

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MOBILE PALLET TRUCK INC.)	
Petitioner,)	
v.)	16-TT-151
ILLINOIS DEPARTMENT)	
OF REVENUE)	Judge Brian F. Barov
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:

JURISDICTION, VENUE AND PARTIES

1. Petitioner brings this action pursuant to Rule Section 5000.310 of the Tax Tribunal 86 Ill.Admin. Code § 5000.310.

ANSWER: Admitted.

2. The Petitioner is Mobile Pallet Truck Inc., 3750B Laird Road, Unit 2 and 3, Mississauga, Ontario, Canada L5L OAS.

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. The Department also adds that various Notices found in the audit file indicate that the above listed address may be incorrect.

3. The Petitioner's identification number is Account ID 09453-30176.

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 in Paragraph 3.

4. The Department audited Petitioner and issued to Petitioner certain Notices of Tax Liability which are attached as Exhibit A and which involve the periods January 2009 through

2012 (Periods at Issue). (The Notice for the May 22, 2011 transaction is missing but Notice of Proposed Tax Liability is included.)

ANSWER: The Department admits the factual allegations contained within Paragraph 4.

5. The Tax Tribunal has jurisdiction over this matter pursuant to the Illinois Tax Tribunal Act of 2012, 35 ILCS 1010/1-1 et seq.

ANSWER: Paragraph 5 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 the Illinois Tax Tribunal Act of 2012, and states that the Act speaks for itself.

6. Petitioner is a corporation now doing business in Illinois.

ANSWER: Admitted.

7. The Notices of Tax Liability herein (see paragraph 4) were mailed to an address of a broker whose name appeared on import documentation of goods supplied by Petitioner.

ANSWER: The Department is without sufficient information to either admit or deny the factual allegations contained within Paragraph 7.

8. Petitioner requested a discretionary hearing with regard to the Notices of Tax Liability.

ANSWER: Admitted.

9. By letter of May 26, 2016, Petitioner was granted a discretionary hearing (attached as Exhibit B).

ANSWER: Admitted.

10. By Order of August 1, 2016, Petitioner was granted until September 1, 2016 to file a corrected petition.

ANSWER: Admitted.

STATEMENT OF FACTS

11. The tax involved herein is the Illinois Use Tax or Retailers' Occupation Tax imposed under the Illinois Use Tax Act, 35 ILCS 105/1 et seq. and Illinois Retailers' Occupation Tax Act 35 ILCS 120/1 et seq.

ANSWER: The Department clarifies and admits that this matter involves tax imposed under the Illinois Use Tax Act. Otherwise, the factual allegations contained within Paragraph 11 are denied.

12. Petitioner maintains its commercial domicile in Mississauga, Ontario Canada.

ANSWER: The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 12, and demands verifying information.

13. Petitioner operates a business which manufactures and distributes material handling transport, lift and warehouse equipment.

ANSWER: The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 13, and demands verifying information.

14. Petitioner is now registered with the Department under Illinois Business Tax Number 09453-30176 but during the Periods at Issue had no office, distribution house, sales house, warehouse or other place of business in Illinois.

ANSWER: The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 14, and demands verifying information.

15. Illinois imposes an occupation tax upon sales of tangible personal property equipment for use by the purchaser.

ANSWER: Paragraph 15 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.

16. During the Periods at Issue, Petitioner made sales for resale to purchasers inside the United States.

ANSWER: The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 16, and demands verifying information.

17. During the Periods at Issue, Petitioner made sales to non-Illinois customers for delivery outside Illinois.

ANSWER: The Department does not have sufficient information to either admit or deny the factual allegations contained within Paragraph 17, and demand verifying information.

COUNT I

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 17, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 17 as though fully set forth herein.

18. The Department obtained shipping and importation documents concerning property of Petitioner for the Periods at Issue.

ANSWER: Admitted.

19. The Department issued the Notices of Tax Liability seeking to assess additional use or retailers' occupation taxes against Petitioner in the amount of \$97,660.00 plus interest and penalty.

ANSWER: The Department clarifies and admits that this matter involves tax imposed under the Illinois Use Tax Act. Otherwise, the factual allegations contained within Paragraph 19 are denied. The amount of tax is \$97,663.00, as reflected in the Notices of Tax Liability. Further answering, penalties and interest are as stated in the attached Notices.

20. The Department asserted that the actions of Petitioner resulted in use tax or retailers' occupation taxes being due by Petitioner.

ANSWER: The Department clarifies and admits that this matter involves tax imposed under the Illinois Use Tax Act. Further answering, the taxes, interest, and penalties due are as indicated within the attached Notices of Tax Liability and the audit file. Otherwise, the factual allegations contained within Paragraph 20 are denied.

21. Petitioner is not a retailer in Illinois as to the wholesale sales portion of its business.

ANSWER: Paragraph 21 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, denied.

22. As a result of its determination, the Department calculated the use tax and retailers' occupation tax liability of Petitioner.

ANSWER: The Department clarifies and admits that this matter involves tax imposed under the Illinois Use Tax Act. Otherwise, denied. The determination occurred as stated in the audit file. Based on a lack of responsiveness by the Taxpayer of requested books and records, the auditor used his best judgment and information to determine the liability at issue. *See* 35 ILCS 120/5.

23. This calculation of Petitioner's use tax and retailers' occupation tax liability is not supported by the facts and is contrary to the law.

ANSWER: Paragraph 23 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 clarifies and admits that this matter involves tax imposed under the Illinois Use Tax Act. Further, based on a lack of responsiveness by the Taxpayer of requested books and records, the auditor used his best judgment and information to determine the liability at issue. *See* 35 ILCS 120/5. To the extent a further answer is required, denied.

24. Petitioner did not make sales at retail but rather made sales for resale.

ANSWER: Paragraph 24 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 a further answer is required, denied based on the information currently available to the Department.

25. Certain of the sales on the Notices of Tax Liability were property that was shipped to non-Illinois locations.

ANSWER: Based on the information currently available to the Department, denied. The determination occurred as stated in the audit file. Further, based on a lack of

responsiveness by the Taxpayer of requested books and records, the auditor used his best judgment and information to determine the liability at issue. *See* 35 ILCS 120/5.

26. Petitioner was not a retailer maintaining a place of business in Illinois during the Periods at Issue.

ANSWER: Paragraph 26 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 a further answer is required, denied based on the information currently available to the Department.

27. The values for the gross receipts used on certain of the Notices of Tax Liability are incorrect.

ANSWER: Paragraph 27 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. Further, based on a lack of responsiveness by the Taxpayer of requested books and records, the auditor used his best judgment and information to determine the liability at issue. *See* 35 ILCS 120/5. To the extent a further answer is required, denied.

28. There is an actual controversy between Petitioner and the Department concerning Petitioner's tax liability.

ANSWER: The Department objects to the term “actual controversy” as vague and ambiguous, and therefore denies the factual allegations contained within Paragraph 28.

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.

COUNT II

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 28, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 28 as though fully set forth herein.

29. The Notices of Tax Liability calculate penalty and interest.

ANSWER: Admitted.

30. Section 3-8 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-8 states:

No penalties if reasonable cause exists. The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability.

ANSWER: Paragraph 30 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, and states that the statute speaks for itself. To the extent a further answer is required, denied.

31. Petitioner was acting reasonably in not self-assessing or remitting Use Tax or Retailers' Occupation Tax for the Periods at Issue under existing regulations and rulings.

ANSWER: Paragraph 31 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 a further answer is required, denied.

32. Documentation was obtained of sales for resale and interstate shipping as was appropriate.

ANSWER: Denied. Based on a lack of responsiveness by the Taxpayer of requested books and records, the auditor used his best judgment and information to determine the liability at issue. *See* 35 ILCS 120/5.

33. Petitioner had reasonable cause not to pay the amounts in the proposed Notices of Tax Liability.

ANSWER: Paragraph 33 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 a further answer is required, denied.

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: September 23, 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

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MOBILE PALLET TRUCK INC.)	
Petitioner,)	
v.)	16-TT-151
ILLINOIS DEPARTMENT OF REVENUE)	
Respondent.)	Judge Brian F. Barov

**AFFIDAVIT OF RONALD MOLL
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

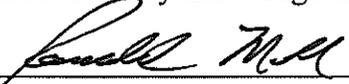
STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Ronald Moll, 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 7, 12, 13, 14, 16, and 17 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.



Ronald Moll
Revenue Auditor

9/23/16
Date