

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

HARI DARSHAN CORP.,)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-31
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
)	
Defendant.)	

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:

PARTIES

1. Petitioner is an Illinois corporation that is now defunct but can be contacted at 931 NW Fresco Way, Apartment 107, Jensen Beach, Florida, 34957, and can be reached at 630-277-2494.

ANSWER: The information contained in Paragraph 1 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. Further answering, the Department is without sufficient information to admit or deny the allegations contained within 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.

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 admits the factual allegations contained within Paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 3936-3570.

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 within 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: Paragraph 4 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.

NOTICE

5. On December 15, 2014, Petitioner received two Notice of Tax Liability letters ("Notice") from the Department for a sales/use tax audit for the combined tax periods of January 1, 2011 to November 30, 2013. The Notice reflect \$29,233 in tax due, plus penalties and interest. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits that it sent two Notices of Tax Liability ("NTLs") dated December 15, 2014. The details of the NTLs are as follows:

- NTL Letter ID CNXXX124X46384X3 pertains to the period of January 1, 2011 through October 31, 2013. This NTL assesses \$29,201.00 in tax, \$5,840.00 in a late payment penalty increase, and \$1,939.80 in interest.

- NTL Letter ID CNXXX16238668480 pertains to the period of November 1-30, 2013. This NTL assesses \$32.00 in tax, \$6.00 for a late payment penalty increase, \$1.00 in a late filing penalty increase, and \$1.03 in interest.

The total assessed for these two NTLs is \$37,020.83. Otherwise, the factual allegations contained within paragraph 5 are admitted.

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: 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.

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: Paragraph 7 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.

BACKGROUND

8. Petitioner operated a petroleum retail establishment during the audit tax periods.

ANSWER: The Department admits the factual allegations contained within paragraph 8.

9. Defendants audited Petitioner’s books and records for the tax periods January 1, 2011 to November 30, 2013.

ANSWER: The Department admits the factual allegations contained within paragraph 9.

10. The audit liability contained in the Notice is based on projections whereby the Department multiplied the Petitioner’s purchases (i.e., gas and mini-mart items) by estimated industry standard selling prices of Petitioner’s products.

ANSWER: The basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 10.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. On audit, the Department calculated the audit liability by multiplying Petitioner's purchases by estimated selling prices, but the average gas price used by the Department is overstated and the Department's calculations also do not adequately account for inventory adjustments and mini-mart inventory losses like theft and spoilage.

ANSWER: The basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 12.

13. By applying such estimated prices to all of Petitioner's purchases during the audit period, the Department unreasonably inflated Petitioner's audit liability because the Petitioner's selling prices during the audit period were lower than the estimates used by the Department.

ANSWER: The basis of the assessment is as set forth in the audit file, including the audit narrative, and the Department therefore denies Petitioner's characterization of the basis of the audit findings. The Department denies the remainder of the allegations within Paragraph 13.

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

All penalties should be abated based on reasonable cause.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

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

ANSWER: The Department admits the factual allegations contained within in Paragraph 15.

16. Illinois law provides that neither late penalties nor negligence penalties apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 16 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. To the extent an answer is required for this Petition, denied.

17. 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: Paragraph 17 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 an answer is required for this Petition, denied.

18. 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: 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 an answer is required for this Petition, denied.

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period and did not use estimated selling prices.

ANSWER: Paragraph 19 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 denies the legal conclusions/allegations contained in Paragraph 19.

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.

Dated: March 9, 2015

Respectfully submitted,
Illinois Department of Revenue

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

Seth Jacob Schriftman
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-1591
seth.schriftman@illinois.gov

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**AFFIDAVIT OF TIMOTHY BEAVERS
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, Timothy Beavers, 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 compiled the audit information regarding the taxes asserted in the Notices of Tax Liability subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny the allegations contained in Paragraph 1 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.

Timothy Beavers
Timothy Beavers
Revenue Auditor III

3/9/2015
Date