

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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<b>O G D C INC.,</b>	)	
	)	
Petitioner,	)	
	)	Case No. 16-TT-98
v.	)	
	)	Brian F. Barov
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	Administrative Law Judge
	)	
Respondent.	)	

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**ANSWER**

NOW COMES the Illinois Department of Revenue (“Department”), through its attorney, Lisa Madigan, Illinois Attorney General, by Jonathan Pope, Special Assistant Attorney General, and for its Answer to the Petition of O G D C Inc. (“Petitioner”) respectfully pleads as follows:

**PARTIES**

1. Petitioner is an Illinois corporation located at 3700 West 111<sup>th</sup> Street, Chicago, Illinois, 60655, and can be reached at 847-224-3863.

**ANSWER:** The Department admits the allegations 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 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).

**ANSWER:** The Department admits the allegations in Paragraph 2.

3. Petitioner’s Taxpayer ID number is 45-2544314.

**ANSWER:** The Department admits the allegations 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 allegations in Paragraph 4.

### **NOTICE**

5. On March 17, 2016, the Department issued three (3) Notice of Deficiency letters for Form IL-1120, Corporation Income and Replacement Tax Return (“Notice” or “Notices”), to Petitioner for the tax years 2011, 2012, and 2013. The Notices, in aggregate, reflect more than \$15,000 in tax due, plus penalties and interest. The Notices are attached hereto as Exhibit 1.

**ANSWER:** The Department admits the allegations in Paragraph 5.

### **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 in Paragraph 6.

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:** Petitioner’s assertion that the Tribunal has jurisdiction over this matter is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Admin. Code § 5000.310).

### **BACKGROUND**

8. Petitioner is a petroleum retailer located on the south side of Chicago.

**ANSWER:** The Department admits that Petitioner sells gasoline, among other

products, including but not limited to, food products, soft drinks, sundries, cigarettes, candy, newspapers, magazines, and other common convenience items. The Department admits that Petitioner is located in Chicago, Illinois. The Department denies all other allegations in Paragraph 8.

9. Defendant audited Petitioner's books and records for sales tax for the periods 2011 to 2013, and, based on that audit, the Department projected the business income tax assessments at issue herein without providing the proper allowance for cost of goods sold.

**ANSWER:** The Department admits that "it audited Petitioner's books and records for sales tax for the periods 2011 to 2013 [the "Tax Years at Issue"], and, based on that audit, the Department projected the business income tax assessments at issue herein." The Department denies that it failed to provide "the proper allowance for cost of goods sold." The Department denies all other allegations related thereto in Paragraph 9.

### **COUNT I**

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

**ANSWER:** The Department incorporates and repeats its Answers to Paragraphs 1 through 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 denies the allegation 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 Petitioner's corporate income tax liability.

**ANSWER:** Paragraph 12 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 12.

**WHEREFORE,** the Department prays that the Tribunal enter an order that;

- a. finds the Notices correct as issued;
- b. enters judgment for the Department and against Petitioner on all prayers for relief;  
and
- c. grants such further relief as this Tribunal deems appropriate under the circumstances.

## **COUNT II**

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

**ANSWER:** The Department incorporates and repeats its Answers to Paragraphs 1 through 12, as if fully set forth herein.

14. In its Notices, the Department assessed late penalties.

**ANSWER:** The Department admits that, pursuant to statute, it assessed late-filing and late-payment penalties for the Tax Years at Issue.

15. 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:** The Department admits the allegation in Paragraph 15.

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 that Petitioner has accurately reproduced a select portion of 86 Ill. Admin. Code Sec. 700.400(b). The Department denies all other allegations in Paragraph 16 related thereto.

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

**ANSWER:** Paragraph 17 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 17.

**WHEREFORE,** the Department prays that the Tribunal enter an order that;

- a. finds the Notices correct as issued;
- b. enters judgment for the Department and against Petitioner on all prayers for relief;  
and
- c. grants such further relief as this Tribunal deems appropriate under the circumstances.

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Respectfully Submitted,

**LISA MADIGAN**  
State of Illinois Attorney General

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Dated: June 9, 2016