

ILLINOIS INDEPENDENT
TAX TRIBUNAL

S & H TOBACCO, INC.,)	
)	
Petitioner,)	
v.)	No. 16 TT 112
)	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. Petitioner is an Illinois corporation located at 2744 11th Street, Rockford, Illinois, 61109, and can be reached at 815-608-5493.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Petitioner is represented by The Law Offices of 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. Petitioner's Taxpayer (Account) ID is 3951-9211.

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 May 12, 2016, the Department issued a Notice of Tax Liability letter to Petitioner ("Notice") for a sales/use tax audit for the tax periods of July 1, 2012 to June 30, 2015. The Notice reflects \$99,410 in tax liability, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document referred to in paragraph 5 and state that such document speaks for itself.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 101011-1 to 35 ILCS 101011-100.

ANSWER: The Department admits the allegations contained 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: 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. Petitioner is a tobacco store located in Rockford, Illinois.

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

9. Defendants audited Petitioner's books and records for the tax periods July 1, 2012 to June 30, 2015.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, and at least one of the vendors provided purchase amounts far in excess of the actual invoices/purchases during the audit tax periods.

ANSWER: The Department admits that its proposed liability was based on projections, but affirmatively states that such projections were necessary due to

the lack of taxpayer's books and records and further such projections constituted the best available evidence of Petitioner's gross receipts. The remaining allegations are denied.

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 repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, and at least one of the vendors provided purchase amounts in excess of the actual invoices/purchases during the audit tax periods.

ANSWER: The Department admits that its proposed liability was based on projections, but affirmatively states that such projections were necessary due to the lack of taxpayer's books and records and further such projections constituted the best available evidence of Petitioner's gross receipts. The remaining allegations are denied.

13. By applying such audit methodology, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department and also because Petitioner's purchases were less than the amounts used by the Department to calculate the audit tax liability.

ANSWER: Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13.

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 Notice of Tax Liability be determined to be correct;
- C) That this Tribunal grant such other additional relief it deems just and proper

COUNT II

All penalties should be abated based on reasonable cause

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

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

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

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document referred to in paragraph 15 and state that such document speaks for itself.

16. Illinois law provides that 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 existence, force and effect, at all relevant times of the statute set forth or referred to in paragraph 16 and state such statute speaks for itself.

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, 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.

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: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 18 and state such regulation speaks for itself.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated selling prices nor did it use overstated purchases, so the audit tax liability as corrected will no longer warrant imposition of the fraud penalty as well.

ANSWER: Although paragraph 19 is not an allegation of material fact but a legal conclusion, the Department denies the allegation/legal conclusion contained in paragraph 19.

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 Tax Liability 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

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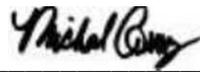
By 
Michael Coveny,
Assistant Attorney General

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
Law Offices of James E. Dickett
600 Hillgrove Avenue / Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on July 8, 2016



Michael Coveny,
Assistant Attorney General