

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MARK & LATA SANTAINES,)	
<i>Petitioner</i>)	
)	14-TT-237
)	
STATE OF ILLINOIS)	Chief Judge James M. Conway
DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

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 Taxpayer’s Petition respectfully pleads as follows:

PARTIES

1. Petitioners are individuals located at 3351 Sandstone Court, Lake in the Hills, Illinois, 60156 and can be reached at 708-784-3200.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(1)(A) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Respondent admits the factual allegation contained in paragraph 1.

2. Petitioners are represented by The Law Office of James E. Dickett, Ltd. Attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aon.com.

ANSWER: The information contained in Paragraph 2 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(1)(B) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Respondent admits the factual allegation contained in paragraph 2.

3. Petitioners' Taxpayer (Account) ID is XXX-XX-XXXX.

ANSWER: The information contained in Paragraph 3 is required by Illinois Independent Tax Tribunal Regulations ("Rule") 310(a)(1)(C) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Respondent admits the factual allegation 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: Respondent admits the factual allegation contained in paragraph 4.

NOTICE

5. On October 10, 2014, Petitioner received four (4) Notices of Deficiency letters for Form IL-1040, Individual Income Tax Return ("Notices") for the tax years 2007, 2008, 2009, and 2010. The Notices, in aggregate, reflect approximately \$70,000 in tax due, plus penalties and interest, the Notices are attached hereto as Exhibit 1.

ANSWER: The information contained in Paragraph 5 is required by Illinois Independent Tax Tribunal Regulations ("Rule") 310(a)(1)(D) (86 Ill. Admin. Code § 5000.310). Respondent admits the factual allegation contained in paragraph 5.

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.

ANSWER: Respondent admits that the Illinois Independent Tax Tribunal has jurisdiction in this case.

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: Respondent admits the factual allegation contained in paragraph 7.

BACKGROUND

8. Petitioner lived and worked in Wisconsin in 2007, 2008, and part of 2009, Petitioner moved to Illinois during 2009. Petitioner owned part of two S corporations that were audited for sales tax by the Department for the tax years 2007 to 2010.

ANSWER: Respondent responds to Petitioner's paragraph 8 as follows:

- a) Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 8 regarding where Petitioner lived or worked during the years 2007, 2008 and 2009.
- b) Respondent admits the allegations contained in paragraph 8 regarding ownership of the two S corporations.

9. The sales tax audit results of the S corporation were projected by the Department to create business income tax assessments that have been protested and that are currently pending in the Department's administrative hearings division because those assessments do not properly account for the S corporations' costs of goods sold and also do not properly account for reductions to the underlying sales tax audits that were recently finalized in the administrative hearings division. The business income tax assessments issued to the S corporations were projected by the Department to create the individual income tax assessments at issue herein, though the Department also improperly added all of the Petitioner's Wisconsin income to the tax years 2007, 2008, and 2009 (see Exhibit 1).

ANSWER: Respondent responds to Petitioner's paragraph 9 as follows:

- a) Respondent admits that adjustments to Petitioner's Illinois income tax were based upon business income tax assessments that are currently pending in Department's Administrative Hearings;
- b) The business income tax assessments have changed and Petitioner's assessment will be corrected when the business income tax assessments become final;
- c) The issue of whether the assessments "properly account for the S corporations' cost of goods sold" and the "underlying sales tax audit" must be resolved in the litigation for the S corporations and is not a material allegation of fact in this case;

- d) Department lacks knowledge or information sufficient to form a belief as to whether it improperly added Petitioner's Wisconsin income to the Illinois tax for the years 2007, 2008 and 2009.
- e) Respondent denies any and all other allegations of fact made in paragraph 9 that are not otherwise admitted or denied with in this Answer.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: Respondent re-answers and incorporates by reference the responses made by Respondent in paragraphs 1 through 9, inclusive, hereinabove.

11. The Department assessed the individual income tax liabilities contained in the Notices based on business income tax assessments that are still pending and that are overstated for several reasons including but not limited to understated costs of goods sold, failure to account for subsequent reductions in the underlying SALES tax audit, and improperly including Wisconsin-based income from a Wisconsin resident during most of the tax years at issue.

ANSWER: Respondent responds to Petitioner's paragraph 11 as follows:

- a) Department admits that the individual income tax liabilities contained in the Notices are based upon business income tax assessments that are pending, and those individual assessments will be amended as soon as the business income tax assessments are finalized;
- b) Whether the business income tax assessments were based upon "understated costs of goods sold, failure to account for subsequent reductions in the underlying SALES tax audit" is not relevant here and therefore is not a material allegation of fact. The allegation is denied.

- c) Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that it improperly included Wisconsin-based income in the calculation of Petitioner's Illinois income tax adjustments.
- d) Respondent denies any and all other allegations of fact made in paragraph 11 that are not otherwise admitted or denied with in this Answer.

12. By applying the Department's unfinalized and overstated business income tax assessments to the individual income tax Notices herein, the Department drastically and unreasonably inflated Petitioner's individual income tax liability.

ANSWER: Respondent denies that it applied "unfinalized and overstated business income tax assessments" to Petitioner's Illinois taxes, but admits that the underlying business cases are were used in the original Notice of Deficiency, those cases are currently in dispute in Department's administrative hearings and when the cases have been finalized Petitioner's tax Notices will be adjusted accordingly.

COUNT II

All penalties should be abated based on reasonable cause.

13. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: Respondent re-answers and incorporates by reference the responses made by Respondent in paragraphs 1 through 12, inclusive, hereinabove.

14. In its Notices, the Department assessed multiple penalties.

ANSWER: Respondent admits the allegations made in paragraph 14.

15. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: The information contained in Paragraph 15 is not a material allegation of fact, but is a statement of law and therefore does not require an answer pursuant to Rule 310(b)(2)(A). Respondent denies any factual allegation contained in paragraph 15.

16. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion, and a taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

ANSWER: The information contained in Paragraph 16 is not a material allegation of fact, but is a statement of law and therefore does not require an answer pursuant to Rule 310(b)(2)(A). Respondent denies any factual allegation contained in paragraph 16.

17. Petitioner exercised ordinary business care and prudence when it reasonably determined its individual income liability during the audit periods and clearly did not use the Department's proposed business income tax audit results

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17. Respondent denies any factual allegations contained in paragraph 17.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

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**AFFIDAVIT OF RAE ANN WELDIN
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 Procedures, 735 ILCS §5/1-109, I, Rae Ann Weldin, 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 audited Mark and Lata Santaines for the tax years ending December 31, 2007 through December 31, 2010.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition Paragraph 9(d), 11(c) and 17.
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 statement set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Rae Ann Weldin
Rae Ann Weldin
Assistant Bureau Manager *Revenue Auditor*
Illinois Department of Revenue

Subscribed and sworn to this 13 day
of January 2015.

Debbie Delong
Notary Public
My Commission: 8/19/18
(Stamp)

DATED:

