

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

M W AUTOBODY & REPAIR, INC., a/k/a)	
M W AUTO BODY & REPAIR, INC.,)	
Petitioner)	
v.)	16-TT-130
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to the petition (the “Petition”) of M W Autobody & Repair, Inc., also known as M W Auto Body & Repair, Inc. (“Petitioner”), respectfully pleads as follows:

INTRODUCTION

1. The Notice was issued by the Department on December 15, 2015 for the years July 1, 2011 through December 31, 2014. A copy of said notice is attached hereto and marked as “Petitioner’s Exhibit A”.

ANSWER: A copy of the Notice of Tax Liability issued by Respondent to Petitioner, for the reporting periods of July 2011 through December 2014 (the “Periods”), dated December 15, 2015 and with Letter ID CNXXXX448X1256X4, attached to the Petition as the first page of the unmarked exhibit thereto (the “Notice”), is 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. Adm. Code 5000.310), but to the extent an answer is required, Respondent admits issuing the Notice and states that the Notice speaks for itself. Respondent denies any remaining allegations in Paragraph 1.

2. Said Notice assessed Sales Tax Liability in the amount of \$47,571.00 leaving an unpaid balance of \$44,808.00.

ANSWER: Respondent admits the allegations in Paragraph 2.

3. Said Notice assessed a Late Payment Penalty Increase in the amount of \$10,358.00 leaving an unpaid balance of an even amount.

ANSWER: Respondent admits the allegations in Paragraph 3.

4. Said Notice assessed a Late Filing Penalty Increase in the amount of \$25,093.00 leaving an unpaid balance of an even amount.

ANSWER: Respondent admits the allegations in Paragraph 4.

5. Said Notice assessed Interest in the amount of \$2,938.95 leaving an unpaid balance of an even amount.

ANSWER: Respondent admits the allegations in Paragraph 5.

6. The petitioner is an Illinois corporation with its principal place of business located at 6313 S. Archer Rd., Summit, Illinois 60501; with its telephone number (708) 856-2296; The Taxpayer Account Number is: 5521-3928.

ANSWER: Respondent admits the allegations in Paragraph 6.

BACKGROUND AND RELEVANT FACTS

7. The petitioner timely filed its Illinois Sales Tax Returns for the periods of July 1, 2011 through December 31, 2014.

ANSWER: Respondent denies the allegations in Paragraph 7.

8. Thereafter, the petitioner became the subject of an audit by the Illinois Department of Revenue.

ANSWER: Respondent admits that the vehicle sales tax audit at issue in this matter was initiated on March 25, 2014. Respondent denies the remaining allegations in Paragraph 8.

9. The petitioner operates a business that purchases used cars at auction in the State of Illinois, repairs them if needed and then re-sells them to individuals and other wholesalers, who are sometimes Illinois residents and sometimes out of state residents.

ANSWER: Respondent admits that Petitioner operates a business in Illinois that purchases used cars, repairs them, and resells them, and that at least some of Petitioner's sales are to individuals. Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 9.

10. The petitioner became the subject of an audit which did not reveal any failure to report sales or pay taxes, but accused the petitioner of failing to file ST-556 returns and levied huge penalties in the amount of \$85,960.95.

ANSWER: Respondent admits that the vehicle sales tax audit at issue in this matter determined that Petitioner failed to file or timely file certain Forms ST-556, and that penalties were assessed based on such failure. Respondent denies the remaining allegations in Paragraph 10.

ERRORS

11. The petitioner states that the Illinois Department of Revenue committed the following errors:

- A. The taxpayer is not required to file an ST-556 when selling vehicles to another wholesaler, and should not have been assessed tax and penalty in these instances.
- B. The taxpayer should not have to be assessed tax and penalties on sales tax that should have been collected because the buyer lived in a reciprocal state, but proved to have

been actually paid in their home state. The auditor should not have disallowed competent evidence that the buyers actually paid the tax in their home state.

- C. The tax liability was issued improperly because it was issued prior to the audit being closed and while the investigation was ongoing. Furthermore, it was never communicated to the accountant handling the audit.
- D. The taxpayer [sic] was never allowed to properly contest the auditors [sic] findings.

ANSWER: Respondent denies the allegations in Paragraph 11.

WHEREFORE, Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 1) is correct as issued;
- c. find that Respondent's assessment of the penalties contained in the Notice (as that term is defined in the Answer to Paragraph 1) was appropriate and conformed with the law;
- d. order judgment in favor of Respondent and against Petitioner; and
- e. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Daniel A. Edelstein
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Petitioner)	
v.)	16-TT-130
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

AFFIDAVIT OF LISA FOX
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS § 5/1-109, I, Lisa Fox, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue (“Respondent”).
2. My current title is Revenue Auditor.
3. I reviewed the vehicle sales tax audit of M W Autobody & Repair, Inc., also known as M W Auto Body & Repair, Inc. (“Petitioner”), for the reporting periods of July 2011 through December 2014.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in the Petitioner’s petition, Paragraph 9.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



Lisa Fox
Revenue Auditor
Illinois Department of Revenue

Date: 9/26/16