

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

PRINCE GEORGE INC.,)	
)	
Petitioner,)	
)	
v.)	No. 16-TT-39
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Defendant.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

PARTIES

1. Petitioner is an Illinois corporation formerly located at 20 East Ogden Avenue, Naperville, Illinois, 60563, and can be reached at 847-322-0895.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within 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 information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a

material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 3777-1698.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within 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: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

NOTICE

5. On February 3, 2016, the Department issued a Notice of Tax Liability letter ("Notice") to the Petitioner for a sales/use tax audit for the tax periods of July 1, 2012 to July 31, 2015 (which is when the business closed). The Notice reflects tax due of \$58,926, E911 Surcharge of \$212, late payment penalties of \$11,827, late filing penalties of \$32, and interest of \$2,950, for a total amount due of \$73,947. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits that the Notice is attached as Exhibit 1 and further states that Exhibit 1 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: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

7. This 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: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

BACKGROUND

8. Petitioner was a petroleum retailer.

ANSWER: Denied. As stated in the audit file, the Petitioner is a gas station with a small mini-mart and three service bays.

9. Defendants audited Petitioner’s books and records for the tax periods July 1, 2012 to July 31, 2015 (which is when the business closed).

ANSWER: Although the audit file indicates that the taxpayer stated that the business closed on July 31, 2015, public information is not consistent with this statement.

Therefore, the Department denies this statement. Otherwise, the Department admits the factual allegations contained within paragraph 9.

10. The audit liability contained in the Notice is based eight (8) adjustments made by the Department during the audit.

ANSWER: The basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 10.

11. Petitioner disagrees with six (6) of the audit adjustments including the adjustment for Service Materials (on-site mechanic was a separate (unrelated) business), the phone card adjustment (items sold with tax included and then reported of the ST-1 the same way), high rate/low rate allocation adjustment (overstated), gasohol deduction adjustment (math error), underreported receipts adjustment (overstated), and exempt organizations adjustment (improper based on documents provided during the audit).

ANSWER: Paragraph 11 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 11.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 11 as though fully set forth herein.

13. On audit, the Department calculated the audit liability by making eight (8) adjustments, but six (6) of those adjustments are erroneous (see 11.).

ANSWER: Paragraph 13 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 13.

14. By applying this audit methodology, the Department unreasonably inflated Petitioner's audit liability.

ANSWER: Paragraph 14 does not contain material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 14.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability including interest and penalties.
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

COUNT II

All penalties should be abated based on reasonable cause.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 14 as though fully set forth herein.

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

ANSWER: The Department admits the factual allegations contained within in Paragraph 16.

17. 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: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself. To the extent an answer is required for this Petition, denied.

18. 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. Admin. Code 00.400(b).

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

19. 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: Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

20. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales tax liability during the audit period.

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 20.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability including interest and penalties.
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: March 17, 2016

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
Seth Jacob Schriftman
Special Assistant Attorney General

Seth Jacob Schriftman
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-1591
seth.schriftman@illinois.gov