

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

SUBHASH & CHANDER SHARMA)	
)	
Petitioners)	
v.)	15-TT-93
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant)	

NOTICE OF FILING

TO: James E. Dickett
The Law Office of James E. Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 telephone
708-784-3201 facsimile
Email: jdickett@aol.com

PLEASE TAKE NOTICE, that on June 16, 2015, the undersigned representative for the Illinois Department of Revenue (the "Department") filed the Department's Answer to Subhash and Chander Sharma's Petition with the Illinois Tax Tribunal, located at 160 North LaSalle Street, Room N506, Chicago, IL 60601.

Rickey A. Walton
Special Assistant Attorney General

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ILLINOIS DEPARTMENT OF REVENUE,)	
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Defendant)	

ANSWER

Petitioners, Subhash & Chander Sharma (“Petitioners”), by and through their attorneys, The Law Office of James E. Dickett, Ltd., complain of the Defendant, the Illinois Department of Revenue (“Department”), and allege as follows:

PARTIES

1. Petitioners are Illinois individuals located at 876 Yellowstone Street, Carol Stream, Illinois 60188, and can be reached at 630-408-5407.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). However, the phrase “Illinois individuals” is vague, and therefore the Department denies the allegation that the “Petitioners are Illinois individuals” and demands strict proof thereof.

2. Petitioners are 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 Rule 310(a) (1) (B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 2.

3. Petitioners' Taxpayer Audit ID is A240452608.

ANSWER: The information contained in Paragraph 3 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, 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 and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The Department admits that the Department is an agency of the State of Illinois. However, the term "Illinois tax laws" is vague and therefore the Department denies all other allegations contained in Paragraph 4 and demands strict proof thereof.

NOTICE

5. On or about March 11, 2015, Petitioners received four (4) Notice of Deficiency letters for Form IL-1120-ST, Small Business Corporation Replacement Tax returns ("Notices") for the years 2007, 2008, 2009, and 2011. The Notices, in aggregate, reflect more than \$15,000 in tax due, plus penalties and interest. The Notices are attached hereto as Exhibit 1.

ANSWER: The Department admits that the Notices of Deficiency (“Notices”) for tax years ending December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2011 (the “Years at Issue”) are dated March 11, 2015 and that the aggregate tax assessed for the four Notices is more than \$15,000 plus penalties and interest. Further, copies of the Notices are required to be attached to the Taxpayers’ Petition pursuant to Rule 310(a) (1) (D) and are not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department denies all other allegations contained in Paragraph 5 and demands strict proof thereof.

JURISDICTION

6. Petitioners bring 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 Paragraph 6.

7. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because timely filed this petition within 60 days of the Notices.

ANSWER: The Department admits that this Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act. However, whether the Petition was timely filed is a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 7 and states that such statute speaks for itself.

BACKGROUND

8. One of the Petitioners is the owner of an S corporation that is a petroleum retailer located in the far northwest suburbs.

ANSWER: The Department admits that Subhash Sharma is a 50% owner of Soodan Corporation, DBA BP DeKalb, which is located in DeKalb, Illinois.

9. Defendant audited the S corporation's books and records for sales tax for the period 2007 to 2011, and, based on that audit, the Department projected the business income tax assessments at issue herein without providing the proper allowance for cost of goods sold.

ANSWER: The Department admits that it audited Soodan Corporation's books and records for sales tax for the period 2007 to 2011. The Department denies all other allegations contained in Paragraph 9 and demands strict proof thereof.

COUNT I

10. Petitioners reallege and incorporate by this reference the allegations made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 9 as if fully set forth herein.

11. The Department assessed the tax liabilities contained in the Notices based on the sales tax audit results without providing the proper allowance for cost of goods sold.

ANSWER: Denied.

12. By applying the Department's corporate sales tax audit results to the business income tax Notices herein, the Department drastically and unreasonable inflated Petitioners' corporate income tax liability.

ANSWER: Denied.

WHEREFORE, Department prays that the Tribunal enter an order:

- a. denying each prayer for relief in Count I of the Petitioners' Petition;
- b. entering judgment in favor of the Department and upholding the Notices;
- c. authorizing the Department to take any action to assess, lien, levy, offset or any other way to prosecute and collect the tax liabilities set forth in the Notices; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

13. Petitioners reallege and incorporate by reference the allegations made in paragraphs 1 through 12, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 12 as if fully set forth herein.

14. In its Notices, the Department assessed late penalties.

ANSWER: Admit.

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: Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in Paragraph 15 and demands strict proof thereof.

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, and 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 16 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department denies any factual allegations contained in Paragraph 16 and demands strict proof thereof.

17. Petitioners exercised ordinary business care and prudence when it reasonably determined its business income liability during the audit periods and clearly did not use the Department's proposed sales tax audit results.

ANSWER: Paragraph 17 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department denies any factual allegations contained in Paragraph 17 and demands strict proof thereof.

WHEREFORE, Department prays that the Tribunal enter an order:

- a. affirming that the Petitioners have not established reasonable cause to justify abatement of the penalties imposed in this matter;
- b. finding that the Notices are correct as issued, and therefore upholding each Notice;
- c. ordering judgment in favor of the Department and against the Petitioners;
- d. authorizing the Department to take any action to assess, lien, levy, offset or any other way to prosecute and collect the amount shown due in the Notices; and
- e. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

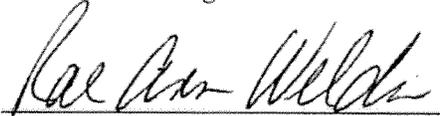
By: _____
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Special Assistant Attorney General

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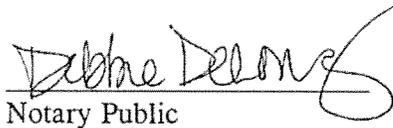
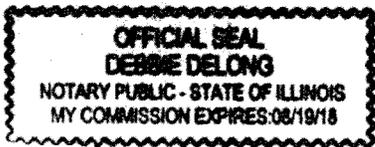
VERIFICATION

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 the Department's Answer to Subhash and Chander Sharma's petition are true and correct to the best of her knowledge and belief, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



Rae Ann Weldin
Revenue Auditor
Illinois Department of Revenue
Springfield, Illinois

Subscribed and Sworn to
Before me this 16 day of
June, 2015


Notary Public

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

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Email: jdickett@aol.com

Please take notice that the undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on June 16, 2015, he served the Department's Answer to Subhash and Chander Sharma's Petition by electronic mail at the electronic mail address shown above at the time shown on the electronic transmission confirmation.

Rickey A. Walton
Special Assistant Attorney General

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