Occupation Tax Act.

ANSWER: The Department admits that it disallowed some of the deductions Derse claimed under the interstate commerce exemption.

35. Service Occupation Tax Act, in pertinent part, provides as follows:

Sec. 3-45. Interstate commerce exemption. No tax is imposed under this Act upon the privilege of engaging in a business in interstate commerce or otherwise when the business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 35 and states such provision speaks for itself.

36. The wording of the "interstate commerce" exemption in the Service Occupation Tax Act is identical to the wording of the same exemption in the Retailers' Occupation Tax Act, at 35 ILCS 120/2-60.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provisions set forth or referred to in paragraph 36 and states such provisions speak for themselves.

37. Neither the interstate commerce exemption of the Retailers' Occupation Tax Act or that of the Service Occupation Tax Act make the exemption of the retailer or a serviceman contingent on the purchaser never returning the purchased item to Illinois.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provisions set forth or referred to in paragraph 37 and states such provisions speak for themselves.

38. The only requirement in the Retailer's Occupation Tax Act that a retailer must verify is that a purchaser who takes delivery or receipt of the purchased item in Illinois will solely use the item outside when the purchase is made by a purchaser who holds a permit issued by the IDOR for "centralized purchasing" in Illinois. 35 ILCS 120 /2-5(38); 35 ILCS 115/3-5(26).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 38 and states such provision speaks for itself.

39. The Illinois Use Tax Act provides an exemption for persons that acquire property outside of Illinois and bring it to Illinois for temporary storage before transporting it for use solely outside Illinois [35 ILCS 105 / 3-55(e)] and for persons who obtain a permit from the Department to make centralized purchasing and temporarily store in Illinois property purchased in Illinois before transportation and use of the property solely outside Illinois. 35 ILCS 105/3-55(j).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provisions set forth or referred to in paragraph 39 and states such provisions speak for themselves.

40. No Illinois occupation or use tax statute requires that a retailer making a sale of tangible personal property for delivery to a purchaser outside of Illinois establish or otherwise agree that the purchased item never return to Illinois as a precondition of claiming the interstate commerce exemption under an Illinois occupation or use tax statute.

ANSWER: Although paragraph 40 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 40.

41. The Department's Service Occupation Tax Act regulations, in pertinent part, provide as follows:

The serviceman does not incur [SOT] liability on property which he resells as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in [Illinois] to a point outside [Illinois], not to be returned to a point within Illinois, provided that such delivery is actually made. Nor does the tax apply to property which the serviceman resells as an incident of a sale of service under an agreement by which the serviceman, by carrier (when the carrier is not also the purchaser) or by mail, delivers the property from a point in [Illinois] to a point outside of [Illinois], not to be returned to a point within [Illinois]."

86 Ill. Admin. Code § 140.501(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 41 and states such regulation speaks for itself.

42. The Department erroneously deprived Derse of the statutory interstate commerce exemption, by disregarding Derse's customers' separately negotiated storage services and, notwithstanding the sale of the trade show exhibits to Derse customers, continuing to treat Derse as if it had an owner's possession and control of the delivered trade show exhibits.

ANSWER: Although paragraph 42 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 42.

43. The Department's regulation § 140.501(b) requirement that tangible personal property sold by a serviceman for delivery to a purchaser outside Illinois, not to return to a point within Illinois, is extraneous to the terms of the Service Occupation Tax Act, and it exceeds the scope of the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and the Use Tax Act, none of which require that the tangible personal property be transferred in the retail transaction be transferred solely for use outside Illinois, not to be returned to a point within Illinois, as a condition to qualifying for the statutory interstate commerce exemption.

ANSWER: Although paragraph 43 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 43.

44. The taxpayer in *Exhibits, Inc. v. Sweet*, 303 Ill. App. 3d 423 (1999), which applied the Department's regulation § 140.501(b) notwithstanding that certain of its terms exceed the scope of the statute it administers, as a condition of the sale of exhibits contracted at the time of sale for the purchaser to store the exhibits in Illinois.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 44 and state such case law speaks for itself.

45. Unlike the taxpayer in *Exhibits, Inc. v. Sweet*, Derse does not condition its design, manufacture and sale of trade show exhibits on an agreement that the purchaser store the exhibit in Illinois between uses at trade shows, and Derse customers may, and do, choose to transport or store exhibits on their own or through a third-party independent contractor, or may at any later date after sale choose to contract with Derse for transportation and storage for one or more intervals between trade shows.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 45 and therefore neither admits or denies the allegations.

46. Like the taxpayer in *Honeywell v. Illinois Department of Revenue*, 366 Ill. App. 3d 187 (2006), in which the Department's regulation § 140.501(b) was also applied despite certain of its

terms exceeding the scope of the Service Occupation Tax, Derse's transfer of tangible personal property to its customers outside of Illinois should not be subject to Service Occupation Tax.

ANSWER: Although paragraph 46 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 46.

47. Despite effectively treating Derse as the owner of the trade show exhibits notwithstanding their sale to Derse's customers, the Department took the inconsistent position of denying to Derse a credit against the Service Occupation Tax on the transactions on which Derse properly paid tax to the States to which the trade show exhibits were first delivered.

ANSWER: Although paragraph 47 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 47.

48. Based on the Department's position of denying a credit against the Service Occupation Tax for taxes legally owed to and paid to another state or local taxing jurisdiction, Derse would have to charge both Illinois Service Occupation Tax and tax based on the first delivery destination of the exhibit as neither jurisdiction would allow a credit for tax paid to the other, which is inconsistent and inequitable in the context of interstate commerce.

ANSWER: Although paragraph 48 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 48.

2. Special Order Transactions

49. The Department erroneously applied Retailers' Occupation Tax to the full selling price of items that Derse custom built to the specifications of its customers and which were of use and value only to Derse's customer, and therefore assessed tax on Derse's gross receipts in excess of its cost of materials on which Derse paid Service Occupation Tax.

ANSWER: Although paragraph 49 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 49.

3. Contractor Transactions

50. The Department's Retailers' Occupation Tax regulations, in pertinent part, provide as follows:

c) Construction Contractors--When Not Liable For Tax

A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures)

incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate. (See also Section 130.2075 of this Part.)

86 Ill. Admin. Code § 130.1940(c)(1).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 50 and states such regulation speaks for itself.

51. The Department erroneously assessed Retailers' Occupation Tax on the selling price of custom showcases built into and permanently attached to the customer's real estate, contrary to the Department's regulation and applicable examples thereof. See 86 Ill. Admin. Code § 130.1940(c)(1).

ANSWER: Although paragraph 51 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 51.

Count I

52. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-51 as if fully set forth herein.

53. The Department's assessment is erroneous and contrary to law because, among other reasons:

Trade Show Exhibits

- (a) It misapplies portions of the Department's regulation § 140.501(b) which would result in no tax liability because the tangible personal property was transferred to the customer outside of Illinois and tax was paid on the transaction outside of Illinois.
- (b) It misapplies *Exhibits, Inc. v. Sweet* to erroneously assess tax on transactions in which, contrary to the facts in *Exhibits, Inc. v. Sweet*, the storage of trade show exhibits was not a condition for, and contemporaneously agreed with, a serviceman's sale of the trade show exhibits.
- (c) It relies on a portion of the Department's regulation § 140.501(b) which exceeds the scope of the Service Occupation Tax by improperly and without authority denying Derse the benefit of the interstate commerce exemption on sales of trade show exhibits shipped to customers and first delivered for use at trade shows outside Illinois. Derse's customer's contract with Derse for the shipment and storage of show exhibits, separately from the

sale of the exhibits, and thus exercise control over their exhibits at all times by directing pursuant to such separate contracts.

- (d) Even if correct in its assessment of tax liability, it erroneously denies Derse credit for taxes paid to other states on trade show exhibits delivered to purchasers in such states.

Special Order Transactions

- (e) It erroneously applies the Retailers' Occupation Tax Act to sales of service in which the transfer of tangible personal property is incident to the design and manufacture to the custom specifications of the purchaser which render the items purchased of use and value solely to the purchaser.

Contractor Transactions

- (f) It erroneously, and contrary to its own regulation and examples, applies the Retailers' Occupation Tax Act to the selling price of items designed, manufactured and permanently affixed to the purchaser's real estate in a sale of service by Derse.
- (g) It included the real property transaction within a sample of Derse's sales of tradeshow exhibits and tradeshow exhibit services despite the fact that Derse is not ordinarily in the business of performing real property work. The specific transaction discussed was not one sold in the ordinary course of business by Derse and thus should not have been included within a sample of transactions that were sold within the ordinary course of business.

ANSWER: Although paragraph 53 and all its subparts are not allegations of material facts but legal conclusions, the Department denies the allegations/legal conclusions contained in paragraph 53 and all its subparts.

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

Count II

54. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-51 as if fully set forth herein.

55. The Department employed sampling and estimation methods to conduct its audit, which are not provided for in statute and regulations.

ANSWER: Although paragraph 55 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 55.

56. The Department's use of sampling and estimation methods was not necessary nor reasonable as there were no records necessary to the audit that were unavailable or incomplete to justify the Department's use of sampling methodologies in lieu of a detailed audit.

ANSWER: The Department denies the allegations contained in paragraph 56.

57. The Department initially developed a sampling plan discussed with Derse that selected a certain number of invoices to review as part of the audit. However, the Department deviated from the sampling plan by selecting and incorporating additional invoices to review and include within the sample, which effectively went beyond the scope of the sampling procedures and the sample itself as originally agreed to between the Department and the taxpayer.

ANSWER: The Department denies the allegations contained in paragraph 57. ?????

58. The Department's use of sampling and estimation methods was factually flawed and produced statistically unsound results as it did not properly account for the fact that each "sales order" of Derse's may be reflected in multiple invoices.

ANSWER: The Department denies the allegations contained in paragraph 58.

59. The Department's use of flawed sampling and estimation methods was not authorized by Derse.

ANSWER: The Department denies the allegations contained in paragraph 59.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count II of this matter;
- B) That the Department's Notices of Tax Liability be determined to be correct; and
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT III

(In the Alternative)

60. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-51 as if fully set forth herein.

61. The Department imposed a late-payment penalty pursuant to Section 3-3(b-20)(2) of the UPIA.

ANSWER: The Department admits the allegations contained in paragraph 61.

62. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, "shall not apply if the taxpayer shows that his failure to ... pay tax at the required time 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 statutory provision set forth or referred to in paragraph 62 and states such provision speaks for itself.

63. Derse made a good faith effort to determine the correct reporting of its sales and use tax liability through the exercise of ordinary business care and prudence.

ANSWER: Although paragraph 63 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 63.

64. Derse acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

ANSWER: Although paragraph 64 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 64.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count III of this matter;
- B) That the Department's Notices of Tax Liability be determined to be correct; and
- 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

STATE OF WISCONSIN

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AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

I, ED SHOLTES, being first duly sworn, deposes and says that I am an employee of the Illinois Department of Revenue, that I have read the foregoing Department's Answer to Petitioner's Petition to the Illinois Independent Tax Tribunal, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that I lack the required personal knowledge to either admit or deny paragraphs 4-7, 9-12, 14-17, 19-25, 27, 30-31 and 45 pursuant to 735 ILCS 5/2-610(b) and Tribunal Rule 5000.310(b)(3). I hereby certify that the statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief.



Ed Sholtes
Revenue Auditor
Illinois Department of Revenue

Date: 6-10-16

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:

Michael J. Wynne / Adam Beckerink
Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606

By email attachment to mwynne@reedsmith.com and abeckerink@reedsmith.com on June 10, 2016.



Michael Coveny,
Assistant Attorney General