

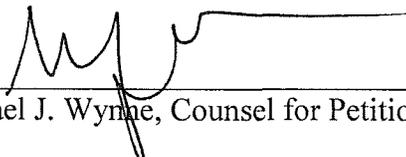
IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

Derse, Inc.,)	
)	
)	
Petitioner,)	No. 16-TT-30
)	
v.)	Chief Judge Conway
)	
Illinois Department of Revenue,)	
)	
Respondent.)	

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on May 26, 2016, I caused to be filed with the Clerk of the Illinois Independent Tax Tribunal in Cook County, Illinois, the **Motion for Summary Judgment**, in the above captioned matter, a copy of which is attached hereto and herewith served upon you.

Dated: May 26, 2016

By: 

Michael J. Wynne, Counsel for Petitioner

Michael J. Wynne
Adam P. Beckerink
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CERTIFICATE OF SERVICE

I, Michael J. Wynne, an attorney, hereby certify that on May 26, 2016, I caused a copy of the **Motion for Summary Judgment**, in the above captioned matter, to be served on all parties of record in this cause by (i) enclosing the same in an envelope, postage fully prepaid; (ii) by depositing said envelope in the United States Postal Service mail chute at 10 South Wacker Drive, Chicago, Illinois, 60606, before the hour of 5:00 p.m. on May 26, 2016; and (iii) by addressing said envelope to:

Michael Coveny
James R. Reynolds
Special Assistant Attorneys General
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, Illinois 60601

By:



Michael J. Wynne

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MOTION FOR SUMMARY JUDGMENT

Petitioner, Derse, Inc., by and through its attorneys, Reed Smith LLP, files this motion for summary judgment in its favor and against the Respondent, the Illinois Department of Revenue (the “Department”) on Counts I and II of its Petition, pursuant to 735 ILCS 5/2-1005. In support of its Motion Derse states the following:

1. Under 735 ILCS 5/2-1005(a): “For plaintiff. Any time after the opposite party has appeared or after the time within which he or she is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.” Derse filed its Petition with the Tribunal on February 16, 2016. On February 16, 2016, the Tribunal entered an Order accepting Derse’s Petition and setting a deadline for the Department’s Answer at March 29, 2016. The Department failed to provide an Answer by March 29, 2016. On April 13, 2016, the Tribunal Ordered the Department to file an Answer in 3 weeks, *i.e.*, by May 4, 2016. The Department disregarded the Court’s Order, did not request a further extension of time to answer, and did not file an Answer by May 4, 2016. As of the date of the filing of this Motion for Summary Judgment, the Department has

still not filed an Answer, and has not communicated to Petitioner as to when an Answer might be filed.

2. Summary judgment should be granted “if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c). There is no genuine issue of material fact in this case; the controversy is purely legal. The issues are (Count I) whether the interstate commerce exemption to the Service Occupation Tax applies to out-of-state sales of trade show exhibits, and whether the Department improperly applied Retailers’ Occupation Tax to special order transactions and to real property transactions; and (Count II) whether the Department employed improper sampling and estimation methods during its audit.

3. Under 86 Ill. Admin. Code § 5000.310(b)(3), “[m]aterial allegations of fact set forth in the petition that are not expressly admitted or denied in the answer shall be deemed to be admitted, unless the Department states in its Answer that it has no knowledge of the allegations sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge.” The Department has not expressly admitted, denied, or asserted a lack of knowledge with respect to any material facts asserted in Derse’s Petition, even though the extended deadline for answering has passed. Therefore, all material allegations in the Petition are deemed admitted.

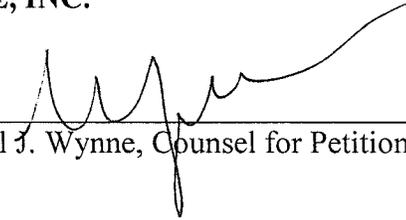
4. Derse is entitled to Summary Judgment as a matter of law.

5. Derse requests a briefing schedule to supply a memorandum of law in support of its motion for summary judgment.

Respectfully submitted,

DERSE, INC.

By:



Michael J. Wynne, Counsel for Petitioner