

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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CHICAGO AUTO SOURCE, INC.,	)	
	)	
Petitioner,	)	
v.	)	No. 16 TT 160
	)	Judge Brian F. Barov
	)	
ILLINOIS DEPARTMENT OF	)	
REVENUE,	)	
	)	
Respondent.	)	

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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, Chicago Auto Source, Inc., Petitioner is an Illinois corporation located at 6520 South Western Avenue, Chicago, Illinois 60636-2411, and can be reached at 708-923-1813.

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

2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg and Anne J. Kim of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or tcalandrielloC@dandgpc.com. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Anne J. Kim can be reached at 312-263-2200 or akim@dandgpc.com.

**ANSWER:** The Department admits the allegations contained in paragraph 2.

3. Petitioner's Illinois Business Tax number is 5566-8755.

**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.

### NOTICES

#### Retailers Occupation/Use Tax

5. On June 10, 2016, the Department issued a Notice of Tax Liability (the "NTL") to Petitioner assessing a total Retailers Occupation Tax/Use Tax ("ROT") liability of \$123,560.49 (including interest and penalties), covering the period April 15, 2011 through November 27, 2013 (the "period at issue"). The total liability consists of \$21,646 in tax due, \$38,723 in "Excess Tax Collected," \$51,968 in late payment penalties, \$9,052 in late filing penalties, and \$2, 171.49 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit A and 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 1010/1-1 to 35 ILCS 1010/1-100 *et seq.*

**ANSWER:** The Department admits the allegations contained in paragraph 6.

7. The 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 owns and operates a used auto dealership. The Department audited Petitioner's books and records for sales tax for the period at issue.

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

9. The liability contained in the NTL is based on the Department's review of a sample size of 41 of Petitioner's automobile transaction files ("Deal Jackets") and projection of the average tax underpayment, tax overpayment, and number of late filing and late payment occurrences therein out over the period at issue.

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

### **COUNT I**

#### **The Department's Audit Methodology Overstates Petitioner's Tax Liability, Penalties and Interest**

10. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 9 above as and for this paragraph 10.

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1-10 as if fully set forth herein.

11. The Department erred in determining Petitioner's ROT liability, liability for Excess Tax Collected, penalties and interest by virtue of the following: (i) the Department used an improper sample in calculating additional tax and penalties owed; (ii) the Department failed to review available Petitioner records; and (iii) the Department failed to consider that Petitioner's

customer base almost exclusively uses secondary financing for the purchase of vehicles, causing a delay in the funding of automobile purchases.

**ANSWER:** Although paragraph 11 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 11.

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

### Petitioner was Improperly Excluded From Participating in this Audit

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11, as and for this paragraph 12.

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1-11 as if fully set forth herein.

13. The Department's Form PI0-60 "Illinois Audit Information" provides that a taxpayer may represent itself in the audit, or may be represented by an employee, accountant, attorney, or any other person whom the taxpayer has authorized to represent it before the Department.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document referred to in Paragraph 13 and state that such document speaks for itself.

14. Petitioner is an Illinois corporation that at all relevant times has been 100 percent owned by Abdo Halawa. However, on information and belief Mr. Halawa was not made aware of the Department's audit of the period at issue until shortly before the Department reached the end of the audit. On information and belief, the Department consulted and conferred with several of

Petitioner's employees throughout the course of the audit, but did not obtain authorization to do so from Mr. Halawa in the form of an executed Form IL-2848 Power of Attorney or any other confirmation that such employees were authorized to represent Petitioner in the audit, and such employees were in fact not authorized to do so. Because Petitioner was deprived of a meaningful opportunity to participate in the audit, the NTL should be vacated.

**ANSWER:** The Department admits that Petitioner is an Illinois corporation, does not admit or deny that Petitioner is owned Abdo Halawa as that is not an allegation of material fact and as such no answer is required pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b). Otherwise, the Department denies the remaining factual allegations and/or legal conclusions of Paragraph 14.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Count II 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 III

#### All Penalties should be Abated for Reasonable Cause

15. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 14 as and for this paragraph 15.

**ANSWER:** The Department repeats and incorporates its answers to paragraphs 1-14 as if fully set forth herein.

16. In its NTL, the Department assessed failure to file and pay penalties totaling \$61,020.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit A and referred to in paragraph 16 and state that such document speaks for itself.

17. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 17 and state such provision speaks for itself.

18. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 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. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. See 86 Ill. Admin. Code 700.400(c).

**ANSWER:** The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 19 and state such regulation speaks for itself.

20. Petitioner's failure to timely file and pay its tax liabilities (to the extent of any liabilities sustained by the Tribunal) during the period at issue was due to reasonable cause warranting abatement of the late filing and payment penalties.

**ANSWER:** Although paragraph 20 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 20.

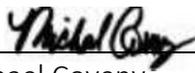
WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in Court 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.

Respectfully Submitted,

LISA MADIGAN  
Illinois Attorney General

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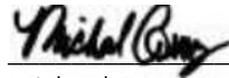
By  \_\_\_\_\_  
Michael Coveny,  
Assistant Attorney General

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:

Lane M. Gensburg / Anthony Calandriello / Anne Kim  
Dale & Gensburg, P.C.  
200 West Adams Street / Suite 2425  
Chicago, IL 60558

By email attachment to [lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com), [tclandriello@dandgpc.com](mailto:tclandriello@dandgpc.com) and [akim@dandgpc.com](mailto:akim@dandgpc.com) on October 27, 2016



Michael Coveny,  
Assistant Attorney General