

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MODY AND GHEEWALA, INC.,)	
Petitioner)	
v.)	15-TT-76
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (the “Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Mody and Gheewala, Inc.’s (the “Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 2816 West Irving Park Road, Chicago, Illinois, 60618, and can be reached at 773-267-7312.

ANSWER: The Respondent admits the allegations 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.

ANSWER: The Respondent admits the allegations in Paragraph 2.

3. Petitioner’s Taxpayer (Account) ID is 3531-4710.

ANSWER: The Respondent admits the allegations in 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: The Respondent admits the allegations in Paragraph 4.

NOTICE

5. On or about March 18, 2015, Petitioner received a Notice of Tax Liability letter (“Notice”) from the Department for a sales/use tax audit for the tax periods of July 1, 2009 to June 30, 2012. The Notice reflect [sic] \$131,960 in tax due, plus interest and late payment penalties. The Notice is attached hereto as Exhibit 1.

ANSWER: The Respondent admits the allegations in the first and second sentences of Paragraph 5. A copy of the Notice of Tax Liability issued by the Respondent to the Petitioner, for the reporting periods of July 1, 2009 through June 30, 2012 (the “Periods”), dated March 18, 2015 and with Letter ID CNXXX1235149X722, attached to the Petition (the “Notice”), is not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code § 5000.310), but to the extent an answer is required, the Respondent admits issuing the Notice and states that the Notice speaks for itself.

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 Respondent admits the allegations 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 Respondent admits the allegations in Paragraph 7.

BACKGROUND

8. Petitioner is a petroleum retailer.

ANSWER: The Respondent denies the allegations in Paragraph 8, and affirmatively states that during the Periods the Petitioner operated a gas station which was engaged in the sale at retail of gasohol, food products, cigarettes and other convenience store items, and in the provision of car wash services.

9. Defendants [sic] audited Petitioner's books and records for the tax periods July 1, 2009 to June 30, 2012.

ANSWER: The Respondent objects to Paragraph 9 in that it is vague as to the "Defendants," the "audit" and the "books and records" to which the Petitioner is referring. The Respondent also strongly objects to Paragraph 9, to the extent it seeks an answer concerning an audit or type of tax that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and without waiving the same, and to the extent Paragraph 9 refers to the Respondent's sales tax audit in this matter, and the Petitioner's books and records relevant to such audit, the Respondent admits the allegations in Paragraph 9. The Respondent denies any remaining allegations in 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 Respondent objects to Paragraph 10 in that it is vague as to the phrases “audit liability” and “estimated industry standard selling prices,” and as to the term “projections.” In addition, the Respondent strongly objects to Paragraph 10, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and without waiving the same, the Respondent denies the allegations in Paragraph 10, and affirmatively states that the sales tax liability reflected in the Notice is, in part, the excess of the Petitioner’s corrected taxable sales over the taxable sales reported on its Forms ST-1 for the Periods, where the corrected taxable sales consist of (a) in the case of gasohol, the product of the Petitioner’s purchases and the selling price from the U.S. Department of Energy’s Energy Information Administration, and (b) in the case of all other sales, the product of the Petitioner’s purchases and the selling prices from Convenient Store News reports.

COUNT I

Defendant’s [sic] audit methodology overstates Petitioner’s liability.

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

ANSWER: The Respondent incorporates and repeats its answers to Paragraphs 1 through 10 as if 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 due to Petitioner’s car wash discount and the Department’s calculations also

do not adequately account for non-taxable car wash receipts even though the Department examined car wash supplies purchase invoices during the audit tax periods and the Department's mark-up for the mini-mart is overstated especially with respect to cigarettes.

ANSWER: The Respondent objects to Paragraph 12 in that it is vague as to the phrases "audit liability," "average gas price," "car wash discount," "audit tax periods," and "mark-up for the mini-mart," and as to the term "audit." In addition, the Respondent strongly objects to Paragraph 12, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and without waiving the same, and to the extent Paragraph 12 refers to the Respondent's sales tax audit in this matter, the Respondent denies the allegations in 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 Respondent objects to Paragraph 13 in that it is vague as to the phrases "audit period," "audit liability," and "selling prices," and as to the term "estimates." In addition, the Respondent strongly objects to Paragraph 13, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and without

waiving the same, and to the extent Paragraph 13 refers to the Respondent's sales tax audit in this matter, the Respondent denies the allegations in Paragraph 13.

WHEREFORE, the Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count I of the Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. order judgment in favor of the Respondent and against the Petitioner; and
- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause

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

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

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

ANSWER: The Respondent objects to Paragraph 15 in that it is vague as to the phrase "audit liability." In addition, the Respondent strongly objects to Paragraph 15, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and

without waiving the same, and to the extent Paragraph 15 refers to the Respondent's sales tax audit in this matter, the Respondent admits the allegations 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 pursuant to Rule 310(b)(2). The Respondent admits the existence, force and effect of the statute cited in Paragraph 16 and states that the statute speaks for itself.

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 pursuant to Rule 310(b)(2). The Respondent admits the existence, force and effect of 86 Ill. Adm. Code § 700.400(b), intended to be referenced in Paragraph 17, and states that such regulation speaks for itself.

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 pursuant to Rule 310(b)(2). The Respondent admits the existence, force and effect of the regulation cited in Paragraph 18 and states that the regulation speaks for itself.

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

ANSWER: The Respondent objects to Paragraph 19 in that it is vague as to the phrase “audit period.” In addition, the Respondent strongly objects to Paragraph 19, to the extent it seeks an answer concerning an audit, type of tax, or tax period that is beyond the scope of the relevant sales tax audit in this matter. Notwithstanding said objections, and without waiving the same, and to the extent Paragraph 19 refers to the Respondent’s sales tax audit in this matter, the Respondent denies the allegations in Paragraph 19 of the Petition.

WHEREFORE, the Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Count II of the Petitioner’s Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 5) is correct as issued;
- c. find that the Respondent’s assessment of the penalties contained in the Notice was appropriate and conformed with the law;
- d. find that the Petitioner’s failure to pay the tax assessed in the Notice was not due to reasonable cause. 35 ILCS 735/3-8;

- e. order judgment in favor of the Respondent and against the Petitioner; and
- f. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Daniel A. Edelstein
Daniel A. Edelstein
Special Assistant Attorney General

Daniel A. Edelstein
Special Assistant Attorney General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
Telephone: (312) 814-3120
Facsimile: (312) 814-4344
Email: Daniel.Edelstein@Illinois.gov