

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

M CUBE PETRO SIX INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 15-TT-13
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

**ANSWER**

The Illinois Department of Revenue, by and through its attorney, Lisa Madigan, Attorney General, through Marc L. Muchin, Special Assistant Attorney General, answers and alleges as follows:

**PARTIES**

1. Petitioner is a corporation located at 298 Montgomery Road, Montgomery, Illinois, 60538, and can be reached at 630-440-1900.

ANSWER: The Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is 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@aol.com](mailto:jdickett@aol.com).

ANSWER: The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Account ID is 3749-1482.

ANSWER: The Department admits the factual 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 of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The Department admits the factual allegations contained in Paragraph 4.

### **NOTICE**

5. On November 18, 2014, the Department issued a Notice of Tax Liability letter to Petitioner for the tax periods December 1, 2009 to December 31, 2013 that is comprised of \$42,269 in tax plus penalties and interest. The Notice of Tax Liability letter is attached as Exhibit 1.

ANSWER: The Department admits the factual allegations 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: The Department admits the factual allegations contained in Paragraph 6.

7. This 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: The Department admits the factual allegations contained in Paragraph 7.

### **BACKGROUND**

8. Defendants audited Petitioner's books and records for the tax periods December 1, 2009 to December 31, 2013.

ANSWER: The Department admits the factual allegations contained in Paragraph 8.

9. The audit liability contained in the Notice is based on differences between the Petitioner's sales tax returns as filed and Petitioner's books and records, but the audit

adjustments fail to account for over-reported low rate sales for some of the audit tax periods.

ANSWER: The Department denies the allegations contained in Paragraph 9.

### COUNT 1

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

ANSWER: The Department admits the allegations contained in Paragraph 10.

11. On audit, the Department calculated the audit liability without regard to over-reported low rate sales.

ANSWER: The Department denies the allegations contained in Paragraph 11.

12. By applying such audit methodology, the Department unreasonably inflated Petitioner's audit liability because the Petitioner over-reported its low rate sales during some of the audit tax periods.

ANSWER: The Department denies the allegations contained in Paragraph 12.

**WHEREFORE**, the Department respectfully requests this Tribunal:

- (a) Order judgment in favor of the Department and against the Taxpayer;
- (b) Grant the Department the right to take any action to assess, lien, levy, offset,  
or any other way prosecute and collect the amount due on the Notice;
- (c) Grant such further relief as the Tribunal deems appropriate.

### COUNT II

**No penalties should be abated based on reasonable cause.**

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

ANSWER: The Department admits the allegations contained in Paragraph 13

14. In its Notice, the Department assessed penalties based on the audit liability.

ANSWER: The Department admits the allegations contained in Paragraph 14.

15. Illinois law provides that late 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 Department denies this as legal conclusions not facts and asserts that the cited statute speaks for itself.

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. 86 Ill. Admin. Code 00.400(b).

ANSWER: The Department denies this as legal conclusions not facts and asserts that the cited statute speaks for itself.

17. 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 Department denies this as legal conclusions not facts and asserts that the cited statute speaks for itself.

18. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and actually over-reported its low rate sales for some of the audit tax periods.

ANSWER: The Department denies the factual allegations contained in Paragraph 18.

**WHEREFORE**, the Department respectfully requests this Tribunal enter an order that:

- (a) Finds and declares that all penalties should be finalized;
- (b) Grants the Department the right to take any action to assess, lien, levy, offset,  
or any other way prosecute and collect the amount of penalties due on the Notice; and
- (c) Grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

Lisa Madigan, Attorney General

By:



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Marc L. Muchin  
Special Assistant Attorney General

Date: 2/19/15

Marc L. Muchin  
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