

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

MEYER INDUSTRIAL CONTAINER LLC )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS DEPARTMENT )  
OF REVENUE, )  
)  
Respondent. )

No.

RECEIVED  
OCT 23 2015  
BY: 15TT218

PETITION

Petitioner, MEYER INDUSTRIAL CONTAINER LLC (“Petitioner”), by and through its attorneys, Madden, Jiganti, Moore & Sinars LLP, petitions for redetermination of the liability set forth by the Respondent, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois limited liability company located at 610 W. 81<sup>st</sup> Street, Chicago, Illinois, 60620 and can be reached at (773)483-5050.
2. Petitioner is represented by Claire L. McMahon and Theodore A. Sinars of Madden, Jiganti, Moore & Sinars located at 190 S. LaSalle St. Ste. 1700, Chicago, Illinois 60603, who can be reached at 312-314-4101 or [cmcmahon@mjms.com](mailto:cmcmahon@mjms.com).
3. Petitioner’s EIN Number is 75-2968023.
4. Petitioner was formed to cleanse and refurbish steel drums for the purpose of selling the drums to customers for use in manufacturing or resale.
5. 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.

## NOTICE

6. On June 2, 2015, the Respondent issued the Notice Before Collection Action (the "Notice") totaling use tax, penalties, and interest of \$480,250.41 for the period October 2010 through September 2013 ("Period at Issue"). A true and accurate copy of the Notice is attached hereto as Exhibit A.

## JURISDICTION

7. Petitioner brings this action pursuant to Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

8. This Petition comes to the Illinois Independent Tax Tribunal through the Late Discretionary Hearing provisions provided by 86 Ill. Admin Cod Sec. 200.175(d).

9. On July 30, 2015 the Petitioner submitted its request for a Late Discretionary Hearing to Chief Administrative Law Judge Terry Charlton. A true and accurate copy of the Petitioners request for Late Discretionary Hearing is attached hereto as Exhibit B.

10. On September 14, 2015, Chief Administrative Law Judge Terry Charlton accepted the Petitioner's request for Late Discretionary Hearing conditioned on the payment of \$77,076 in sales tax for the period in question. A true and accurate copy of the Chief Administrative Law Judge's acceptance of the Petitioner's request for Late Discretionary Hearing is attached hereto as Exhibit C.

11. On September 16, 2015 the Petitioner paid the \$77,076 of sales tax and accepted the conditional Late Discretionary Hearing. A true and accurate copy of the Petitioner's payment and acceptance is attached hereto as Exhibit D.

12. Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's Rules provide that the Tribunal has jurisdiction over this matter because the amount on the Notice exceeds the \$15,000 threshold set forth in the cited Rule and the Taxpayer is filing a petition with

the Tax Tribunal within 60 days of issuance of the Letter granting a Late Discretionary Hearing.

### BACKGROUND

13. At Petitioner's plant, customers bring in dirty, used, 55 gallon steel drums for the purpose of environmental cleansing so these drums may be reused.

14. The Petitioner's primary customers are resellers and manufacturers of steel drums.

15. The Company's primary customers are resellers and manufacturers of steel drums.

16. The Company employs several individuals in the accounting department to manage the day to day operations.

17. The Company engages outside accountants to prepare income tax returns and financials.

18. The Petitioner employs an individual who is charged with the responsibility of handling all sales tax matters, including audits, relating to the Petitioner (the "Employee").

19. In 2011, Petitioner became the subject of a Department of Revenue sales and use tax audit for periods from 2004 through September 2010.

20. When the auditor originally came to the Petitioner's facility to conduct the audit, a personality conflict prevented the auditor from working with the Employee directly, and the audit was completed via correspondence.

21. Despite documentation to the contrary, the auditor issued an almost \$800,000 Notice of Tax Liability.

22. The Employee did not communicate to the Petitioner or its related professionals that it was the subject of an Illinois Department of Revenue audit, or that the

auditor had issued audit results reflecting a balance close to \$800,000 until the protest date had past and collection activity had already begun.

23. When the Petitioner's accounting department and the outside accountants learned of the audit results, they sought legal representation and petitioned the then acting Chief Administrative Law Judge, Mimi Brin, for Late Discretionary Hearing Relief, which was granted.

24. The Late Discretionary Hearing was not granted before the Department of Revenue issued a Notice of Penalty Liability attempting to assess a penalty against one of the Petitioner's owners for the underlying sales tax liability from the first audit period.

25. The Petitioner involved its representatives in enough time to file a timely Protest to Administrative Hearings for the Responsible Officer Penalty issued on the Notice of Penalty Liability against the Petitioner's owner.

26. The Petitioner's representatives also protested the Petitioner's audit liability to Administrative Hearings.

27. On motion by the Petitioner's representative, the Administrative Law Judge consolidated the two cases.

28. While in Administrative Hearings the Respondent wrongfully levied the Petitioner's accounts receivables for approximately \$77,000 over the course of months despite persistent efforts to stop the levy.

29. Nonetheless the Petitioner has so far been able to reduce its sales tax liability by submitting the resale certificates and arranging for a revised-audit by the Respondent's auditor.

30. The sales tax issue has been narrowed to the reseller status of two purchasers out of more than 60.

31. One of those two purchasers had provided the Petitioner with a reseller

certificate.

32. While the case has not yet settled, offers have been made and negotiations are ongoing.

33. Before the first audit period reached a resolution in Administrative Hearings, the Employee received notice of a follow up period spanning October 2010 through September 2013 ("Second Audit").

34. The Employee failed to alert the Petitioner, the third party accountants, or the representatives from the first audit of the initiation of Respondent's Second Audit.

35. The Second Audit was again handled by correspondence due to the conflict between the auditor and the Employee.

36. Despite the production of resale certificates during the proceedings before Administrative Hearings on the first audit period, the auditor completed the Second Audit without considering the Petitioner's sales to resellers.

37. Despite attempts to protest the audit results on his own, the Employee was not successful at securing a forum.

38. The Petitioner, the third party accountants and the representatives, did not learn of Second Audit until a Collection Notice was received from Respondent.

39. When the Petitioner, the third party accountants, and the representatives, learned of the second audit, they also learned that the Employee had not been filing sales tax returns for the Petitioner during the period spanning the Second Audit.

40. To stop the Respondent's collection efforts, the Petitioner prepared an Offer in Compromise to the Board of Appeals.

41. As the basis for the Petitioner's Offer in Compromise, the Petitioner's accounting department prepared original ST-1s for the Second Audit period reporting the proper amount of tax due and owing, issued checks in satisfaction of the tax payments

reflected on the ST-1s totaling \$77, 076 in sales tax for the period October 2010-September 2013, and submitted the information to the Board of Appeals for consideration.

42. The Board of Appeals determined that Administrative Hearings had jurisdiction over the matter and urged the Petitioner to petition the now acting Chief Administrative Law Judge, Terry Charlton, for Late Discretionary Hearing Relief.

43. On July 30, 2015 the Petitioner submitted its request for a Late Discretionary Hearing to Chief Administrative Law Judge Terry Charlton. An abridged [a full copy is available upon request] copy of the Petitioner's request for Late Discretionary Hearing is attached hereto as Exhibit B.

44. On September 14, 2015, Chief Administrative Law Judge Terry Charlton accepted the Petitioner's request for Late Discretionary Hearing conditioned on the payment of \$77, 076 in sales tax for the period in question. A true and accurate copy of the Chief Administrative Law Judge's acceptance of the Petitioner's request for Late Discretionary Hearing is attached hereto as Exhibit C.

45. On September 16, 2015 the Petitioner paid the \$77,076 of sales tax and accepted the conditional Late Discretionary Hearing. A true and accurate copy of the Petitioner's payment and acceptance is attached hereto as Exhibit D.

46. Despite the Department's acceptance of the Petitioner's Late Discretionary Hearing Request, Collection activity against the Petitioner has persisted, as it did in the prior audit period. A true and accurate copy of the letter that was sent to collections is attached hereto as Exhibit E.

47. On October 2, 2015 the Petitioner's owner received a Notice of Penalty Liability, assessing the full amount of the auditor's liability against the Petitioner as a penalty. A true and accurate copy of the Notice of Penalty Liability is attached hereto and marked Exhibit F.

## COUNT I

**The auditor erred by failing to consider the Petitioner's reseller certificates as an adjustment to gross sales.**

48. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 47, inclusive, hereinabove.

49. The Respondent imposed a sales tax on the Petitioner's gross sales.

50. The Petitioner has valid reseller certificates from its customers verifying the nature of the sales as non-taxable.

51. The Respondent did not adjust the Petitioner's gross sales by the amount of product it sold to customers which provided valid resale certificates.

52. ILCS Section 120/2c provides that sales shall be made tax free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

53. The Petitioner was furnished reseller certificates, or resale numbers from its customers in connection with their certification that the transactions being made were not taxable due to resale or other relevant exemptions.

54. The Petitioner supplied many of the reseller certificates to the auditor during the course of the revised audit for the prior period.

55. The Petitioner has included many of the reseller certificates, as well as the verification from the Illinois Department of Revenue Website that the reseller numbers are properly registered with the Respondent, in the Late Discretionary Hearing Request.

56. The Petitioner has more reseller certificates available for inspection by the Respondent's auditor.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Respondents may not assess a liability against Petitioner for sales to customers who provided valid resale certificates or resale registration numbers;
- (b) enters judgment in favor of Petitioner and against the Respondent and cancels the Notice;
- (c) enjoins the Respondent from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

## COUNT II

**The auditor erred by failing to consider the Petitioner's customers eligible for exemption under the manufacturer's exemption as an adjustment to gross sales.**

56. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 56, inclusive, hereinabove.

57. The Respondent imposed a sales tax on the Petitioner's sale of steel drums to its customers who used those steel drums in the manufacturing process.

58. The Petitioner has valid reseller certificates from its customers verifying the nature of the sales as non-taxable and the supporting documentation explaining the exempt nature of the use of the steel drums in manufacturing.

59. The Respondent did not adjust the Petitioner's gross sales by the amount of product it sold to customers which provided valid resale certificates and explanations of the manufacturing use of the steel drums.

60. Manufacturing and assembly equipment is exempt from sales tax when the purchaser of such equipment provides the seller with a valid reseller certificate CR-61 and a valid Illinois Reseller Number. ILCS Section 120/2-45.

61. The Petitioner was furnished resale numbers from its customers in connection with their certification that the transactions being made were not taxable due to resale or other relevant exemptions.

62. The Petitioner was furnished reseller certificates, or resale numbers from its customers in connection with their certification that the transactions being made were not taxable due to resale or other relevant exemptions.

63. The Petitioner supplied many of the reseller certificates to the auditor during the course of the revised audit for the prior period.

64. The Petitioner has included many of the reseller certificates, as well as the verification from the Illinois Department of Revenue Website that the reseller numbers are properly registered with the Respondent, in the Late Discretionary Hearing Request.

65. The Petitioner has more reseller certificates available for inspection by the Respondent's auditor.

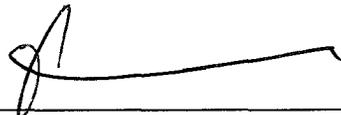
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Respondents may not assess a liability against Petitioner for sales to customers who provided valid resale certificates or resale registration numbers;
- (b) enters judgment in favor of Petitioner and against the Respondent and cancels the Notice;

- (c) enjoins the Respondent from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

**MEYER INDUSTRIAL CONTAINER, LLC**  
Petitioner

By:   
One of Petitioner's Attorneys

Claire L. McMahon  
Theodore A. Sinars  
Madden, Jiganti, Moore & Sinars  
190 S. LaSalle St. Ste. 1700  
Chicago, IL 60603  
(312) 314-4101

# Notice Before Collection Action



June 1, 2015



Letter ID: CNXXX11452X296X6

#BWNKMGV  
#CNXX X114 52X2 96X6#  
MEYER INDUSTRIAL CONTAINER LLC  
610 W 81ST ST  
CHICAGO IL 60620-2511

Taxpayer ID: 75-2968023



## We have not received all of your required payments.

You must immediately pay the balance due of \$480,250.41.

Details are shown on the following pages.

This may be the **only** notice we will send you before we take other collection action. Other collection action may include garnishment of your wages or seizure and sale of your assets.

**It is important that you respond to us immediately.**

If you have any questions about this notice, please contact us at the address and phone number listed below. If you are currently making payments on an installment contract for this liability period, please disregard this notice.

ICS PAYMENT AND CORRESPONDENCE UNIT  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19043  
SPRINGFIELD IL 62794-9043

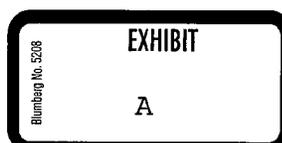
217 785-2698  
217 557-5757 fax

enclosures

### For information about

- › how to pay
- › how to file
- › what you owe
- › collection actions

Turn page



# Taxpayer Statement



June 2, 2015



Letter ID: L0923524112

MEYER INDUSTRIAL CONTAINER LLC  
610 W 81ST ST  
CHICAGO IL 60620-2511

Taxpayer ID: 75-2968023

Total amount due: \$480,250.41



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

### Sales/Use Tax & E911 Surcharge

Account ID: 3302-0469

Period	Tax	Penalty	Interest	Other Payments/Credits	Balance
30-Sep-2013	372,938.00	82,147.00	25,165.41	-	480,250.41



SOC

Retain this portion for your records.

P-000934

Fold and detach on perforation. Return bottom portion with your payment.

## Taxpayer Statement (R-12/08) (136)



Letter ID: L0923524112  
MEYER INDUSTRIAL CONTAINER LLC

Total amount due: \$480,250.41

Write the amount you are paying below.

Mail this voucher and your payment to:  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19035  
SPRINGFIELD IL 62794-9035

\$ \_\_\_\_\_  
Write your Taxpayer ID on your check.

000 006 013528377126 731 123199 3 0000048025041