

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

AL-MUDEER INC.)	
)	
Petitioner,)	
)	
v.)	No. 14-TT-232
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT OF REVENUE)	
)	
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:

Petitioner, AL-MUDEER INC., by and through its attorneys Akram Zanayed and Associates, who are duly authorized to represent Petitioner in this regard pursuant to the Power of Attorney attached hereto as Exhibit "A", complains of Respondent, Illinois Department of Revenue, as follows:

ANSWER: The information contained in the preceding unnumbered paragraph is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations, nor is it a numbered paragraph. The Respondent denies that the IL-2048 Power of Attorney form is marked as “Exhibit ‘A’.” Otherwise, the factual allegations contained within the preceding paragraph are admitted.

PARTIES

1. Petitioner, AL-MUDEER INC. ("Petitioner"), is an Illinois Corporation doing business in Cook County.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Otherwise, the factual allegations contained in paragraph 1 are admitted.

2. Petitioner's principal place of residence is located at 20 W. 138th Street, Riverdale, IL 60827

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) 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 that the Petitioner's principal place of business is located at 20 W. 138th Street, Riverdale, IL 60827, where it conducts business as Herman's Food and Dairy. Otherwise, the factual allegations contained in paragraph 2 are admitted.

3. Petitioner's telephone number is 708/841-5730

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Otherwise, the factual allegations contained in paragraph 3 are admitted.

4. Petitioner's tax identification number is 27-1321639

ANSWER: The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material

allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Otherwise, the Petitioner's Federal Employee ID number for Withholding Tax is 27-1321639. The tax ID number for Tobacco Products Tax is TP-00032.

5. Respondent, Illinois Department of Revenue (the "Department"), is an agency of the State of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

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.

JURISDICTION

6. Petitioner brings action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 10101-1 to 35 ILCS 10101-100.

ANSWER: Paragraph 6 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 answering, the "Tribunal Act" is comprised of 35 ILCS 1010/1-1 to 1010/1-100. The Department admits the existence, force and effect of the Tribunal Act, and states that the Act speaks for itself.

7. ON or about November 12, 2014, the Department issued a Notice of Tax Liability to Petitioner asserting additional tax due in the amount of \$55,817.33 for the period of December 1, 2009 through December 31, 2012. (A copy of the November 12, 2014 notice is attached hereto and incorporated herein as Exhibit "B").

ANSWER: Admitted that the Notice reflects \$43,305.00 in tax due, \$8,661.00 in late payment penalties, \$866.00 in late filing penalties, and \$2,985.33 in interest, for a total assessed amount of \$55,817.33. The Department further states that the liability proposed under the Notice

is deemed *prima facie* correct and is deemed *prima facie* evidence of the correctness of the amount of tax due. See 35 ILCS 143/10-45; 35 ILCS 120/5. Further answering, the Department denies that the notice is marked as attached as “Exhibit ‘B’.” The Department admits the other factual allegations in Paragraph 7.

8. This tribunal has jurisdiction pursuant to Sections 1-45 and 1-50 of the Tribunal Act over the Department's determinations as reflected on the November 12, 2014 notice, where the amount at issue exceeds \$15,000.00, exclusive of penalties and interest and because Petitioner timely filed this petition within 60 days of the November 12, 2014 notice. See 35 ILCS 1010/1-45 and 35 ILCS 1010/1-50.

ANSWER: Paragraph 8 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 answering, the Department admits the existence, force and effect of Sections 1-45 and 1-50 of the Tribunal Act, and states that the Act speaks for itself.

BACKGROUND

9. Petitioner operates a convenient store which sells various food items.

ANSWER: Denied that Petitioner operates a convenient store. The Respondent admits that Petitioner operates a grocery store. Otherwise the factual allegations contained within paragraph 9 are admitted.

10. Petitioner timely filed all tax returns and paid all amounts due on a regular and timely basis.

ANSWER: Denied.

PROCEDURAL HISTORY

11. At some point before November 12, 2014 the Department initiated an audit of the returns filed by the Petitioner for the period of December 1, 2009 through December 31, 2012 (the "Audit Period").

ANSWER: Denied that Petitioner properly filed all returns during the audit period. Otherwise, the factual allegations contained within paragraph 11 are admitted.

12. The taxpayer provided adequate books and records for the Department to examine.

ANSWER: Denied.

13. The Department disregarded the books and issued an assessment based upon its own calculations.

ANSWER: The Department denies the characterization made by the Petitioner. The resulting audit liability was a result of information collected, as reflected in the audit file. Otherwise, the factual allegations contained within paragraph 13 are denied.

14. The basis for which the calculations were made by the department are improper since it disregarded the books and records of the taxpayer.

ANSWER: The Department denies the characterization made by the Petitioner. The resulting audit liability was a result of information collected, as reflected in the audit file. Otherwise, the factual allegations contained within paragraph 14 are denied.

15. Although the taxpayer provided all purchase invoices to match the IRS cost of goods sold and the income reported, the auditor assessed a liability based upon the information obtained from My Enterprises.

ANSWER: The Department denies the characterization made by the Petitioner. The resulting audit liability was a result of information collected, as reflected in the audit file. Otherwise, the factual allegations contained within paragraph 15 are denied.

16. As a result on November 12, 2014 the audit was completed and the audit assessment was issued.

ANSWER: Denied that the audit was completed on November 12, 2014, as the actual audit at issue was completed prior to this date. Otherwise, the factual allegations contained within paragraph 16 are admitted.

17. The Department's calculations based upon the audit are in error since they do not include information from the books and records that the petitioner provided.

ANSWER: The Department denies the characterization made by the Petitioner. The resulting audit liability was a result of information collected, as reflected in the audit file. Otherwise, the factual allegations contained within paragraph 17 are denied.

COUNT I

18. The Petitioner hereby restates and realleges the allegations contained in paragraphs 1-17 as if fully set forth herein.

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

19. The Department failed to properly assess the tax since they did not accept the books and records of the taxpayer and had no evidence of any liability other than a report from a company that is no longer in business.

ANSWER: The Department denies the characterization made by the Petitioner. The resulting audit liability was a result of information as reflected in the audit file. The Respondent

is without sufficient information to determine if the “company” in question is “no longer in business.” The Respondent also objects to this paragraph as being vague and ambiguous. To the extent the Department can answer, the information was obtained by the Department while MY Enterprise, Inc. was in business. Otherwise, the factual allegations contained within paragraph 19 are denied.

20. There has been no proof that any payments were made to this company or any signatures obtained showing any delivery of product to this company from the alleged supplier My Enterprises.

ANSWER: The Respondent is without sufficient information to determine if “payments” were made to the “company” in question. The Department also objects to this paragraph, including the term “payments,” as being vague and ambiguous. Otherwise, the factual allegations contained within paragraph 20 are denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department’s Notice correctly reflects 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: January 7, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
Seth Jacob Schriftman
Special Assistant Attorney General

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Respondent)	

**AFFIDAVIT OF PAULLETTE LEWIS-BIRMINGHAM
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

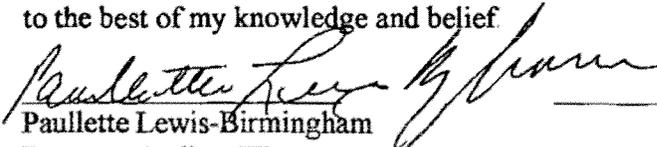
STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Paullette Lewis-Birmingham, 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 III.
3. I audited Al-Mudeer Inc. regarding the taxes asserted on the Notice of Tax Liability attached to and 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 19 and 20 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.


Paullette Lewis-Birmingham
Revenue Auditor III

Date 1/7/15