

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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|--------------------------------|---|---------------------------|
| MEYER INDUSTRIAL |) | |
| CONTAINER LLC, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 15-TT-218 |
| |) | |
| THE ILLINOIS DEPARTMENT |) | |
| OF REVENUE, |) | |
| Respondent. |) | |

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

PARTIES

1. Petitioner is an Illinois limited liability company located at 610 W. 81st Street, Chicago, Illinois, 60620 and can be reached at (773) 483-5050.

ANSWER: The information contained in Paragraph 1 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 requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations in Paragraph 1.

2. Petitioner is represented by Claire L. McMahon and Theodore A. Sinars of Madden, Jiganit, 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.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (86 Ill. Admin. Code §5000.310) and is not a material

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

3. Petitioner's EIN Number is 75-2968023.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact requiring an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations in Paragraph 3.

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.

ANSWER: The Department admits the factual allegations in Paragraph 4.

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.

ANSWER: Paragraph 5 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.

NOTICE

6. On June 2, 2105, the Respondent issued the Notice Before Collection Action ("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.

ANSWER: The Department admits the factual allegations in Paragraph 6 and states the Notice speaks for itself.

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.

ANSWER: Paragraph 7 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.

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

ANSWER: Paragraph 8 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.

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 Petitioner’s request for Late Discretionary Hearing is attached hereto as Exhibit B.

ANSWER: The Department admits the allegations in Paragraph 9.

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.

ANSWER: The Department admits the allegations in Paragraph 10.

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.

ANSWER: The Department denies the allegations in Paragraph 11. Payment was received by the Department on October 2, 2015.

12. Section (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.

ANSWER: Paragraph 12 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.

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.

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

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 14 and demands strict proof thereof.

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

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

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 16 and demands strict proof thereof.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 17 and demands strict proof thereof.

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”).

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 18 and demands strict proof thereof.

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

ANSWER: The Department denies the allegations in Paragraph 19. The Department states the audit referenced in Paragraph 19 was initiated in 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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 20 and demands strict proof thereof.

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

ANSWER: The Department denies the allegations in Paragraph 21.

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 passed and collection activity had already begun.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 22 and demands strict proof thereof.

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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 23 and demands strict proof thereof.

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.

ANSWER: The Department admits the allegations in Paragraph 24.

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 Petitioner's owner.

ANSWER: Paragraph 25 contains a legal conclusion with respect to the timeliness of the Petition, 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 one of Petitioner's Responsible Officers filed an Administrative Hearing's Protest in August 2012.

26. The Petitioner's representative also protested the Petitioner's audit liability to

Administrative Hearings.

ANSWER: The Department admits the Petitioner filed an Administrative Hearings Protest in October 2012.

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

ANSWER: The Department denies the allegations in paragraph 27.

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.

ANSWER: The Department denies the allegations in paragraph 28.

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.

ANSWER: The Department admits additional documents were provided relating to the issues in Administrative Hearings. Paragraph 29 contains a legal conclusion with respect to Petitioner's allegation the Company's liability has been reduced. Paragraph 29 does not contain a material allegation of fact since the Administrative Hearings case is still open and active; therefore Paragraph 29 does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

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

ANSWER: The Department denies the allegations in Paragraph 30 and states that while offers have been made and negotiations are ongoing, no agreements have been finalized.

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

ANSWER: The Department denies the allegations in Paragraph 31. The Department further lacks sufficient information to admit or deny the allegations in Paragraph 31 and demands strict proof thereof.

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

ANSWER: The Department admits the allegations in Paragraph 32.

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”).

ANSWER: The Department admits the audit period was October 2010 through September 2013. However, the Department additionally states the original audit period was October 2010 through April 2012 and expanded through two expansion letters to include April 2012 through June 2013 and July 2013 through September 2013. The Department lacks sufficient information to admit or deny when the employee received notice of a follow up audit and demands strict proof thereof.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 34 and demands strict proof thereof.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 35 and demands strict proof thereof.

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.

ANSWER: The Department states that the allegations in Paragraph 36 are vague and conclusory and are therefore denied.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 37 and demands strict proof thereof.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 38 and demands strict proof thereof.

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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 39 and demands strict proof thereof.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 40 and demands strict proof thereof.

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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 41 and therefore demands strict proof thereof.

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 Carlton, for Late Discretionary Hearing Relief.

ANSWER: The Department admits the allegations in Paragraph 42.

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 available upon request] copy of the Petitioner's request for Late Discretionary Hearing is attached hereto as Exhibit B.

ANSWER: The Department admits the allegations in Paragraph 43.

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 periods 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.

ANSWER: The Department admits the allegations in Paragraph 44.

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.

ANSWER: The Department denies the allegations in Paragraph 45. Payment was received by the Department on October 2, 2015.

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.

ANSWER: The Department states that the allegations in Paragraph 46 are vague and conclusory and are denied. The Department lacks sufficient information to admit or deny the allegations in Paragraph 46 and demands strict proof thereof.

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.

ANSWER: The Department lacks sufficient information on when the Petitioner received the Notice of Personal Liability and therefore demands strict proof thereof. The Department admits it issued a Notice of Personal Liability against one of the owners dated October 2, 2015.

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.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through

47 as though fully set forth herein.

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

ANSWER: The allegations in Paragraph 49 are vague. However, the Department admits it issued a Notice of Tax Liability on February 4, 2015 for tax periods October 2010 through September 2013.

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

ANSWER: Paragraph 50 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. To the extent Paragraph 50 requires any further answer the Department denies the allegations.

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

ANSWER: The Department denies the allegations in Paragraph 51.

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.

ANSWER: Paragraph 60 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.

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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 53 and demands strict proof thereof.

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

ANSWER: The Department admits some documents were given to the auditor for a proposed audit adjustment related to the First Audit in Administrative Hearings. However, the Department further states the Second Audit stands alone and no relevant supporting documentation or reseller certificates were given to the auditor related to the Second Audit. Any remaining allegations in Paragraph 54 are denied.

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.

ANSWER: The Department admits Petitioner has attached certain reseller certificates and certain verifications from the Illinois Department of Revenue Website to its Late Discretionary Hearing Request.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 56.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;

- b. Find that the Department's Notice correctly reflect the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

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.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 56 as though fully set forth herein.

58. 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.

ANSWER: The allegations in Paragraph 58 (Petitioner's Paragraph 57) are vague. However, the Department admits it issued a Notice of Tax Liability on February 4, 2015 for tax periods October 2010 through September 2013.

59. 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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 59 (Petitioner's Paragraph 58) and demands strict proof thereof. To the extent Paragraph 59 (Petitioner's Paragraph 58) requires any further answer, Department denies the allegations in Paragraph 59 (Petitioner's Paragraph 58.)

60. The Respondent did not adjust the Petitioner's gross sales by the amounts of product it

sold to customers which provided valid resale certificates and explanations of the manufacturing use of the steel drums.

ANSWER: The Department denies the allegations in Paragraph 60 (Petitioner's Paragraph 59.)

61. Manufacturing and assembly equipment is exempt from the 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.

ANSWER: Paragraph 61 (Petitioner's Paragraph 60) 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.

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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 62 (Petitioner's Paragraph 61) and demands strict proof thereof. To the extent Paragraph 62 (Petitioner's Paragraph 61) requires any further answer, the Department denies the allegations.

63. 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.

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 63 (Petitioner's Paragraph 62) and demands strict proof thereof. To the extent Paragraph 63 (Petitioner's Paragraph 62) requires any further answer, the

Department denies the allegations.

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

ANSWER: The Department admits some documents were given to the auditor for a proposed audit adjustment related to the First Audit in Administrative Hearings. However, the Department further states the Second Audit stands alone and no relevant supporting documentation or reseller certificates were given to the auditor with respect to the Second Audit. Any remaining allegations in Paragraph 64 (Petitioner's Paragraph 63) are denied.

65. 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.

ANSWER: The Department admits Petitioner has attached certain reseller certificates and certain verifications from the Illinois Department of Revenue Website to its Late Discretionary Hearing Request.

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

ANSWER: The Department lacks sufficient information to admit or deny the allegations in Paragraph 66 (Petitioner's Paragraph 65) and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflect the Petitioner's liability including interest and penalties;

- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: January 12, 2016

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

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AFFIDAVIT OF ARLENE MAHEIA
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue in the Audit Bureau.
2. My current title is Revenue Auditor III.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition Paragraphs 13-18, 20-23, 31, 33-35, 37-41, 46-47, 53, 56, 59, 62-63 and 66.

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 this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.


 Arlene Maheia
 Revenue Auditor III
 Illinois Department of Revenue

DATED: 1/2/2016