

ILLINOIS INDEPENDENT TAX TRIBUNAL

GRAPHIC PACKAGING HOLDING COMPANY))	
AND SUBS,)	
)	Case No. 16-TT-63
Petitioner,)	
)	
v.)	
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

ANSWER

NOW COMES the Illinois Department of Revenue (“Department”), through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to the Petition of Graphic Packaging Holding Company and Subs (“Petitioner” or “Graphic”) respectfully pleads as follows:

PARTIES

1. Petitioner, Graphic Packaging Holding Company and Subs (collectively, “Graphic”), is a publicly traded corporation duly organized and existing under the laws of Delaware.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the statement in Paragraph 1 and demands strict proof thereof.

2. Petitioner maintains its principal place of business at 1500 Riveredge Parkway, Suite 100, Atlanta, GA 30328.

ANSWER: Petitioner’s address is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(E) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. Petitioner’s telephone number is (770) 240-7200.

ANSWER: The information in Paragraph 3 is required by Rule 310(a)(1)(A) and is

not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

4. Petitioner's tax identification number is 26-0405422.

ANSWER: The information in Paragraph 3 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

5. Petitioner is represented by Sutherland Asbill & Brennan LLP attorney Sheldon Kay, who is located at 999 Peachtree Street, NE, Suite 2300, Atlanta, GA 30309-3996 and can be reached at (404) 853-8965 or sheldon.kay@sutherland.com.

ANSWER: The Department admits the statement in Paragraph 5.

6. Respondent, Illinois Department of Revenue ("Department"), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

ANSWER: The Department admits that the Department is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*), which is relevant to the legal claims raised in Taxpayer's petition. The term "revenue laws" is ambiguous and the Department therefore denies all other allegations related thereto.

JURISDICTION

7. On January 25, 2016, the Department issued the Notice to Graphic assessing a total balance due of \$2,137,430.00 in tax, \$213,743.00 in penalty, and \$55,337.74 in interest for the tax year ended December 31, 2014. A copy of the Notice is attached as **Exhibit A**.

ANSWER: The Department admits the allegation in Paragraph 7.

8. This Tribunal has original jurisdiction over all Department determinations reflected in Notices of Deficiency where the amount at issue exceeds \$15,000.00, exclusive of penalties and interest. 35 Ill. Comp. Stat. 1010/1-45.

ANSWER: Paragraph 8 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

BACKGROUND

9. Graphic is headquartered in Atlanta, Georgia.

ANSWER: The Department admits the allegation in Paragraph 9.

10. Graphic designs and manufactures packaging for commercial products including beverages and packaged food.

ANSWER: The Department admits the allegation in Paragraph 10.

11. Graphic owns multiple paper mills and paper converting operations across the United States, including paper mills located in Macon, Georgia and West Monroe, Louisiana.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 11 and demands strict proof thereof.

12. Graphic files a unitary combined Illinois Corporation Income and Replacement Tax Return, Form IL-1120.

ANSWER: The Department admits that Petitioner filed a 2014 Form IL-1120 Corporation Income and Replacement Tax Return for the tax year ending December 31, 2014. The term “files” is ambiguous; the Department therefore denies all allegations related thereto.

13. In January, 2009 Graphic began producing and using a mixture of “Black Liquor”¹ and diesel fuel in its recovery boilers at the Macon and West Monroe paper mills.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 13 and demands strict proof thereof.

14. That same year, Graphic filed Federal Form 637, *Application for Registration (For Certain Excise Tax Activities)*, to be registered by the Internal Revenue Service (“IRS”) as a producer of alternative fuel mixtures.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 14 and demands strict proof thereof.

15. Graphic received its registration from the IRS, effective May 18, 2009.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 15 and demands strict proof thereof.

16. Graphic then began claiming payments on Federal Form 8849, *Claim for Refund of Excise Taxes*, on Schedule 3 of the form (Certain Fuel Mixtures and Alternative Fuel Credit).

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 16 and demands strict proof thereof.

17. Graphic claimed the federal benefits as alternative fuel mixture excise tax payments under I.R.C. § 6427(d).

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 17 and demands strict proof thereof.

¹ Black Liquor is a liquid by-product of Graphic’s manufacture of pulp in the paperboard production business.

18. In 2009, Graphic claimed a total of \$147,212,461 in alternative fuel credits and received payments equaling that amount pursuant to I.R.C. § 6427(e).

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 18 and demands strict proof thereof.

19. Graphic included the alternative fuel credit payments on its timely filed original 2009 Federal Form 1120, *U.S. Corporation Income Tax Return*, as gross income under I.R.C. § 61.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegations in Paragraph 19 and demands strict proof thereof.

20. Because federal taxable income is the starting point for calculating Illinois net income, Graphic also included the alternative fuel credit payments within its gross income on its timely filed original 2009 Form IL-1120.

ANSWER: The Department admits that Form IL-1120, Line 1, for the 2009 and 2014 tax years calls for “Federal taxable income from U.S. Form 1120, Line 30.” The Department lacks sufficient knowledge to either admit or deny how Petitioner determined its self-reported gross income on its 2009 Form IL-1120. To the extent the allegations in Paragraph 20 imply that Petitioner correctly calculated its Illinois net income for the 2014 tax year, the Department denies all allegations related thereto.

21. Subsequent to the filing of its 2009 Federal and Illinois corporate income tax returns, the IRS issued guidance conclusively stating that alternative fuel credit payments under I.R.C. § 6427(e) are not items of gross income under I.R.C. § 61. *See* I.R.S. Chief Couns. Mem. 201342010 (Aug. 29, 2013). A copy of the Memorandum is attached as **Exhibit B**.

ANSWER: The Department admits that Petitioner attached to its Petition as Exhibit B an IRS Office of Chief Counsel Memorandum, which expressly states that such document “may not be used or cited as precedent,” and that said document speaks for itself. The Department denies all other allegations related thereto.

22. Based on the I.R.S. Chief Counsel Memorandum, Graphic filed a Form 1120X, *Amended U.S. Corporation Income Tax Return*, to exclude from income the \$147,212,461 in alternative fuel credit payments it included in federal taxable income on its originally filed 2009 federal return.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegation in Paragraph 22 and demands strict proof thereof.

23. This reduction to Graphic’s 2009 federal taxable income necessitated a corresponding reduction in its 2009 Illinois base income.

ANSWER: The Department denies the allegations in Paragraph 23.

24. Accordingly, in 2013 Graphic timely filed a 2009 IL-1120-X, *Amended Corporation Income and Replacement Tax Return*. Graphic’s exclusion of its alternative fuel credit payments from federal taxable income reduced Graphic’s Illinois base income, which resulted in an Illinois net loss of \$95,686 for 2009.

ANSWER: Whether Petitioner’s 2009 IL-1120-X was timely filed is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department lacks sufficient knowledge to either admit or deny the remaining allegations in Paragraph 24 and demands strict proof thereof. To the extent an answer is required, the Department denies the allegations in Paragraph 24.

25. The 2009 Illinois amended return increased Graphic's pre-existing Illinois net operating loss ("NOL") carryover balance to \$75,166,397, to be utilized in future years.

ANSWER: The Department denies the allegation in Paragraph 25.

26. Graphic did not utilize its NOL carryover balance in the 2011 tax year and capped at \$100,000 its NOL carryover deduction for tax years 2012 and 2013.

ANSWER: The Department denies the allegation in Paragraph 26.

27. In its timely filed amended 2014 Form IL-1120, Graphic reported \$22,438,179 in Illinois combined net income but utilized its Illinois NOL carryover balance, which resulted in no tax being due.

ANSWER: Whether Petitioner's 2014 Form IL-1120 was timely filed is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that Petitioner self-reported on 2014 Form IL-1120, Line 34, \$22,438,179 in Illinois base income and \$0 net income on Line 39. However, the Department denies the accuracy of Petitioner's self-reported net income and therefore denies Petitioner's erroneous conclusion that "no tax" was due.

28. The NOL utilized on Graphic's 2014 Illinois return was generated in tax years prior to 2009.

ANSWER: The Department denies the allegations in Paragraph 28.

PROCEDURAL HISTORY

29. The Department reviewed Graphic's income tax return for tax years ended December 31, 2014 ("Audit Period").

ANSWER: The term "reviewed" is vague and ambiguous; the Department therefore denies all allegations related thereto. Moreover, to the extent Paragraph 29 implies that

the Department audited Petitioner's 2014 IL-1120, the Department denies such allegation.

30. Graphic responded to all information requests in a timely and sufficient manner.

ANSWER: The term "responded" and the phrases "all information requests" and "sufficient manner" are vague and ambiguous; the Department therefore denies all allegations related thereto.

31. As a result of the review, on January 25, 2016, the Department issued the Notice to Graphic assessing a total balance due of \$2,137,430.00 in tax, \$213,743.00 in penalty, and \$55,337.74 in interest for the tax year ending December 31, 2014.

ANSWER: The phrase "the review" is vague and ambiguous; the Department therefore denies all allegations in Paragraph 31 related thereto. The Department admits that it issued the Notice at issue to Petitioner assessing \$2,137,430.00 in tax, \$213,743.00 in penalty, and \$55,337.74 in interest for the tax year ending December 31, 2014.

32. In the Notice, the Department assessed additional tax by disallowing all NOLs claimed by Graphic on its 2014 Form IL-1120.

ANSWER: The Department admits that Petitioner had \$0 NOLs available for the 2014 tax year and the Department therefore disallowed Petitioner's claimed amount of \$22,438,179. The Department admits that the application of \$0 NOLs to Petitioner's 2014 tax year Illinois base income of \$22,499,260 ultimately contributed to the underlying tax due of \$2,137,430. The Department denies all other allegations in Paragraph 32.

33. The Notice contained no other adjustments to Graphic's income.

ANSWER: The Notice evidences an Illinois base income lower than that reported by Petitioner, based ultimately on the Department's disallowance of \$679,801 reported by Petitioner on Line 21 for Other Subtractions; the Department therefore denies the allegation in Paragraph 33.

34. The Notice states that the Department disallowed the NOL because "We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly."

ANSWER: The Department admits that Petitioner has accurately reproduced a portion of the information provided in the Notice to the Petitioner.

35. The Notice failed to provide any explanation as to why the Department adjusted NOLs that did not relate to the 2009 alternative fuel credit payments.

ANSWER: The Department denies the allegation in Paragraph 35.

FIRST COUNT

36. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 35 as if set forth fully herein.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 35, as if fully set forth herein.

37. The Illinois Income Tax applies to corporate taxpayers' "net income." 35 ILCS 5/201(a).

ANSWER: The Department admits that Petitioner has paraphrased a portion of 35 ILCS 5/201(a). The Department denies all other allegations in Paragraph 37 related thereto.

38. Illinois defines “net income” as the taxpayer’s “base income” which is allocable to Illinois, less the standard exemption allowed by 35 ILCS 5/204 and the net loss deduction allowed by 35 ILCS 5/207.

ANSWER: Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

39. A taxpayer’s “base income” means its federal ordinary income after certain modifications, including application of any federal NOL. 35 ILCS 203(b)(E).

ANSWER: Paragraph 39 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

40. Therefore, the starting point for calculating taxable Illinois net income is a taxpayer’s federal taxable income after applying available NOLs, and other special deductions.

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 40.

41. Because the 2009 alternative fuel credit payments were not included within gross income for federal income tax purposes, they are not included within gross income for Illinois corporate income tax purposes and thus not taxable.

ANSWER: Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 41.

42. If a taxpayer’s Illinois net income results in a loss, for tax years on or after December 31, 2003 Illinois allows the loss as an NOL carryover to each of the twelve taxable years following the year of such loss. 35 ILCS § 207(a)(3).

ANSWER: Paragraph 42 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 42.

43. Illinois disallowed the use of carryover NOLs for taxable years ending December 31, 2010 and prior to December 31, 2012 and capped at \$100,000 the NOL carryover deduction for tax years ending December 31, 2012 and prior to December 31, 2014. *See* 35 ILCS 5/207(d).

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 43.

44. NOL carryover deductions disallowed in years 2010 – 2013 are not counted for purposes of the twelve year carryover period provided for in 35 ILCS 5/207(a). 35 ILCS 5/207(d).

ANSWER: Paragraph 44 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 44.

45. On its originally filed 2009 federal return, Graphic included in its gross income \$147,212,461 of alternative fuel credit payments it received from the federal government under I.R.C. § 6427(e).

ANSWER: The Department lacks sufficient knowledge to either admit or deny the statement in Paragraph 45 and demands strict proof thereof.

46. In 2013, the IRS conclusively stated that alternative fuel credit payments received pursuant to I.R.C. § 6427(e) does not constitute gross income under I.R.C. § 61. *See* I.R.S. Chief Couns. Mem. 201342010 (Aug. 29, 2013), **Exhibit B**.

ANSWER: The Department admits that Petitioner attached to its Petition as Exhibit B an IRS Office of Chief Counsel Memorandum, which expressly states that such document “may not be used or cited as precedent,” and that said document speaks for itself. The Department denies all other allegations related thereto.

47. Accordingly, Graphic filed an amended 2009 federal return to reduce its gross income by the amount of the 2009 alternative credit fuel payments it received but should not have included in gross income pursuant to the IRS Chief Counsel Memorandum.

ANSWER: The Department lacks sufficient knowledge to either admit or deny the allegation in Paragraph 47 and demands strict proof thereof.

48. Graphic properly amended its 2009 Illinois return to reflect its reduction in federal taxable income, which in turn reduced its Illinois net income from \$144,879,030 to an Illinois net loss of \$95,686.

ANSWER: The Department denies the allegations in Paragraph 48.

49. Therefore, rather than utilizing its pre-existing NOL carryover balance in 2009, Graphic added to its NOL balance the \$95,686 Illinois net loss, pursuant to 35 ILCS 5/207(a).

ANSWER: The Department denies the allegations in Paragraph 49.

50. Graphic did not utilize its NOL carryforward balance in the 2010 tax year and capped at \$100,000 its NOL carryforward in tax years 2012 and 2013, pursuant to 35 ILCS 5/207(d).

ANSWER: Irrespective of NOL carryforward value, the Department admits that, pursuant to 35 ILCS 5/207(d), Petitioner did not utilize its NOL deduction carryforward balance in the 2010 tax year and that the NOL carryforward balance for the 2010 and

2011 tax years was capped at \$100,000. The Department denies all other allegations in Paragraph 50.

51. The Illinois statutory NOL carryover restrictions applied only to tax years ending prior to December 31, 2014.

ANSWER: The Department admits that 35 ILCS 5/207(d) permitted no NOL carryover deductions “for any taxable year ending after December 31, 2010 and prior to December 31, 2012” and limited NOL carryover deductions to “\$100,000 for any taxable year ending on or after December 31, 2012 and prior to December 31, 2014” The Department denies all other allegations in Paragraph 51.

52. Therefore, Graphic properly utilized its NOL carryover balance under the statutory twelve-year limitation for the tax year ending December 31, 2014.

ANSWER: The Department denies the allegations in Paragraph 52.

53. Graphic’s NOL deductions disallowed under Illinois’ temporary NOL carryover restriction do not count for purposes of the twelve year limitation under 35 ILCS 5/207(a).

ANSWER: Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

54. Therefore, the Department incorrectly disallowed Graphic’s utilization of its NOL carryover balance on its 2014 Illinois return.

ANSWER: Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies all allegations in Paragraph 54.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. holding that Petitioner is not entitled to the Illinois NOL deduction carryover it seeks for the 2014 tax year;
- b. finding that the Notice of Deficiency is correct as issued;
- c. ordering judgment in favor of Department and against Petitioner; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

SECOND COUNT

55. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if set forth fully herein.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 54, as if fully set forth herein.

56. The United States and Illinois Constitutions guarantees that no person shall be deprived of property without due process of law. U.S. Const. amend. V; Ill. Const. Art. 1, § 2.

ANSWER: The Department admits that Petitioner has accurately paraphrased a portion of the sources of law cited in Paragraph 56. The Department denies all other allegations related thereto.

57. Due Process protections limit the police and taxing power of a government when “that power is arbitrarily and unreasonably used.” *Crocker v. Finley*, 99 Ill.2d 444, 456, 459 N.E.2d 1346, 1352 (Ill. 1984); *Illinois Gamefowl Breeders Assoc. v. Block*, 75 Ill.2d 443, 453, 389 N.E.2d 529 (Ill. 1979).

ANSWER: Paragraph 57 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

58. The Department's Notice only states in its "Reason for deficiency" that it "did not receive the information we requested regarding [Graphic's] Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction."

ANSWER: The Department admits that the "Reason for deficiency" portion of the Notice at issue provides that the Department "did not receive the information we requested regarding [Graphic's] Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly." The Department denies all other allegations related thereto.

59. Presumably, the Department seeks verification of the IRS' acceptance of Graphic's 2009 federal amended return, which provides the basis for Graphic's 2009 Illinois amended return and the adjusted NOL carryover balance.

ANSWER: Petitioner's presumption is incorrect; the Department therefore denies the allegations in Paragraph 59.

60. However, the adjustment to Graphic's gross federal income due to the exclusion from gross income of the amounts received from the alternative fuel credits did not create a refund from the IRS for 2009 since Graphic already had a NOL. The adjustment merely increased the federal NOL. Therefore, Graphic was not required under federal law to amend its 2009 federal return and the IRS will not issue any acceptance or confirmation of the filed 2009 federal amended return.

ANSWER: Paragraph 60 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 60.

61. The Department's requests, therefore, are arbitrary and unreasonable because they seek documentation that does not and cannot exist and is impossible for Graphic to produce.

ANSWER: The Department denies the allegations in Paragraph 61.

62. Further, the Notice provides no explanation or legal justification for the denial of the utilization of NOLs for tax periods prior to 2009 leaving Graphic to guess as to the basis of the Department's assessment.

ANSWER: The Department denies the allegations in Paragraph 62.

63. Because the Department arbitrarily and unreasonably denied Graphic's 2014 NOL without explanation or legal justification, Graphic has been stripped of its Due Process rights.

ANSWER: Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegations in Paragraph 63.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. holding that Petitioner's Due Process rights, to whatever extent they exist, have not been violated;
- b. finding that the Notice of Deficiency is correct as issued;
- c. ordering judgment in favor of Department and against Petitioner; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

THIRD COUNT

64. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 63 as if set forth fully herein.

ANSWER: The Department incorporates and repeats its Answers to Paragraphs 1 through 63, as if fully set forth herein.

65. The Department assessed penalties for the Audit Period in the amount of \$213,743.00.

ANSWER: The Department denies that an audit occurred for the 2014 tax year, the year at issue in the Notice. The Department admits that it assessed \$213,743 in penalties for the 2014 tax year, as evidenced in the Notice at issue.

66. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8.

ANSWER: Petitioner's statement in Paragraph 66 has oversimplified 35 ILCS 735/3-8 and in doing so has produced an incorrect statement; the Department therefore denies all allegations in Paragraph 66.

67. Under Illinois regulations, "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 his proper tax liability and to file and pay his proper liability in a timely fashion." Ill. Admin. Code tit. 86, § 700.400(b).

ANSWER: The Department admit Ill. Admin. Code 86 § 700.400(b) provides that a reasonable cause determination is "made on a case by case basis taking into account all pertinent facts and circumstances." The Department further admits that Petitioner has accurately reproduced in Paragraph 67 a portion of Ill. Admin. Code 86 § 700.400(b).

The Department denies all other allegations in Paragraph 67 related thereto.

68. A taxpayer is considered to have made a good faith effort to determine, file, and pay his tax liability if "he exercised ordinary business care and prudence in doing so." Ill. Admin. Code tit. 86, § 700.400(c).

ANSWER: The Department admits that Petitioner has accurately reproduced in Paragraph 68 a portion of Ill. Admin. Code 86 § 700.400(c). The Department denies all other allegations in Paragraph 68 related thereto.

69. A taxpayer's filing history is also considered when determining whether there is reasonable cause. Ill. Admin. Code tit. 86, § 700.400(d).

ANSWER: The Department admits the statement in Paragraph 69.

70. Graphic followed the statutory requirements set forth in federal and Illinois tax law to determine its 2014 Illinois corporate income tax liability.

ANSWER: Paragraph 70 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

71. Pursuant to federal law and Illinois statutory requirements, Graphic properly carried forward and applied its NOLs to 2014.

ANSWER: The Department denies the allegations in Paragraph 71.

72. The Department attempts an arbitrary denial of Graphic's 2014 NOL without explanation or legal justification.

ANSWER: The Department denies the allegations in Paragraph 72.

73. Graphic made a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion.

ANSWER: Paragraph 73 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

74. Graphic exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.

ANSWER: Paragraph 74 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

75. Graphic has a long history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.

ANSWER: Paragraph 75 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

76. The penalties imposed by the Department must be abated for reasonable cause.

ANSWER: Paragraph 76 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, the Department denies the allegation in Paragraph 76.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. holding that Petitioner has not demonstrated reasonable cause as prescribed in 35 ILCS 735/3-8; and
- b. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
State of Illinois Attorney General

By: /s/ Jonathan M. Pope
One of the Department's Attorneys

Rebecca Kulekowskis
Jonathan M. Pope
Special Assistant Attorneys General
Illinois Department of Revenue
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(312) 814-3318
(312) 814-3185

Dated: May 9, 2016

ILLINOIS INDEPENDENT TAX TRIBUNAL

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AND SUBS,))	
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)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE,))	
)	
Respondent.))	

**AFFIDAVIT OF KEVIN ANGUISH
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Kevin Anguish, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Public Service Administrator.
3. I reviewed Petitioner's IL-1120, Corporation Income and Replacement Tax Return, for the tax year ending December 31, 2014.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition Paragraphs 1, 11, 13-20, 22, 24, 45, and 47.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Kevin Anguish
Public Service Administrator
Illinois Department of Revenue

Date: 5/5/16

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CERTIFICATE OF SERVICE

Jonathan M. Pope certifies that he is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that he is authorized to make this certificate; that on May 9, 2016 before the hour of 5:00 p.m. (C.S.T.) he served a true and exact copy of the foregoing instrument entitled **ANSWER** on Petitioner by sending the same as an attachment to an e-mail message addressed to Petitioner at its designated e-mail address:

Mr. Jonathan Feldman: Jonathan.Feldman@sutherland.com

 /s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General

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Dated: May 9, 2016

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NOTICE OF FILING BY E-MAIL

TO: Mr. Jonathan Feldman
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309
(404) 853-8000
Jonathan.Feldman@sutherland.com

PLEASE TAKE NOTICE that on May 9, 2016, Respondent filed by e-mail with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601, its **ANSWER** in the above captioned matter.

/s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General

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Dated: May 9, 2016