

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

INNOVATIVE FACILITIES)	
SOLUTIONS, LLC,)	
Petitioner,)	
)	
v.)	Case No. 15-TT-74
)	Barov
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

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:

PARTIES

1. Petitioner is a Missouri limited liability company with its principal place of business in St. Louis, Missouri.

ANSWER: The Department admits the allegations in Paragraph 1.

2. Petitioner is located at 816 Yosemite Drive, St. Louis, MO 63122.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

3. Petitioner’s telephone number is (314) 221-8511.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material

allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

4. Petitioner's FEIN is 20-3521832.

ANSWER: The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

5. Petitioner's Account ID is 4066-9981.

ANSWER: The information contained in Paragraph 5 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

6. Respondent is an agency of the State of Illinois responsible for administering and enforcing the revenue law of the State of Illinois.

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

JURISDICTION

7. On or about February 9, 2015, the Department issued a Notice of Tax Liability assessing tax in the amount of \$14,092.00, penalties in the amount of \$6,201.00 and interest in the amount of \$5,633.66 for reporting periods July 1, 2007 through June 30, 2009 ("2009 Notice"). A copy of the 2009 Notice is attached to this Petition as Exhibit B.

ANSWER: The Department states the 2009 Notice speaks for itself and therefore denies any characterization thereof. The Department admits it issued the 2009 Notice of Tax Liability dated February 9, 2015 attached to Petitioner's Petition as Exhibit B.

8. On or about February 9, 2015, the Department issued a Notice of Tax Liability assessing tax in the amount of \$47,023.00, penalties in the amount of \$10,341.00 and interest in the amount of \$4,641.59 for reporting periods July 1, 2009 through November 30, 2012 (“2012 Notice”). A copy of the 2012 Notice is attached to this Petition as Exhibit C.

ANSWER: The Department states the 2012 Notice speaks for itself and therefore denies any characterization thereof. The Department admits it issued the 2012 Notice of Tax Liability dated February 9, 2015 attached to Petitioner’s Petition as Exhibit C.

9. The 2009 Notice and the 2012 Notice (collectively, “Notices”) cover the audit period of July 1, 2007 through November 30, 2012 as reflected in the Department’s audit system reports (“Audit Period”). A copy of the Department’s Interest Computation is attached to this Petition as Exhibit D.

ANSWER: The Department states the Notices speak for themselves and therefore denies any characterizations thereof.

10. This Tribunal has original jurisdiction over all Department determinations reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 ILCS §1010/1-45.

ANSWER: Paragraph 10 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

11. Petitioner provides services and products to retrofit buildings with energy efficient systems.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and therefore demands strict proof thereof.

12. Petitioner operates exclusively out of its office in St. Louis, Missouri.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and therefore demands strict proof thereof.

13. Petitioner does not maintain any office or other permanent place of business in Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 13 and therefore demands strict proof thereof.

14. Petitioner has no tangible, real estate or facility within Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 14 and therefore demands strict proof thereof.

15. Petitioner does not have any Illinois employees.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 15 and therefore demands strict proof thereof.

16. Petitioner did not have any sales contracts in Illinois until 2011.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 16 and therefore demands strict proof thereof.

17. Petitioner does not maintain any inventory in Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 17 and therefore demands strict proof thereof.

18. Petitioner does not accept or reject orders in Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 18 and therefore demands strict proof thereof.

19. Petitioner does not engage in retail activities in Illinois.

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. To the extent Paragraph 19 requires an answer, the Department denies the allegations.

20. Petitioner consults with customers and submits proposals of options to improve building systems.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 20 and therefore demands strict proof thereof.

21. Petitioner purchases materials from various manufacturers and supplies them to its customers.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 21 and therefore demands strict proof thereof.

22. The manufacturers ship materials directly to customers unless otherwise requested by customers to be delivered to Petitioner, who then ships to customers via common carrier.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 22 and therefore demands strict proof thereof.

23. Petitioner's received its Illinois transactions through business referrals and not any method of direct sales or solicitations within Illinois.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 23 and therefore demands strict proof thereof.

24. Petitioner does not install or service any of the materials delivered to its customers.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 24 and therefore demands strict proof thereof.

25. Petitioner contracts with independent vendors to perform installation and maintenance

services.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 25 and therefore demands strict proof thereof.

PROCEDURAL HISTORY AND AUDIT

26. In 2012, Petitioner registered itself with Illinois to begin collecting and remitting Retailers' Occupation and Use Tax ("Sales/Use Tax").

ANSWER: The Department admits the allegations in Paragraph 26.

27. Prior to 2012, Petitioner did not file a Sales/Use Tax return.

ANSWER: The Department admits the allegations in Paragraph 27.

28. Petitioner was audited by the Department for Sales/Use Tax comprising the Audit Period.

ANSWER: The Department admits the allegations in Paragraph 28.

29. As a result of the audit, the Department determined that Petitioner had nexus with Illinois for the entire Audit Period and assessed tax based on Petitioner's sales to Illinois customers.

ANSWER: The Department admits the allegations contained in paragraph 29.

30. The Department improperly concluded that Petitioner's Illinois activities were sufficient to give Petitioner Illinois nexus.

ANSWER: Paragraph 30 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 Paragraph 30 requires an answer, the Department denies the allegations.

31. The Department's conclusion increased Petitioner's Illinois assessment of Sales/Use Tax.

ANSWER: The Department states the Notices speak for themselves and therefore denies any characterizations thereof.

32. Petitioner timely filed this Petition and properly invoked the jurisdiction of this Tribunal for the Notices.

ANSWER: Paragraph 32 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.

33. Petitioner seeks abatement of the Notices for the reasons stated below.

ANSWER: The Department admits the allegations contained in paragraph 33.

COUNT I
PETITIONER DID NOT MAINTAIN THE REQUISITE PHYSICAL PRESENCE IN ILLINOIS

34. Petitioner hereby restates and realleges the allegations contained in Paragraph 1 through Paragraph 33 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 33 as though fully set forth herein.

35. The Commerce Clause of the United States Constitution requires a taxpayer's physical presence in a state in order for the state to exercise its jurisdiction to impose corporate income tax. U.S. Const. Art. I, §8, cl. 3; and Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 35 and state such case law speaks for itself.

36. An out-of-state vendor must be physically present within a state in order to meet the substantial nexus requirement and the slightest physical presence within a state does not

establish the requisite nexus. Quill, 504 U.S. at 315; and Brown's Furniture, Inc. v. Raymond Wagner, 665 N.E.2d 795 (Ill. 1996).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 36 and state such case law speaks for itself.

37. Petitioner did not own, lease or maintain any real or tangible personal property in Illinois during the Audit Period.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 37 and therefore demands strict proof thereof.

38. Petitioner did not maintain any employees in Illinois during the Audit Period.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 38 and therefore demands strict proof thereof.

39. Petitioner did not maintain the requisite physical presence in Illinois to authorize Illinois to require Petitioner to collect Sales/Use Tax.

ANSWER: Paragraph 39 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 Paragraph 39 requires an answer, the Department denies the allegations.

40. The Department's assessment of Sales/Use Tax against Petitioner violates the Commerce Clause of the United States Constitution.

ANSWER: Paragraph 40 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 Paragraph 40 requires an answer, the Department denies the allegations.

COUNT II

PENALTIES MUST BE ABATED FOR REASONABLE CAUSE

41. Petitioner hereby restates and realleges the allegations contained in Paragraph 1 through Paragraph 33 as if fully set forth herein.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 33 as though fully set forth herein.

42. Any penalties assessed must be abated for reasonable cause.

ANSWER: Paragraph 42 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.

43. The Department has assessed late filing and late payments penalties in the Notices.

ANSWER: The Department states the Notices speak for themselves and therefore denies any characterizations thereof.

44. No penalties shall be imposed on a taxpayer if its failure to file and pay was due to reasonable cause. 35 ILCS §735/3-8.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 44 and state such provision speaks for itself.

45. “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 file and pay [its] proper liability in a timely fashion.” 86 Ill. Admin. Code §700.400(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 45 and state such regulation speaks for

itself.

46. “A taxpayer will be considered to have made a good faith effort to determine and file and pay [its] proper tax liability if [it] exercised ordinary business care and prudence in doing so.” 86 Ill. Admin. Code §700.400(c).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 46 and state such regulation speaks for itself.

47. Petitioner’s filing history is also considered in determining whether the taxpayer acted in good faith. 86 Ill. Admin. Code §700.400(d).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 47 and state such regulation speaks for itself.

48. Petitioner made a good faith effort to determine its Sales/Use Tax reporting responsibility and liability and to file and pay its proper liability in a timely fashion.

ANSWER: Paragraph 48 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 Paragraph 48 requires an answer the Department denies the allegations.

49. Petitioner exercised ordinary business care and prudence to determine its Sales/Use Tax reporting responsibility and to file and pay its proper liability in a timely fashion.

ANSWER: Paragraph 49 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 Paragraph 49 requires an answer the Department denies the

allegations.

50. Petitioner has a history of timely filing Illinois Sales/Use Tax returns and paying Illinois Sales/Use Tax for periods it interpreted there was a duty.

ANSWER: To the extent Petitioner is referring to the Audit Period as defined by Petitioner in Paragraph 9, the Department denies the allegations in Paragraph 50. To the extent Petitioner is referring to periods outside the Audit Period, the Department lacks sufficient information to either admit or deny the allegations in paragraph 50 and therefore demands strict proof thereof.

51. The late payment and late filing penalties imposed by the Department must be abated for reasonable cause.

ANSWER: Paragraph 51 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 Paragraph 51 requires an answer the Department denies the allegations.

WHEREFORE, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects 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.

[SPACE INTENTIONALLY LEFT BLANK]

Dated: May 28, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Michael Coveny
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Special Assistant Attorney General

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DEPARTMENT OF REVENUE)	
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**AFFIDAVIT OF CURT REGENSBERGER
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Audit Supervisor.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 11-18, 20-25, 37-38 and 50.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



Curt Regensberger
Revenue Audit Supervisor
Illinois Department of Revenue

DATED: _____

5/27/15