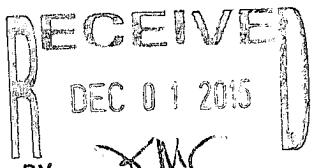
IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

WILLIAM MEYER,	)	
Petitioner,	)	
v.	)	
	)	No.
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	15TT248
Respondent.	)	

PETITION

Petitioner, WILLIAM MEYER ("Petitioner"), by and through his 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 individual and resident of Illinois residing at 12500 E. Navajo Drive, Palos Heights, Illinois 60463-1745 who can be reached at (773) 483-5050.

2. Petitioner is represented by Claire L. McMahon of Madden, Jiganti, Moore & Sinars LLP located at 190 S. LaSalle St. Ste. 1700, Chicago, Illinois 60603, who can be reached at 312-314-4101 or cmcmahon@mjms.com.

3. Petitioner's Identification Number is XXX-XX-4960.

4. Petitioner is an owner of Meyer Industrial Container, LLC (the "Company") an Illinois limited liability company, located at 610 W. 81st Street, Chicago, Illinois, 60620.

5. The Company's Taxpayer Identification Number is 75-2968023.

6. The Company is in the business of cleansing and refurbishing steel drums for the purpose of selling the drums to customers for use in manufacturing and resale.

7. 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.

NOTICES

8. On October 2, 2015, the Respondent issued the Notice of Penalty Liability the ("Notice") totaling use tax, penalties, and interest of $484,020.57 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

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

10. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely files this Petition with the Tribunal within 60 days of its receipt of the Notice of Tax Liability for tax exceeding $15,000.

BACKGROUND

11. The Petitioner is the elderly owner of the Company and other related entities.

12. Customers bring in dirty, used, 55 gallon steel drums to the Company's plant for the purpose of environmental cleansing so these drums may be reused.

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

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

15. The Company engages outside accountants to prepare income tax returns

and financials.

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

17. The Company's related entities, by and through the same employees, have been through Department audits in the past that resulted in no changes, or minimal adjustments.

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

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

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

21. The Employee did not inform the Petitioner, any individuals in the Company's accounting department, or the Company's outside accountants that the Company 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.

22. When the Company 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.

23. The Late Discretionary Hearing was not granted before the Department of Revenue issued a Notice of Penalty Liability against the Petitioner for the underlying sales tax liability from the first audit period.

24. The Company 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.

25. The Company's representatives also protested the Company's audit liability to Administrative Hearings.

26. On motion by the Petitioner's representative, the Administrative Law Judge Agreed to consolidate the two cases.

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

28. Nonetheless the Company 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.

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

30. One of those two purchasers had provided the Company with a reseller certificate.

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

32. 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").

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

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

35. 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 Company's sales to resellers.

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

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

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

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

40. As the basis for the Company's Offer in Compromise, the Company'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.

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

42. On July 30, 2015 the Company submitted its request for a Late Discretionary

Hearing to Chief Administrative Law Judge Terry Charlton. An abridged [full copy available upon request] copy of the Petitioners request for Late Discretionary Hearing is attached hereto as Exhibit B.

43. On September 14, 2015, Chief Administrative Law Judge Terry Charlton accepted the Company'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 Company's request for Late Discretionary Hearing is attached hereto as Exhibit C.

44. On September 16, 2015 the Company 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.

45. Despite the Department's acceptance of the Company's Late Discretionary Hearing Request, Collection activity against the Company has persisted, as it did in the prior audit period.

46. On October 2, 2015 the Petitioner received his Notice of Penalty Liability, assessing the full amount of the auditor's liability against the Petitioner as a penalty.

COUNT I

The Petitioner disputes the issuance of the NPL on the grounds that the Petitioner is not a Responsible Officer of the Company.

47. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 46, inclusive, hereinabove.

48. The Respondent imposed a penalty on the Petitioner for sales tax, penalties and interest that the Respondent alleges are owed by the Company.

49. The Petitioner is not a responsible officer of the Company, and the Respondent is thus not entitled to assess a penalty against Petitioner for the sales tax amounts it alleges are due from the Company.

50. A personal liability penalty applies when any officer or employee of any Taxpayer subject to a Tax Act administered by the Department of Revenue who has the control, supervision, or responsibility of filing returns and making payment of any trust tax, willfully fails to file the return or make the payment to the Department, or willfully attempts in any other manner to evade or defeat the tax. ILCS Section 735/3-7(a).

51. Petitioner does not take an active role in the operations of the Company's tax department, and has no control over the preparation, filing or payment of sales tax returns.

52. Petitioner hires employees to manage and oversee these obligations for the Company.

53. Petitioner believed at all relevant times that all sales tax filing obligations were being managed by the Company Employee.

54. Petitioner believed at all relevant times that all sales tax filing obligations and audit issues were being overseen by the Company accounting department.

55. Petitioner learned of the audit, the adjustments, and all relevant information only after such adjustments had been finalized and assessed against the Company.

56. There was absolutely no willful conduct on the part of the Petitioner that led to any non-filing or non-payment of any sales tax obligations to the Respondent.

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

(a) finds and declares that the Petitioner is not a responsible officer of the Company and that the Respondent is thus barred from assessing a personal liability penalty against the Petitioner for the sales tax, interest and penalties of the Company;

(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 Petitioner disputes the validity of the Notice because the Respondent failed to use the best information to which it had access at the time it was computing the Notice.

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

58. The Respondent imposed a penalty on Petitioner for sales tax, interest and penalties owed by the Company.

59. The Respondent had access to the Company's reseller certificates and should not have included the Company's gross sales as taxable.

60. The Respondent's inclusion of the Company's resales in taxable sales increased the underlying sales tax liability, and increased the amount of the Petitioner's penalty on the Notice.

61. ILCS Section 735/3-7 (a) provides, in part, that the Department determines the[amount of the] penalty due according to its best judgment and information.

62. The Respondent's auditor was provided the Company's reseller certificates.

63. The auditor did not consider the reseller certificates for the purpose of the Second Audit.

64. The reseller certificates provided verify that the Company did not have certain taxable sales during the period at issue.

65. Had the auditor used the reseller certificates for the Second Audit period they the Company's taxable sales figure would have been reduced, and the corresponding penalties and interest figures would have been reduced as well.

66. Reducing the Company's sales tax, penalties and interest would have reduced the amount of the personal liability listed on the Notice.

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

(a) finds and declares that Notice issued by the Respondents is invalid because it was not prepared using the best judgement and information of the Respondent, and bar the Respondent from assessing a penalty against the Petitioner for such amounts;

(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 III

<u>The Petitioner disputes the Notice as invalid because it contains sales tax already paid.</u>

67. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 66, inclusive, hereinabove.

68. The Respondent imposed a sales tax on the Company's gross sales and assessed penalties and interest on the unpaid portion of that tax.

69. The Respondent imposed a penalty on the Petitioner for the Company's unpaid sales tax and corresponding penalties and interest.

70. Pursuant to Chief Administrative Law Judge Terry Charlton's conditional grant of a Late Discretionary Hearing issued on September 14, 2015, the Company paid sales tax in the amount of $77, 076 on September 16, 2015.

71. When the Respondent issued its Notice of Penalty Liability on October 2, 2015 in the amount of $484,020.57, the Respondent had already accepted a payment of sales tax from the Company in the amount of $77,076.

72. ILCS Section 735/3-7 provides that when the Department imposes a penalty against an individual for unpaid sales tax, such officer or employee is personally liable for a penalty equal to the total amount of tax unpaid by the Company including penalties and interest.

73. The Respondent received $77,076 in sales tax payments from the Company before it issued the Notice to the Petitioner.

74. The total amount of tax unpaid by the Company including penalties and interest was less than the amount imposed as a penalty on the Notice against the Petitioner.

75. The Respondent is not permitted to issue an Notice attempting to assess a personal liability penalty the Petitioner for sales tax amounts that have already been paid by the Company.

76. The Respondent is attempting to double collect the liability from the Company and from the Petitioner.

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

(a) finds and declares that Respondents Notice invalid;

(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,
WILLIAM MEYER
Petitioner

By: _____
One of Petitioner's Attorneys

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

Collection Action

Assessment and Notice of Intent

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

October 2, 2015

Letter ID: L1748493072

WILLIAM MEYER
12500 E NAVAJO DR
PALOS HEIGHTS IL 60463-1745

Taxpayer ID: XXX-XX-4960
NPL Penalty ID: 3052248

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

Duplicate

We have determined you are personally liable for a penalty of $484,020.57.

The penalty is equal to the amount of unpaid liability of MEYER INDUSTRIAL CONTAINER LLC, due to your status as a responsible officer, partner, or individual of MEYER INDUSTRIAL CONTAINER LLC.

Illinois law (35 ILCS 735/3-7) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us $484,020.57. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this liability is more than $15,000,** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal,** file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **December 1, 2015**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue,** you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at **tax.illinois.gov**), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax

For information about
- **how to pay**
- **submitting proof**
- **collection actions**

Turn page

EXHIBIT
A
Blumberg No. 5208

To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review. You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at **tax.illinois.gov**.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
  - Professional license,
  - Certificate of Registration,
  - Liquor license,
  - Corporate Charter with the Secretary of State, or
  - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Unofficial Copy

Collection Action

Assessment and Notice of Intent

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

October 2, 2015

Letter ID: L1748493072

WILLIAM MEYER
12500 E NAVAJO DR
PALOS HEIGHTS IL 60463-1745

Taxpayer ID: XXX-XX-4960
NPL Penalty ID: 3052248

Duplicate

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	28,935.57	-	-	484,020.57

IDOR-5P-NPL (N-03/07)

Retain this portion for your records.
Fold and detach on perforation. Return bottom portion with your payment.

Collection Action (R-12/08) (136)

Letter ID: L1748493072
WILLIAM MEYER

Total amount due: $484,020.57

Write the amount you are paying below.

$_____._____

Write your Account ID on your check.

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

000 006 011048101926 731 123199 4 0000048402057

MADDEN, JIGANTI, MOORE & SINARS LLP
ATTORNEYS AT LAW
SUITE 1700
190 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60603

TELEPHONE
(312) 346-4101

FACSIMILE
(312) 346-4885

EF008233862US

August 20, 2015

VIA EXPRESS MAIL

Honorable Judge Terry Charlton
Illinois Department of Revenue
101 W. Jefferson
Springfield, IL 62794

Re: Meyer Industrial Container (the "Taxpayer")
Tax ID Number: 75-2968023

Dear Chief Administrative Law Judge Charlton,

Thank you for returning the sales tax returns and payments for the period spanning October 2010 through September 2013 that were attached to the above referenced Taxpayer's Board of Appeal's Petition. As you recall, the Petition was forwarded to you along with a request for a Late Discretionary Hearing based on the Taxpayer's defenses to the auditor's position that the Taxpayer had exclusively taxable sales.

You had informed me that although the request for Late Discretionary Hearing met the burden of establishing the first prong for success, that is, that it established the Taxpayer either timely filed a petition, or that the Taxpayer missed the deadline for timely filing a petition for circumstances beyond its control, it was missing the second prong. You informed me that to grant a Late Discretionary Hearing in this matter, I must provide you with evidence that the audited figures were incorrect. To that effect, I have provided the following enclosures for your review:

(1) A comprehensive customer list containing the customers' name, address, and other contact information;

(2) Reseller Certificates from 2012 for a majority of the customers appearing on the list; and

EXHIBIT
B PART 1

(3) Printouts from the Illinois Department of Revenue website verifying a majority of the customers' status as valid registered resellers.

As you can see from the information enclosed, the Taxpayer does a majority of its sales to resellers of its product, and thus a majority of its sales are not taxable. The audited figures are thus inaccurate, and the evidence provided is sufficient to bring the issue to hearing.

Based on this information contained herein, along with the information contained in the package submitted on July 30, 2015 such as the comptroller's attempts to Protest the audit findings, Meyer Industrial Container requests that you grant an administrative hearing for initial review under Administrative Code Section 200.175 for the underlying sales tax liability. We believe that Meyer Industrial Container has solid defenses to the auditor's position which we have noted in our supporting documentation and the underlying circumstances clearly support relief.

Please do not hesitate to contact me with any questions that you may have. I look forward to hearing from you.

Very truly yours,

MADDEN, JIGANTI, MOORE, & SINARS LLP

Theodore A. Sinars

TAS:vdv
Enclosures