

allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Taxpayer (Account) ID is 2158-0561.

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 that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The 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 Government and that the Department is responsible for enforcing the Illinois Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which is relevant to the legal claims raised in the Taxpayer's petition. The term "tax laws" is ambiguous and therefore, the Department denies all other allegations contained in Paragraph 4.

NOTICE

5. On November 14, 2013, Petitioner received a Notice of Tax Liability ("Notice") for the tax periods April 1, 2010 through June 30, 2012. The Notice reflects \$96,545 in tax due, as well as \$19,308 in penalties and \$4,661.55 in interest, for an assessment total of \$120,514.55. The Notice is attached hereto as Exhibit A.

ANSWER: A copy of the Notice is required by Section 310(a)(1)(D) of the Tax Tribunal Regulations 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 in Paragraph 5.

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 Department admits the factual allegations contained 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: Paragraph 10 contains a legal conclusion, not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force, and effect at all times relevant of the Tribunal Act referred to in Paragraph 10 and states that the statute speaks for its self. The Department admits the factual allegations contained in Paragraph 7.

BACKGROUND

8. Petitioner is engaged in the business of truck tire sales and service.

ANSWER: The Department admits the factual allegations contained in Paragraph 8.

9. Defendant audited Petitioner’s books and records for the tax periods April 1, 2010 to June 30, 2012.

ANSWER: The Department admits the factual allegations contained in Paragraph 9.

10. The audit liability contained in the Notice is based in part on the Defendant imposing tax on Petitioner’s tire scrap fees which are optional to customers who buy new tires.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and therefore demands strict proof thereof.

11. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on a portion of the Petitioner's invoices related to Federal Excise Tax which was separately stated.

ANSWER: The Department admits the factual allegations contained in Paragraph 11.

12. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on commissions paid by Petitioner to an independent salesperson.

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

13. The audit liability contained in the Notice is also based in part on the Defendant imposing tax on several of Petitioner's sales tax exempt customers.

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

COUNT I

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 if fully set forth herein.

15. Petitioner charges a service fee to customers who want to dispose ("scrap") their old tires regardless of whether the customers purchased new tires.

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

16. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

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 120/1 of the Retailers' Occupation Tax Act and states that the statute speaks for itself.

17. The State of Illinois does not impose sales tax on the sale at retail in Illinois of services.

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.

18. Contrary to the Department's determination, Petitioner's tire scrap fees are not subject to Illinois sales tax.

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. The Department denies all factual allegations contained in Paragraph 18.

WHEREFORE, the Department respectfully requests that this Tribunal:

- (a) Deny each prayer for relief in Count I of the petition;
- (b) Find that the Petitioner's tire scrap fees are subject to Illinois sales tax;
- (c) Find that the Department's Notices correctly reflect the Petitioner's liability, including interest and penalties;
- (d) Enter judgment in favor of the Department and against the Petitioner; and
- (E) Grant any further relief this Tribunal deems just and appropriate.

COUNT II

19. Petitioner realleges and incorporates by reference the allegation made in

paragraphs 1 through 18, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 18 as if fully set forth herein.

20. Some of Petitioner's invoices contain separately stated charges for Federal excise tax related to the tires.

ANSWER: The Department admits the factual allegations contained in Paragraph 20.

21. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

ANSWER: Paragraph 21 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 120/1 of the Retailers' Occupation Tax Act and states that the statute speaks for itself.

22. Contrary to the Department's determination, Petitioner's charges for Federal excise tax are not subject to Illinois sales tax because such charges are not tangible personal property.

ANSWER: The Department denies the factual allegations contained in Paragraph 22.

WHEREFORE, the Department respectfully requests that this Tribunal:

- (a) Deny each prayer for relief in Count II of the petition;
- (b) Find that the Petitioner's charges for Federal excise tax are subject to Illinois sales tax;
- (c) Find that the Department's Notices correctly reflect the Petitioner's liability including interest and penalties;
- (d) Enter judgment in favor of the Department and against the Petitioner; and

(e) Grant any further relief this Tribunal deems just and appropriate.

COUNT III

23. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 22, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 22 as if fully set forth herein.

24. The Department's audit liability contains taxable exceptions related to payments made by the Petitioner to an independent contractor for sales commissions.

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

25. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

ANSWER: Paragraph 25 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 120/1 of the Retailers' Occupation Tax Act and states that the statute speaks for itself.

26. Contrary to the Department's determination, Petitioner's paid sales commissions are not subject to Illinois sales tax because such charges are not tangible personal property.

ANSWER: Paragraph 26 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 all factual allegations contained in Paragraph 26 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests that this Tribunal enter an order

that:

- (a) Deny each prayer for relief in Count III of the petition;
Find that the Petitioner's charges for Federal excise tax are subject to Illinois sales tax;
- (c) Find that the Department's Notices correctly reflect the Petitioner's liability including interest and penalties;
- (d) Enter judgment in favor of the Department and against the Petitioner; and
- (e) Grant any further relief this Tribunal deems just and appropriate.

COUNT IV

27. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 26, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 26 as if fully set forth herein.

28. The Department's audit liability contains taxable exceptions related to sales to sales tax exempt customers including exempt organizations, out-of-state customers, and sales for resale.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 28 and therefore demands strict proof thereof.

29. The State of Illinois imposes sales tax on persons engaged in the business of selling tangible personal property at retail in Illinois. 35 ILCS 120/1.

ANSWER: Paragraph 29 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 120/1 of the Retailers'

Occupation Tax Act and states that the statute speaks for itself.

30. Contrary to the Department's determination, Petitioner's sales to sales tax exempt customers are not subject to Illinois sales tax because such sales are not sales at retail.

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. The Department denies all factual allegations contained in Paragraph 30 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests that this Tribunal enter an order that:

- (a) Deny each prayer for relief in Count IV of the petition;
- (b) Find that the Department did not tax documented non-exempt sales;
- (c) Find that the Department's Notices correctly reflect the Petitioner's liability including interest and penalties;
- (d) Enter judgment in favor of the Department and against the Petitioner; and
- (e) Grant any further relief this Tribunal deems just and appropriate.

COUNT V

31. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 30, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 30 as if fully set forth herein.

32. In its Notice, the Department assessed late payment penalties in the amount of \$19,308.

ANSWER: The Department admits the factual allegations contained in Paragraph 32.

33. Illinois law provides that 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 33 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 the Uniform Penalty and Interest Act (35 ILCS 735/3-1 *et seq.*) and states that the statute speaks for itself.

34. 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 700.400(b).

ANSWER: Paragraph 34 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 its regulations and states that the regulations speak for themselves.

35. 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).
700.400(b).

ANSWER: Paragraph 35 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 its regulations and states that the regulations speak for themselves.

36. The Petitioner exercised prudence in preparing its sales tax returns and never collected sales tax on any of the audit exceptions.

ANSWER: Paragraph 36 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 all factual allegations contained in Paragraph 36 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this tribunal

- a. Deny each prayer for relief in Count V of the Petition;
- b. Find that the Petitioner is liable for the late payment penalties assessed in the Department's Notice of Tax Liability;
- c. Find that the Petitioner did not act with reasonable cause with respect to its failure to pay the taxes due to the Department.
- d. Find that the Department's Notices correctly reflect the Petitioner's liability including interest and penalties;
- e. Enter judgment in favor of the Department and against the Petitioner; and
- f. Grant any further relief this Tribunal deems just and appropriate.

Respectfully submitted,

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ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

COMMERCIAL TIRE SERVICE, INC,)
Petitioner,)
v.)
DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)

Case No. 14-TT-37

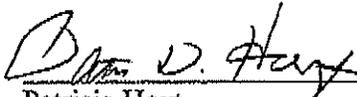
AFFIDAVIT OF PATRICIA HOYT
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

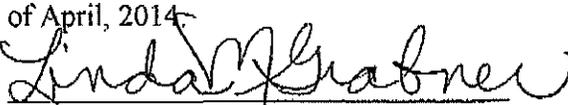
STATE OF ILLINOIS
COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Patricia Hoyt, 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 audited Commercial Tire Service, Inc. for the period of April 1, 2010 through June 30, 2012.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 10, 12, 13, 15, 24, and 28.
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.


Patricia Hoyt
Revenue Auditor III
Illinois Department of Revenue

Subscribed and sworn to this 29th day
of April, 2014

Notary Public

