

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

HARVEY'S CORNER, LLC,)	
)	
Petitioner,)	
v.)	No. 15 TT 50
)	Judge Brian F. Barov
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	
Respondent.)	

DEPARTMENT'S ANSWER TO PETITION

Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the "Petition"), hereby states as follows:

INTRODUCTION

1. These Notices were issued by the Department on May 8, 2014 proposing adjustments in the amount of \$17,580.00 in sales tax, \$3,516.00 in penalties and \$1,626.23 in interest for taxable periods July 1, 2009, to September 30, 2011, and \$2,286.00 in sales tax, \$914.00 in penalties, and \$715.64 in interest, for tax periods April 1, 2009, to June 30, 2009. Copies of the Notices are attached to this Petition as Exhibits A and B

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits A and B referred to in paragraph 1 and state that such documents speak for themselves.

2. Petitioner is a corporation with its principal place of business in Country Club Hills, Illinois.

ANSWER: The Department admits the allegations contained in paragraph 2.

BACKGROUND

¹4. The Petitioner operates a gas station, with a convenience store, car wash, and other customer services.

ANSWER: The Department admits the allegations contained in paragraph 3.

5. Petitioner filed timely sales tax returns (ST-1s) for the periods under review.

ANSWER: The Department admits the allegations contained in paragraph 5.

6. The audit was initiated as a follow-up audit to the original audit for tax periods January 1, 2007, through March 31, 2009.

ANSWER: The Department admits the allegations contained in paragraph 6.

7. The proposed adjustments in the original audit are at issue before the Illinois Department of Revenue, Administrative Hearings Division.

ANSWER: The Department admits the allegations contained in paragraph 7.

8. Petitioner was granted leave to file this Petition under the provisions for "late discretionary hearing" in a letter issued by the Department, dated January 23, 2015, attached as Exhibit C.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit C referred to in paragraph 8 and state that such document speaks for itself.

9. The contested adjustments center on two issues: the high-low computation of tax for convenience store items, and the formula for computation of tax on gasoline.

ANSWER: The Department denies the allegations contained in paragraph 9 and further affirmatively states that all proposed adjustments were related to disallowance of certain bio-diesel and environmental deductions claimed on Petitioners' sales tax returns for the period(s) at issue.

APPLICABLE LAW

10. Section 35 ILCS 120/2 of the Illinois Code imposes a tax on the retail sale of tangible personal property.

¹ Petitioner's Petition contains no paragraph 3.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 10 and state such provision speaks for itself.

11. The tax on items, such as items sold at a convenience store including food, soft drinks and candy, is determined pursuant to 86 Ill. Adm. Code §130.310.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 11 and state such regulation speaks for itself.

12. The tax on gasoline is determined pursuant to 35 ILCS 505/2.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 12 and state such provision speaks for itself.

13. Late payment penalties may be abated, or not asserted, based on reasonable cause. *Kroger Co. v. Department of Revenue*, 284 Ill.App.3d at 484, 220 Ill. Dec. 566, 673 N.E.2d 710 (Ill. App. 1 Dist., 1996). The existence of reasonable cause justifying abatement of a penalty is a factual determination made on a case-by-case basis. *Id.*

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 13 and state such case law speaks for itself.

ERRORS

14. The Department erred in its proposed adjustments to tax for convenience store items, based on "high-low" computations.

ANSWER: Although paragraph 14 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 14.

15. The Department erred in its proposed adjustment to gasoline tax based on a revised computation formula

ANSWER: Although paragraph 15 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 15.

16. The Department erred in proposing penalty assessments against the Petitioner for late payment of tax.

ANSWER: Although paragraph 16 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 16.

CONCLUSION AND RELIEF REQUESTED

17. Petitioner believes that its ST-1s were accurate as originally filed.

ANSWER: Paragraph 17 is not a material allegation of fact but a statement of Petitioner’s belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

18. Petitioner requests that no adjustments be made on its account for the periods at issue.

ANSWER: Paragraph 18 is not a material allegation of fact but a statement of Petitioner’s belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter;
- B) That the Department’s Notice(s) of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

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Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By _____
Michael Coveny,
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

Kathleen M. Lach
Arnstein & Lehr LLP
120 S. Riverside Plaza
Chicago, IL 60606

By email attachment to kmlach@arnstein.com on April 16, 2015.



Michael Coveny,
Assistant Attorney General