

ILLINOIS INDEPENDENT
TAX TRIBUNAL

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| MIDWEST FUEL, INC., |) | |
| |) | |
| Petitioner, |) | |
| v. |) | No. 14 TT 43 |
| |) | |
| ILLINOIS DEPARTMENT OF |) | |
| REVENUE, |) | |
| |) | Judge Brian F. Barov |
| |) | |
| Respondent. |) | |

DEPARTMENT' S ANSWER TO PETITION

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

1. Petitioner Midwest Fuel, Inc., ("MFI") is a corporation organized under the laws of the State of Missouri, qualified to do business in the State of Illinois and owning property located in the count of St. Clair, State of Illinois that is used to sell gasoline and convenience store merchandise. MFI' s Account ID is 3787-5469. MFI may be reached at 314-889-8000, the phone number of MFI' s undersigned counsel. Petitioner' s FEIN is 20-2577996.

ANSWER: The Department admits the allegations contained in paragraph 1.

2. Respondent, the Illinois Department of Revenue ("DOR"), is an Illinois state agency charged, in part, with auditing taxes related to the sales of gasoline and merchandise sold at gas stations with convenience stores. Service of process may be effected on DOR by mailing a copy of this Petition to the Office of Legal Services at the address set forth in the caption of this case.

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

3. The Bureau of Audits, Technical Review Section of DOR has alleged that an audit of MFI's sales during the period from January 1, 2010 to June 30, 2012 shows:

- A. gasoline taxes were allegedly underpaid by \$121,552.16; and
- B. that an alleged Late Payment Penalty of \$24,311 is due and owing; and
- C. that an alleged Negligence Penalty of \$24,311 is due and owing; and
- D. that alleged Interest in the amount of \$6,882.89 is due and owing; all as set

forth in Exhibit 1, Notice of Tax Liability dated November 12, 2013 with a Letter ID of CNXXXX67X4713923, a true and accurate copy of which is attached hereto and incorporated herein by this reference.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to Plaintiff's Petition as Exhibit 1 and referred to in paragraph 3 and states that such document speaks for itself.

4. As set forth in Exhibit 1, DOR provided MFI 60 days, up to and including January 13, 2014, to protest the audit results reported in the Notice of Tax Liability and to request an administrative hearing.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to Plaintiff's Petition as Exhibit 1 and referred to in paragraph 4 and states that such document speaks for itself.

5. On January 13, 2014, MFI timely filed a protest of the Notice of Tax Liability by certified mail properly addressed to the DOR Office of Administrative Hearings (see Exhibit 2 attached hereto and incorporated herein by this reference).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to Plaintiff's Petition as Exhibit 2 and referred to in paragraph 5 and states that such documents speak for themselves

6. On or about January 16, the DOR Office of Administrative Hearings notified MFI that it no longer had jurisdiction to hear the protest, but that such jurisdiction is now vested exclusively with this Illinois Independent Tax Tribunal pursuant to 35 ILCS 1010/1 *et seq.*

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

7. The Tax Tribunal's draft proposed rules provide that a timely protest that is dismissed by the Office of Administrative Hearing for lack of jurisdiction "may be filed with the Tax Tribunal within 60 days of the notice of such dismissal."

ANSWER: The Department admits the existence, force and effect, at all relevant times of the emergency regulation set forth or referred to in paragraph 7 and states such provision speaks for itself.

8. MFI received notice of such dismissal on or about January 21, 2014 (see Exhibit 3 attached hereto and incorporated herein by this reference).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to Plaintiff's Petition as Exhibit 3 and referred to in paragraph 8 and states that such document speaks for itself.

9. This Petition to Protest the Audit and Notice of Tax Liability asserted by DOR is properly before this Tax Tribunal because it was timely mailed by certified mail pursuant Emergency Rule of Procedure 5000.310(a)(2) on or about March 17, 2014, accompanied by a check for \$500 made payable to the Illinois Independent Tax Tribunal (see Exhibit 4 attached hereto and incorporated herein by reference).

ANSWER: Although paragraph 9 is not an allegation of material fact but a legal conclusion, the Department admits the allegations/legal conclusions contained in paragraph 9.

10. MFI protests the audit results set forth in the Notice of Tax Liability because, among other reasons, the alleged assessment, penalties and interest is in excess of the statutory authority or jurisdiction.

ANSWER: Although paragraph 10 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 10.

11. MFI also protests the audit results set forth in the Notice of Tax Liability because the proposed assessment is based upon incomplete and inaccurate sales records, estimates based upon formula that do not accurately reflect actual sales at the store location audited, and includes sales that are neither taxable or exempt from tax.

ANSWER: Although paragraph 11 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 11.

12. The audit results, therefore, are not supported by competent and substantial evidence upon the whole record and does not reflect the true value of taxes owed.

ANSWER: Although paragraph 12 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 12.

13. Upon information and belief, the auditor apparently used a gross profit percentage of approximately 45 percent, which is excessive, not based upon fact and so grossly unfair as to be punitive and in violation of constitutional protections under both the Illinois and United States constitutions provided by the due process clauses, equal protection clauses and tax uniformity clauses.

ANSWER: Although paragraph 13 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 13.

14. Upon information and belief, the auditor incorrectly included a substantial amount of cash items that are not taxable sales since the cash was used for check cashing services, cash transfers, and purchases of property.

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. Upon information and belief, the auditor included a schedule incorrectly adjusting the amount of sales between high-rate retail sales and low-rate retail sales, and consequently, MFI challenges the amount of the adjustment.

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. Upon information and belief, the auditor included an incorrect assessment of prepaid phone cards.

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.

17. MFI reserves the right to add additional reasons for its protest at such time as taxpayer has had a full and fair opportunity to examine all of the information upon which the proposed assessment is based.

ANSWER: Although paragraph 17 is not an allegation of material fact but a legal conclusion, the Department admits the allegations/legal conclusions contained in paragraph 17.

18. The Notice of Tax Liability is arbitrary, capricious and unreasonable and involves an abuse of discretion and was made upon unlawful procedure.

ANSWER: Although paragraph 18* is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 18.*

*Petitioner mis-numbered this paragraph as paragraph 21 in its Petition.

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 of Tax Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-4142

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:

Helmut Starr
Polsinelli Shughart
100 S. Fourth Street
Suite 1000
St. Louis, MO 63102

By email to hstarr@polsinelli.com on April 17, 2014.



Michael Coveny