ILLINOIS INDEPENDENT
TAX TRIBUNAL

PROFUEL FIVE, INC.,	)	
	)	
Petitioner,	)	**Judge Brian F. Barov**
	)	
v.	)	**No. 16-TT-92**
	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
	)	
Respondent.	)	

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:

INTRODUCTION

1. The Department issued 7 "Notice[s] of Tax Liability" to the Petitioner on May 5, 2015 assessing sales tax deficiencies, late payment penalty increases, negligence penalties and interests for the following periods in the following amounts, all of which the Petitioner disputes; (copies of these notices are attached to the Petition marked as **Exhibits 2 to 8);**

PERIOD	AMOUNT	
7/1/2011 to 12/31/2013	$236,486.36	Exhibit 2
1/31/14	$7,460.27	Exhibit 3
2/28/14	$7,402.00	Exhibit4
3/31/14	$5,232.76	Exhibit 5
4/30/14	$8,186.62	Exhibit 6
5/31/14	$9,563.50	Exhibit 7
6/30/14	$11,070.28	Exhibit 8
	$285,401.79	

ANSWER: The Department admits that Exhibits 2 through 8 speak for themselves and that the Notice of Tax Liability amounts in the aggregate of tax, interest, and penalties is correct. Otherwise the Department admits the factual allegations contained within Paragraph 1.

2. On July 20, 2015, the Department issued 7 "Final Notice[s] of Tax Due" for the alleged above liabilities. *See* **Exhibits 9 to 15.**

ANSWER: The Department admits that Exhibits 9 through 15 speak for themselves. Otherwise the Department admits the factual allegations contained within Paragraph 2.

3. The Department granted Petitioner a late hearing on the May 5, 2015 Notices of Tax Liability on April 7, 2016. A copy of the letter granting the late hearing issued by the Honorable Terry D. Charlton, Chief Administrative Law Judge, Illinois Department of Revenue is attached as **Exhibit 1.** We have timely filed this Petition within the 60-day period granted by Judge Charlton.

ANSWER: The Department admits that Exhibit 1 speaks for itself. Otherwise the Department admits the factual allegations contained within Paragraph 3.

4. The Petitioner is a corporation that operated a gas station located at 105 S. Chicago Street, Geneseo, Illinois 61254. Its Taxpayer Account Number is 3965-4478. The Petitioner is currently out of business at that location, but is still an active Illinois corporation with a mailing address of P.O. Box 101, Gladstone, Illinois 61437. Its telephone number is 319-572-4667.

ANSWER: The Department denies the factual allegations contained within the first sentence of Paragraph 4. The Department admits the factual allegations contained within the second sentence of Paragraph 4. The Department is without sufficient information to either admit or deny the factual allegations contained within the third and fourth sentences of Paragraph 4.

BACKGROUND AND RELEVANT FACTS

5. Petitioner timely filed monthly Illinois sale tax returns for all of the months of its operation, including the months of July 2011 to June 2014.

ANSWER: The Department admits the factual allegations contained within Paragraph 5.

6. The Department commenced an audit of the Petitioner in 2014. The Petitioner did not engage an accountant or an attorney to represent it in this audit because the gas station was losing money. It relied on the station manager, Wendy Coravia, a 22-year old who had just taken over the job.

> **ANSWER:** The Department admits the factual allegations contained within the first sentence of Paragraph 6. The Department is without sufficient information to either admit or deny the factual allegations contained within the last two sentences of Paragraph 6.

7. The auditor asked Ms. Coravia for the station's z-tapes for the prior months' sales. She located z-tapes at the gas station for the previous 6 months and gave them to the auditor. The auditor asked for additional z-tapes and Ms. Coravia could not find any at the station.

> **ANSWER:** The Department objects to the characterization of the audit, contained within Paragraph 7, and denies the allegations within Paragraph 7 on that basis.

8. Petitioner was one of several gas stations owned by its principal stockholder, Mr. Sean Chinna, whose main office was in Burlington, Iowa. Z-tapes from all of his gas stations, including Petitioner's, were stored there after 6 months.

> **ANSWER:** The Department is without sufficient information to either admit or deny the factual allegations contained within Paragraph 8.

9. The auditor ignored the z-tapes that Petitioner provided to her. The auditor used some indirect method of calculating the sales tax. She never explained her indirect method to any representative of Petitioner, never provided the Petitioner with any written explanation of her analysis, and never identified any third party information sources that supported her analysis. Petitioner still does not know how she arrived at her sales figures.

> **ANSWER:** The Department objects to the characterization of the audit, contained within Paragraph 9, and denies the allegations within Paragraph 9 on that basis.

10. When the Petitioner received the "Notices of Tax Liability" on May 5, 2015, Mr. Chinna asked the Petitioner's tax preparer, Shital Mehta, for assistance. Mr. Mehta obtained several additional months of z-tapes from the Burlington, Iowa office and began preparing amended sales tax returns.

> **ANSWER:** The Department is without sufficient information to either admit or deny the factual allegations contained within Paragraph 10.

11. In June, 2015, the Petitioner filed 11 amended returns based on z-tapes covering the period January to November 2013. Mr. Mehta continued to work on others. The Department acknowledged receipt of these amended returns on June 5, 2014 and told the Petitioner that it referred the amended returns to the audit division.

> **ANSWER:** The Department is without sufficient information to either admit or deny the factual allegations contained within Paragraph 11.

12. On July 20, 2015, the Department issued "Final Notice[s] of Tax Due," assessing all of the taxes, penalty and interest reflected in the "Notices of Tax Liability" issued on May 5, 2015.

> **ANSWER:** The Department denies that the amounts in the Final Notices of Tax due were as reflected in the Notices of Tax Liability, since interest continued to accrue. Otherwise, the Department admits the factual allegations contained within Paragraph 12.

13. As a result of the July 20, 2015 Notices from the Department, the Petitioner stopped filing any further amended return.

> **ANSWER:** The Department is without sufficient information to either admit or deny the factual allegations contained within Paragraph 13.

APPLICABLE LAW

14. The Department issued "Final Notices of Tax Due" on July 20, 2015 **(Exhibit 9 to 15).** The statute of limitations, 35 **ILCS** 5/902, provides that "a notice of deficiency shall be issued not later than 3 years after the date the return was filed." The Department is barred from assessing

any tax liability for the periods July 2011 to and including June 2012 because those returns were filed prior to 3 years before the Department's notice of deficiency. 35 **ILCS** 5/905.

Further, the "Final Notices of Tax Due" received by the Petitioner refer only to the periods December, 2013 to June 2014. *See* **Exhibits 9 to 15.** It appears that the examining agent attempted to aggregate sales tax liabilities for prior periods in the period identified as "December 2013" **(Exhibit 9),** but the Notice says that the period is "December 2013," not "July 2011 to December 2013." The Department has failed to give the Petitioner proper notice of a tax due for any period prior to "December 2013" and therefore the alleged sales tax liabilities, late payment penalties, negligence penalties, and interest for the periods of July 2011 to and including November 2013 are barred by the statute of limitations.

The Petitioner also argues that the Department did not accurately determine the facts upon which it based any of its Notices of Proposed Tax Liability or Final Notices of Tax Liability.

> ANSWER: The Department admits the factual allegations contained within the first sentence of the first paragraph of Paragraph 14. Further, the second two sentences of the first paragraph of Paragraph 14 contain legal conclusions, not material allegations of fact. Therefore, no answer regarding these two sentences is required. Further answering, both of these provisions are contained within the Income Tax Act (35 ILCS 5/901, *et seq.*). The Notices of Tax Liability at Issue and Final Notices of Tax Due relate to a Retailers' Occupation Tax audit. The Retailers' Occupation Tax Act ("ROTA") is contained within 35 ILCS 120/1, *et. seq.* The applicable statute of limitations time periods involved for the Notices of Tax Liability are contained within 35 ILCS 120/4. Section 4 provides that the Department and the Taxpayer may consent in writing to extend the statute of limitations before the applicable statute expires. In this matter, the audit file shows that a Statute of Limitations waiver was executed before December 31, 2014 to extend the time period to asses tax, penalties, and interest by the Notices of Tax Liability until June 30, 2015. This waiver to extend the statute of limitations was completed for the benefit of the Taxpayer. The Notices of Tax Liability at issue were issued prior to June 30, 2015. So, there is no statute of limitation error. To the extent a further answer is required, the allegations in the first paragraph of Paragraph 14 are affirmatively denied.
>
> In regard to second paragraph of Paragraph 14, the Department states that the Final Notices of Tax Due speak for themselves. Further, Exhibit B is a Notice of Tax Liability which states that the reporting period was July 1, 2011 through December 31, 2013.

Otherwise, the second paragraph of Paragraph 14 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. Further, the Notices of Tax Liability at Issue and Final Notices of Tax Due relate to a Retailers' Occupation Tax audit. The Retailers' Occupation Tax Act ("ROTA") is contained within 35 ILCS 120/1, *et. seq.* The applicable statute of limitations time periods involved for the Notices of Tax Liability are contained within 35 ILCS 120/4. Section 4 provides that the Department and the Taxpayer may consent in writing to extend the statute of limitations before the applicable statute expires. In this matter, the audit file shows that a Statute of Limitations waiver was executed before December 31, 2014 to extend the time period to asses tax, penalties, and interest by the Notices of Tax Liability until June 30, 2015. This waiver to extend the statute of limitations was completed for the benefit of the Taxpayer. The Notices of Tax Liability at issue were issued prior to June 30, 2015. So, there is no statute of limitation error. To the extent a further answer is required, the allegations in the second paragraph of Paragraph 14 are affirmatively denied.

In regard to the third paragraph of Paragraph 14, the Department states that the third paragraph of Paragraph 14 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations in the second paragraph of Paragraph 14 are affirmatively denied.

ERROR 1

15. The auditors used an unknown indirect method of calculating the sales tax liability of the Petitioner for the months of July 2011 to June 2014. Her method is inconsistent with available z-tapes, and is inaccurate, arbitrary and capricious. The auditor has not provided petitioner with any information about her methodology and has not identified any third party sources supporting her calculations. Her indirect method of proving sales tax liabilities should be disregarded by this Court.

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. Further, Paragraph 15 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations contained within Paragraph 15 are affirmatively denied.

ERROR2

16. It does not appear that the auditor gave, or properly calculate, the Petitioner credit for the sale of biofuels.

> **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. Further, Paragraph 16 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations contained within Paragraph 16 are affirmatively denied.

ERROR 3

17. If this Court determines that the months of January 2013 to November 2013 are not barred by the statute of limitations, the Department erred in not accepting the Petitioner's amended sales tax returns for those periods.

> **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. Further, Paragraph 17 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations contained within Paragraph 17 are affirmatively denied.

ERROR 4

18. The Petitioner used a computerized recording device (the Ruby System) connected to all of its cash registers to calculate precisely its total sales and sales tax. This system produces z-tapes that accurately reflect sales on a daily basis. The Department erred in not using those z-tapes to calculate Petitioner's monthly sales and sales tax due.

> **ANSWER:** The Department is without sufficient information to either admit or deny the factual allegations contained within the first two sentences of Paragraph 18. As for the third sentence, 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. Further, the third sentence of Paragraph 18 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations contained within Paragraph 18 are affirmatively denied.

ERRORS

19. To the extent that any month that the Court determines is not either barred by the statute of limitations or for which the Petitioner cannot no longer locate z-tapes, a proper indirect method of establishing the applicable sales tax for that month for this gas station is to determine an average range of sales based on months verified by z-tapes.

> **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. Further, Paragraph 19 contains legal conclusions, and not material allegations of fact. Therefore, no further answer is necessary. To the extent a further answer is required, the allegations contained within Paragraph 19 are affirmatively denied.

CONCULSION AND RELIEF REQUESTED

WHEREFORE, the Department respectfully requests this Tribunal:

a. Deny each prayer for relief in the Petition;

b. Find that the Department's Notices correctly reflect 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: June 15, 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

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THE ILLINOIS DEPARTMENT OF REVENUE,	)	
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	)	
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AFFIDAVIT OF DANA Y. DIAMOND
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF ILLINOIS

COUNTY OF ROCK ISLAND

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, *735 ILCS 5/1-109,* I, Dana Diamond, 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 Revenue Auditor.

3. I compiled the audit information regarding the taxes asserted in the Notices of Tax Liability subject of Taxpayer's Petition.

4. I lack the personal knowledge required to either admit or deny some or all of the allegations contained in Paragraphs 4, 6, 8, 10, 11, 13, and 18 of Taxpayer's Petition.

5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Dana Y. Diamond
Dana Y. Diamond
Revenue Auditor

06.15.16
Date