

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>UNIVERSAL SCRAP METALS, INC.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 15-TT-244</b>
	)	
<b>DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS,</b>	)	
<b>Respondent.</b>	)	

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**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:

**BACKGROUND AND RELEVANT FACTS**

1. Universal Scrap is an Illinois corporation, whose address is 2500 W. Fulton St., Chicago, IL 60612. Universal Scrap’s Illinois taxpayer ID number is 3861-1831. Universal Scrap’s telephone number is 312-666-0011.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) and (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. To the extent any further answer is required, the Department admits the factual allegations contained in Paragraph 1.

2. Universal Scrap prepared and timely filed IDOR Forms ST-16s (Manufacturer’s Purchase Credit Earned) and ST-17s (Manufacturer’s Purchase Credit Used) each year of the audit (2009-2012) (the “MPC Returns” or “Returns”).

**ANSWER:** The Department denies the allegations in Paragraph 2.

3. Universal Scrap filed the MPC Returns by mailing them via regular United States Postal Service. This method did not require signature by the Department, nor did it provide proof of delivery to Universal Scrap.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 3 and therefore demands strict proof thereof.

4. On October 6, 2015, the Department issued a statutory Notice of Tax Liability, Form EDA-105-R, ROT Audit Report (the "Assessment"), to Universal Scrap in the amount of \$37,098.11 for the reporting period of July 1, 2009 through December 31, 2012. A copy of the Assessment is attached as Exhibit A.

**ANSWER:** The information contained in Paragraph 4 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(D)(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 denies the Notice of Tax Liability can be identified as EDA-105-R. An EDA-105-R is separate and distinct from a Notice of Tax Liability. The Department admits the remainder of the factual allegations contained in Paragraph 4.

5. The Assessment was comprised of \$28,594.00 in Tax; \$5,719.00 in Late Payment Penalty; \$0.00 in Late Filing Penalty; and \$2,785.11 in Interest.

**ANSWER:** The Department admits the allegations in Paragraph 5.

6. In support of the Assessment, the Department provided Petitioner with a Global Taxable Exceptions Detailed Report (the "Exceptions Report").

**ANSWER:** The Department admits the factual allegations in Paragraph 6.

7. Petitioner disputes the Assessment based on items erroneously included on the Exceptions

Report as taxable items.

**ANSWER:** The Department denies the allegations in Paragraph 7.

**APPLICABLE LAW**

8. ILCS Section 105/3-85 and Illinois Admin. Code Section 130.331 provides the basis to earn and utilize Manufacturer's Purchase Credit. There is no dispute that Petitioner is entitled to earn and utilize the Manufacturer's Purchase Credit.

**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. ILCS Section 105/3-85(b) and Illinois Admin. Code 130.331(e)(6) both provide that a purchaser that fails to timely file MPC Returns shall forfeit such credit *unless*, "the failure to file was due to *reasonable cause*."

**ANSWER:** Paragraph 9 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.

10. ILCS Section 105/3-85(b) and Illinois Admin. Code Section 130.331(e)(7) both provide that the annual *MPC Returns may be amended to report and claim credit* on qualifying purchases of manufacturing machinery and equipment not previously reported at any time before the credit would have expired, *unless* both the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability, in which case such Returns can be filed until the end of the agreed extension period.

**ANSWER:** Paragraph 10 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.

11. These sections further provide, “Manufacturer’s Purchase Credit that had not been previously reported and is included in an amended [MPC Return] submitted as a result of such an agreed extension will expire as provided in this subsection...or at the end of the agreed extension period, *whichever is longer*. If the time for assessment or refund has been extended by agreement, amended reports for a calendar year may be filed at any time prior to the date which the statute of limitations for the calendar year or portion thereof has been extended. In this case, Petitioner signed an agreed Statute of Limitations Waiver.

**ANSWER:** The Department admits Statute of Limitation Waivers were executed during the audit. However, Paragraph 11 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 11 requires any further answer the Department denies any remaining allegations in Paragraph 11.

**ERROR 1**

12. The Department improperly disallowed Petitioner’s validly taken Manufacture’s Purchase Credit as such Returns were timely filed.

**ANSWER:** The Department denies the allegations in Paragraph 12.

13. The Department claims that no MPC Returns were filed by Universal Scrap. This is simply not accurate. To the contrary, Universal Scrap’s then Controller, Dennis Klein (“Mr. Klein” or “Controller”), prepared and timely filed MPC Returns in each of the years at issue. Petitioner will provide an affidavit signed by Mr. Klein that he prepared and timely filed such Returns via U.S. mail and such filings were never returned to Petitioner.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 13 and demands strict proof thereof. To the extent Paragraph 13 requires any further answer the Department denies the allegations in Paragraph 13.

14. Further, the fact that the Department purports not to have a record of the filing does *not* result in the conclusion that the MPC Returns were not mailed to the Department by Mr. Klein, nor does it result in the conclusion that the MPC Returns were not received by the Department. It only stands for the proposition that the Department does not have a record of it now.

**ANSWER:** Paragraph 14 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 14 requires any further answer the Department denies the allegations in Paragraph 14.

15. Thus, these amounts should be removed from the taxable events in the Exceptions Report and the total amount of the Assessment, including corresponding amounts of penalty and interest should be reduced accordingly.

**ANSWER:** The Department denies the allegations in Paragraph 15.

## **ERROR 2**

16. Even if the Department's allegation of non-filing is correct, the Department still improperly disallowed Petitioner's validly taken Manufacture's Purchase Credit, because it failed to apply the equitable doctrine of reasonable cause as required by both Statue and the Department's Regulations.

**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. To the extent Paragraph 16 requires any further answer the Department denies the allegations in Paragraph 16.

17. As Mr. Klein's affidavit will state, he timely prepared and timely mailed Petitioner's MPC Returns. Such returns were timely signed by the then President of the company who was no longer alive at the time of the Audit, and thus he could *not* have signed the MPC Returns after-the-fact when the Auditor informed Petitioner that the Department does not have a record of such filing. This fact reveals that the MPC Returns were timely prepared and there would have been no reason to not mail the prepared and executed Returns. Moreover, the timely execution of the Returns, coupled with the repeated assertion by the Controller to the Auditor during the Audit that he personally mailed such Returns and would testify to that effect, should justify *reasonable cause* of an intent to timely file, even if the Department's allegation is correct.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 17 and demands strict proof thereof. Further, 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. To the extent Paragraph 17 requires any further answer the Department denies the allegations in Paragraph 17.

18. Thus, Petitioner acted reasonably and in good faith and its MPC Returns should be deemed timely filed, thereby enabling Petitioner to utilize its validly earned Manufacture's Purchase Credits.

**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. To the extent Paragraph 18 requires any further answer the Department

denies the allegations in Paragraph 18.

**ERROR 3**

19. Even if the Department's allegation of non-filing is correct and reasonable cause is not granted, the Department still improperly disallowed Petitioner's validly taken Manufacture's Purchase Credit, because it failed to accept Petitioner's MPC Returns as an amended return when Petitioner handed copies of the executed Returns to the Auditor upon learning the Department had no record of Petitioner's MPC filings.

**ANSWER:** Paragraph 19 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 19 requires any further answer the Department denies the allegations in Paragraph 19.

20. Manufacture's Purchase Credit reports may be amended to report and claim credit on *qualifying purchases not previously reported at any time before the credit would have expired*, unless the Department and the purchaser have agreed to an extension of the statute of limitations for the issuance of a Notice of Tax Liability.

**ANSWER: ANSWER:** Paragraph 20 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.

21. Petitioner and the Department did indeed execute a statute of limitations waiver for the issuance of a Notice of Tax Liability thereby enabling Petitioner to submit MPC Returns after the original due date of such Returns, provided it was before the end of the agreed extension period, which in this case it was before the end of the agreed extension period.

**ANSWER: ANSWER:** The Department admits Statute of Limitation Waivers were

executed during the audit. However, 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. To the extent Paragraph 21 requires any further answer the Department denies any remaining allegations in Paragraph 21.

22. In fact, upon learning from the Auditor that the Department did not have record of the MPC Returns at issue, Petitioner provided copies of such filing to the Auditor. Thus, to the extent the Department's allegation of non-filing is correct and reasonable cause is not granted, Petitioner timely provided MPC Returns to the Department which would have reported qualifying purchases not previously reported to the Department at any time before. Again, thereby enabling Petitioner to utilize its validly earned Manufacture's Purchase Credits.

**ANSWER:** Paragraph 22 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. Further, the Department lacks sufficient information to admit or deny all allegations in Paragraph 22 and demands strict proof thereof. To the extent Paragraph 22 requires any further answer the Department denies the allegations in Paragraph 22.

#### **ERROR 4**

23. At all times, Petitioner acted reasonably and in good faith. Petitioner did not know the Department did not have any record of receiving the MPC Returns at issue. Further, when there were questions of interpretation, Petitioner consulted with and relied upon its then outside accounting firm for guidance on sales and use tax matter in general. Consequently, Petitioner is entitled to complete abatement of penalty for reasonable cause.

**ANSWER:** Paragraph 23 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. Further, the Department lacks sufficient information to admit or deny all allegations in Paragraph 23 and demands strict proof thereof. To the extent Paragraph 23 requires any further answer the Department denies the allegations in Paragraph 23.

### CONCLUSION

24. Petitioner timely prepared and timely filed each of the MPC Returns challenged by the Department. Such returns were signed by the then President of the company who was no longer alive when this issue arose in the Audit. Petitioner's former Controller is prepared to testify via affidavit that he prepared and timely mailed such Returns to the Department, and further, that such Returns were not sent back to the Petitioner via U.S. Mail. The fact that the Department's records do not currently show the Returns were received by the Department does not necessitate that the Returns were not timely filed by Petitioner, nor does it necessitate that such Returns were not in fact received by the Department. It only means the Department does not have a current record of receipt. Further, given the overall facts and circumstances of this case as explained above, Petitioner is entitled to the statutory remedy of reasonable cause to deem such returns timely filed. Finally, if reasonable cause is not granted, Petitioner is nonetheless entitled to treat the Returns provided to the Auditor during the Audit as duly filed amended returns, which likewise will enable Petitioner to take MPC credits that were validly earned.

**ANSWER:** Paragraph 24 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. Further, the Department lacks sufficient information to admit or deny all allegations in Paragraph 24 and demands strict proof thereof. To the extent Paragraph 24

requires any further answer the Department denies the allegations in Paragraph 24.

**WHEREFORE**, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice(s) 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 7, 2016

Respectfully submitted,  
Illinois Department of Revenue,

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

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**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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**UNIVERSAL SCRAP METALS, INC., )**

**Petitioner, )**

**v. )**

**Case No. 15-TT-244**

**DEPARTMENT OF REVENUE )**

**OF THE STATE OF ILLINOIS, )**

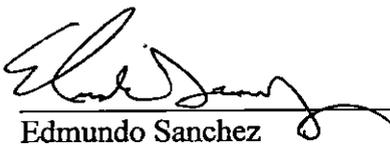
**Respondent. )**

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**AFFIDAVIT OF EDMUNDO SANCHEZ  
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 3, 13, 17 and 22-24.

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.



Edmundo Sanchez  
Revenue Auditor III  
Illinois Department of Revenue

DATED: 01/06/16