

ILLINOIS INDEPENDENT TAX TRIBUNAL

AGML, INC.)
)
 Petitioner,)
)
 v.)
) **Case No. 14-TT-244**
ILLINOIS DEPARTMENT) **Chief Judge James M. Conway**
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:

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 AGML Inc., 2150 E. Locust Street, Decatur, Illinois 62521.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(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 also adds that the Petitioner does business as Gecko Communications & Technologies, at least in Decatur, Illinois. Further, aside from the location in Decatur, Illinois, Petitioner has a location in Bloomington, IL. The Department otherwise admits the factual allegations contained within paragraph 2.

3. The Petitioner's identification number is Account ID 3121-1471.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(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 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 July 1, 2008 through December 31, 2012 (Periods at Issue).

ANSWER: The Department admits the factual allegations in 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 qualified to do business in Illinois.

ANSWER: Admitted.

STATEMENT OF FACTS

7. The tax involved herein is the Illinois retailers' occupation tax imposed under the Illinois Tax Act, 35 ILCS 5/120 et seq.

ANSWER: Denied that all taxes cited in the Notices of Tax Liability are Illinois Retailers' Occupation Taxes. Admitted that the majority of taxes are Illinois Retailers' Occupation Taxes, as indicated in the audit file, including the audit narrative. Otherwise, the factual allegations contained within paragraph 7 are admitted.

8. Petitioner maintains its commercial domicile in Decatur, Illinois.

ANSWER: The Department objects to the term "commercial domicile" as being vague and ambiguous, and as such denies that term on that basis. The Department admits that the Petitioner has one of its two business locations in Decatur, Illinois. Otherwise, the factual allegations contained within paragraph 8 are admitted.

9. Petitioner operates a business which provides a funds deposit system and also sells tangible personal property such as telecommunications equipment. Customers deposit money in the funds deposit system which funds can be used for multiple purposes.

ANSWER: The Department objects to the term "funds deposit system" as being vague and ambiguous, and therefore denies that term. The Department admits that Petitioner is a retailer of, at least, cell phones, cell phone accessories, prepaid calling cards and wireless services, as indicated in the audit file. Otherwise, the factual allegations contained within paragraph 9 are admitted.

10. Petitioner was registered to do business with the Department under Illinois Business Tax Number 3121-1471 during the Periods at Issue.

ANSWER: Admitted.

11. Illinois imposes an occupation tax upon sales of tangible personal property equipment.

ANSWER: Paragraph 11 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 that Illinois imposes a retailers' occupation tax "upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption." Tangible personal property includes "prepaid telephone calling arrangements." *See 86 Ill. Admin. Code § 130.101.*

12. During the Periods at Issue, Petitioner made sales to Illinois customers and filed returns regarding its telecommunications equipment sales.

ANSWER: The Department denies that the Petitioner filed accurate returns regarding its telecommunications equipment sales, as detailed in the audit file, including the audit narrative. Otherwise, the Department admits the factual allegations contained within paragraph 12.

COUNT I

Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 12 as though fully set forth herein.

13. The Department audited the Petitioner for the Periods at Issue.

ANSWER: Admitted.

14. The Department issued the Notices of Tax Liability seeking to assess additional retailers' occupation taxes against Petitioner in the amount of \$429,099.41 plus interest and penalty.

ANSWER: Admitted that the Notices of Tax Liability assess an additional total of taxes, interest, and penalties (not including any payments/credits) of \$429,099.41, as detailed in the Notices of Tax Liability and Taxpayer Statement attached to the Petition (letter numbers CNXXXX2848763X48, CNXXX2X721592XX7, and CNXXXX9938534567). Otherwise, the Department admits the factual allegations contained within paragraph 14.

15. The Department asserted that the deposit funds resulted in retailers' occupation taxes being due by Petitioner.

ANSWER: The Department objects to the use of the term “deposit funds” as vague and ambiguous, and therefore denies this term. Further, the Department admits that cell phone pre paid minutes and the like (if this is what is meant as “deposit funds”) resulted in retailers’ occupation taxes being due by Petitioner. The Department otherwise admits the factual allegations contained within paragraph 15.

16. Petitioner is not a retailer as to the funds deposit portion of its business.

ANSWER: Denied. Petitioner is a retailer of such items as described in the audit file, including the audit narrative. Further, the Department objects to the term “funds deposit,” and therefore denies this term. The Department adds that the Petitioner lacked adequate books and records from which to determine tax liability on that basis alone during the audit. As such, the auditor used her best judgment and information to determine tax liability. Such corrected information in a Notice of Tax Liability is deemed *prima facie* correct for the amount of tax due as shown therein. *See 35 ILCS 120/4.*

17. As a result of its determination, the Department recalculated the retailers' occupation tax liability of Petitioner.

ANSWER: The Department objects to the term “its determination” as vague and ambiguous, and therefore denies this term. As a result of the auditor’s determination, as reflected in the audit file, the Department calculated the retailers’ occupation taxes as well as associated penalties, surcharges, and interest due. The auditor used her best judgment and information to determine tax liability. Such corrected information in a Notice of Tax Liability is deemed *prima facie* correct for the amount of tax due as shown therein. *See 35 ILCS 120/4.*

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

ANSWER: Denied. Paragraph 18 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 the paragraph contains a legal conclusion. The Department adds that the Petitioner lacked adequate books and records from which to determine tax liability on that basis alone during the audit. As such, the auditor used her best judgment and information to determine tax liability. Such corrected information in a Notice of Tax Liability is deemed *prima facie* correct for the amount of tax due as shown therein. *See 35 ILCS 120/4.*

19. There is an actual controversy between Petitioner and the Department concerning Petitioner's entitlement to a refund of all or a portion of the protest payment.

ANSWER: Admitted.

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 19, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 19 as though fully set forth herein.

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

ANSWER: Admitted that the Notices of Tax Liability provide official notice of tax, penalty, and interest due as of a certain date.

21. 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 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. The Department admits the existence, force and effect of Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

22. Petitioner was filing and paying its retailers occupation tax in conformity with existing regulations and rulings.

ANSWER: Paragraph 22 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 otherwise denies Petitioner's assertions, based on Department regulations and guidance, as referenced and provided in the audit file, including the audit narrative.

