

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

UD INC.,)	
)	
Petitioner,)	
)	
v.)	No. 16-TT-83
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian F. Barov
)	
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 located at 334 Saint Paul Boulevard, Carol Stream, Illinois, 60188, and can be reached at 847-909-3798.

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

3. Petitioner’s Taxpayer Account ID is 40616347.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310(a)) 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 April 18, 2016, the Department issued a Notice of Tax Liability letter for Form RC-28, Cigarette Revenue Audit Report (“Notice”) to Petitioner for an audit of the tax periods October 30, 2011 to August 31, 2013. The Notice reflects \$427,722 in tax due, \$213,246 in fraud penalty, \$85,544 in late payment penalty, and \$29,851 in interest, for a total of \$756,363. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits that the Notice is attached to the Petition and that the Notice 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 is a cigarette wholesaler with customers located throughout the country.

ANSWER: The nature of the Petitioner 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 8.

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

ANSWER: Denied. The audit period was for October 2011 through August 2013.

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 nature of the Petitioner 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.

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 incorporates and repeats its answers to Paragraphs 1 through 10 as though 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 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 12.

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

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 13.

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 and other factors.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

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

ANSWER: The Department admits the factual allegations contained within in Paragraph 15.

16. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 16 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.

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. Admin. Code 00.400(b).

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. To the extent an answer is required for this Petition, denied.

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. Admin. Code 700.400(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. Petitioner exercised ordinary business care and prudence during the audit tax periods because Petitioner maintained documentation to support all of its interstate sales.

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. The Department denies the legal conclusions/allegations 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: 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: May 20, 2016

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
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