ILLINOIS INDEPENDENT
TAX TRIBUNAL

MIR KHAN and SAIRA KHAN	)	
	)	
Petitioners,	)	
v.	)	**No. 16 TT 70**
	)	**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. Petitioners are individuals located at 124 Horizon Circle, Carol Stream, Illinois, 60188, and can be reached at 630-440-1900

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 708-784-322 or jdickett@aol.com.

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

3. Petitioners' Taxpayer (Account) ID is XXX-XX-XXXX (redacted).

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 February 10, 2016, the Department issued three (3) Notice of Deficiency letters to Petitioners for Form IL-l 040 ("Notices") for the tax years 2007, 2008, and 2009. The tax amount in the Notices exceeds $15,000 for each year. The Notices are 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 documents speaks for themselves.

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. One of the Petitioners (Mir Khan) is the owner of an S corporation

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

9. Defendant audited the S corporation's books and records for sales tax for the Tax periods 2007 to 2009, and, based on that audit, the Department projected the individual income tax assessments at issue herein without providing the proper allowance for cost of goods sold for the corporation.

ANSWER: The Department admits that it audited the S Corporation's books and records for sales tax for the period(s) 2007 to 2009 and that it projected Petitioner's proposed individual income tax liability for those tax years but otherwise denies the remaining allegations contained in paragraph 9.

COUNT I

Defendant's audit methodology overstates Petitioners' liability

10. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-9 as if fully set forth herein.

11. The Department assessed the tax liabilities contained in the Notices based on the sales tax audit results without providing the proper allowance for cost of goods sold.

ANSWER: The Department admits that it audited the S Corporation's books and records for sales tax for the period(s) 2007 to 2009 and that it projected Petitioner's proposed individual income tax liability for those tax years but otherwise denies the remaining allegations contained in paragraph 11.

12. By applying the Department's corporate sales tax audit results to the business income tax Notices herein, the Department drastically and unreasonable inflated Petitioners' individual income tax liability.

ANSWER: Although paragraph 12 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 12.

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 Notices of Deficiency 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>

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-12 as if fully set forth herein.

14. In its Notices, the Department assessed late filing and late payment penalties.

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 14 and state that such documents speak for themselves.

15. 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 statutory provision set forth or referred to in paragraph 15 and state such provision speaks for itself.

16. 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, and 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: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 16 and state such regulation speaks for itself.

17. Petitioners exercised ordinary business care and prudence when they reasonably determined its business income liability during the audit periods and clearly did not use the Department's proposed sales tax audit results.

ANSWER: Although paragraph 17 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 16.

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 Deficiencies 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
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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
James E. Dickett, Ltd.
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on May 23, 2016.

Michael Coveny,
Assistant Attorney General