ILLINOIS INDEPENDENT TAX TRIBUNAL

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BY:

MERCK SHARP & DOHME CORP. (F/K/A SCHERING CORPORATION), Petitioner	Case No. 16 TT 104
-v.-	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE, Respondent.	PETITIONER'S MOTION TO STRIKE PARTS OF RESPONDENT'S ANSWER

Petitioner, Merck Sharp & Dohme Corp. (f/k/a Schering Corporation) ("Schering"), by and through its counsel, Alston & Bird LLP, pursuant to 735 ILCS 5/2-615, hereby moves the Illinois Independent Tax Tribunal (the "Tribunal") to strike with prejudice the following parts of Respondent's Answer on grounds that they contain improper matter.

1. All of the following part of Paragraph 8:

   > The Department further states that an Amended Notice of Deficiency ("Amended Notice") was issued on July 26, 2016, which amended the original Notice to include late estimated payment or underpayment penalty as allowed under 35 ILCS 735/3-3(b-10)(1), as well as updated interest through the date of the Amended Notice. A copy of the Amended Notice is attached hereto as Exhibit A.

2. The following words from Paragraph 19: "and Amended Notice."

3. The following words from Paragraph 20: "and the Amended Notice."

4. All of Respondent's Exhibit A, which was attached to the Answer.

Each part of Respondent's Answer that Schering seeks to have stricken improperly references what Respondent has called an "Amended Notice." All references in the Answer to an "Amended Notice" should be stricken because an amended notice of deficiency is not provided

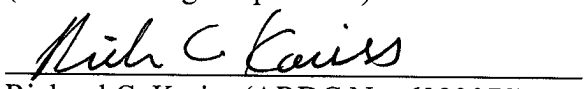
for under Illinois law, nor is any amended notice properly before the Tribunal in this appeal. There is no provision in Illinois law that provides for or contemplates the authority of the Respondent to issue an amended notice of deficiency relating back to a prior notice of deficiency. 35 ILCS 5/1-101 *et seq*. Moreover, even if amended notices of deficiency were permitted under Illinois law, the "Amended Notice" referenced in Respondent's Answer is not the subject of the Petition filed by Schering in this appeal. Jurisdiction of the Tribunal is expressly limited to the review of determinations reflected on a notice of deficiency protested by a taxpayer. See 35 ILCS 10/1-45(a), (50)(a). Therefore, the references to an "Amended Notice" in the Respondent's Answer are improper because they are outside the scope of Schering's appeal.

The Rules of the Tribunal clearly define the scope of responses that may be included in an answer filed by the Respondent. Under Ill. Admin. Code § 5000.310(b)(2), a statement included in an answer pleading must take one of only three available forms: (i) a specific admission or denial of each material allegation of fact contained in the petition; (iii) an affirmative defense; or (iii) a request for relief. The Respondent, through its Answer in the present appeal, without legal authority and in violation of the pleading rules set forth in Ill. Admin. Code § 5000.310(b)(2), introduced and requested relief for a notice of deficiency that was not protested by Schering in this case. Therefore, all references to an "Amended Notice" in Respondent's Answer are improper and should be stricken.

Dated: October 3, 2016

Respectfully submitted,

ALSTON & BIRD LLP
Counsel for Plaintiff,
Merck Sharp & Dohme Corp.
(f/k/a Schering Corporation)



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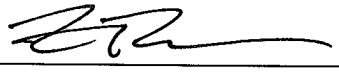

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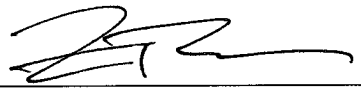
ILLINOIS INDEPENDENT TAX TRIBUNAL

MERCK SHARP & DOHME CORP. (F/K/A SCHERING CORPORATION), Petitioner -v.- ILLINOIS DEPARTMENT OF REVENUE, Respondent.	Case No. 16 TT 104 Judge Brian F. Barov PROOF OF SERVICE

On October 3, 2016, I, the undersigned, caused a copy of the within Motion to be served upon the Respondent by Certified Mail, Return Receipt Requested, at the following address:

Daniel A. Edelstein
Special Assistant Attorney General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

Dated: October 3, 2016



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