

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SUMITRA SINHA,)	
)	
Petitioner,)	
v.)	No. 15 TT 218
)	Judge Brian F. Barov
)	
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 resident who resides at 10 Rhett Butler Drive, Streator, Illinois 61364 and can be reached at 815-822-1314.

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

2. Petitioner is represented by attorneys Lane M. Gensburg and Anthony Calandriello and Michael W. Gutting 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 tcalandriello@dandgpc.com. Michael W. Gutting can be reached at 312-263-2200 or mgutting@dandgpc.com.

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

3. The last four digits of Petitioner's Social Security number are 6920.

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 September 15, 2014, the Department issued an assessment and Notice of Intent (the "Notice of Penalty Liability") to Petitioner proposing a responsible officer penalty liability of \$150,306.87 equaling the outstanding sales/use tax liabilities of Sumitra International, Inc. covering the period through December 2011 (the "period at issue"). The liability consists of \$107,275 in tax due, \$43,010 in penalties, and \$10,022.31 in interest. A copy of the Notice of Penalty Liability is attached hereto as **Exhibit A**.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents 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. Sumitra International, Inc. was a gas station (and mini mart) located at 1116 E. New York Street, Aurora, Illinois 60506. The Department conducted a sales/use tax audit of its books and records for the period at issue.

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

9. The sales/use tax audit liability was on information and belief based on projections whereby the Department multiplied Sumitra International, Inc.'s gas and non-gas purchases by markup percentages determined from various sources.

ANSWER: The Department admits that it obtained information from third party sources regarding Petitioner's purchases of gasoline and/or gasohol but deny the characterization of "information and belief."

10. During the period at issue, Petitioner did not have control, supervision, or responsibility over the filing of Sumitra International, Inc.'s sales tax returns (and attendant collection and payment of tax) and was not responsible for Sumitra International Inc.'s unpaid liabilities.

ANSWER: The Department denies the allegations contained in paragraph 10.

11. During the period at issue, Petitioner did not act willful in connection with Sumitra International, Inc.'s sales/use tax liabilities.

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.

COUNT I

Defendant's Proposed Penalty Liability Assessment against the Petitioner is not Supported

12. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 11 above 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 erred in determining that Petitioner is personally responsible (in accordance with 35ILCS 735/3-7) for Sumitra International, Inc.'s sales/use tax liabilities as set forth in the Notice of Penalty 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 on Count I of this matter;
- B) That the Department's Notice of Penalty 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

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697


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:

Anthony Calandriello / Michael Gutting
Dale & Gensburg, P.C.
200 West Adams Street / Suite 2425
Chicago, IL 60558

By email attachment to tcalandriello@dandgpc.com and mgutting@dandgpc.com on April 1, 2015.



Michael Coveny,
Assistant Attorney General