

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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| IMPERIAL CRANE SALES, INC., |) | |
| Petitioner |) | |
| v. |) | 16-TT-131 |
| ILLINOIS DEPARTMENT OF REVENUE, |) | |
| Respondent |) | |

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Respondent”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Imperial Crane Sales, Inc.’s (“Petitioner”) Petition (the “Petition”) respectfully pleads as follows:

INTRODUCTION

1. The Notice was issued by the Department on December 3, 2015 assessing the amount of Twenty-Nine Thousand Two Hundred Forty Dollars (\$29,240.00) in vehicle use tax for a crane purchased by Petitioner and brought into Illinois on July 31, 2015, Two Thousand Nine Hundred Twenty-Four (\$2,924.00) in penalties, and Two Hundred Twenty-Five Dollars and Ninety Cents (\$225.90) in interest. A copy of the Notice is attached to this Petition as Exhibit A and is incorporated by reference herein.

ANSWER: A copy of the Notice of Tax Liability issued by Respondent to Petitioner, dated December 3, 2015 and with Letter ID CNXXXX3215262885, attached to the Petition as Exhibit “A” (the “Notice”), is not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 310(b)(2) (86 Ill. Adm. Code § 5000.310(b)(2)), but to the extent an answer is required, Respondent admits issuing the Notice and states that the Notice speaks for itself. Respondent admits the remaining allegations in Paragraph 1.

2. Petitioner is an Illinois corporation with its principal place of business located at 9735 Industrial Drive, Bridgeview, Illinois 60455. Its telephone number is 708-598-2300.

ANSWER: Respondent admits the allegations in Paragraph 2.

3. Petitioner's taxpayer account number is 13664-74016.

ANSWER: Respondent admits that Petitioner's RUT-25 Use Tax Account number is 13664-74016. Respondent denies any remaining allegations in Paragraph 3.

4. On April 25, 2016, the Chief Administrative Law Judge, Terry D. Charlton, granted a late discretionary hearing in the Tribunal jurisdiction, conditioned upon this Petition being filed with the Tribunal within sixty (60) days of April 25, 2016. A copy of this ruling by Judge Charlton is attached to this Petition as Exhibit B and is incorporated by reference herein.

ANSWER: A copy of Chief Administrative Law Judge Terry D. Charlton's letter granting Petitioner's request for a late discretionary hearing, dated April 25, 2016, attached to the Petition as Exhibit "B" (the "Letter"), is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2), but to the extent an answer is required, Respondent admits that Petitioner's request for a late discretionary hearing was granted on April 25, 2016, and states that the Letter speaks for itself. Respondent denies the remaining allegations in Paragraph 4.

5. This Petition was filed with the Tribunal within sixty days of April 25, 2016.

ANSWER: Respondent admits the allegations in Paragraph 5.

BACKGROUND AND RELEVANT FACTS

6. Petitioner is a dealership in the business of selling cranes to the public.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 6, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

7. In other words, Petitioner purchases cranes from manufacturers and other companies, and resells them.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 7, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

8. On February 19, 2015, the Illinois Secretary of State issued a Certificate of Authority to Petitioner to be a dealership for Elliott Boom Trucks in the Midwest market. A copy of the Certificate of Authority is attached to this Petition as Exhibit C and is incorporated by reference herein.

ANSWER: A copy of the document attached to the Petition as Exhibit “C” is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2), but to the extent an answer is required, Respondent states that Exhibit C speaks for itself. Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 8, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

9. On April 11, 2015, Petitioner purchased a 2015 Peterbilt crane, model 367, with Vehicle Identification Number 1NPTX4TX5FD283868 (“Crane”) from Elliott Equipment Company as part of this new dealership arrangement. This vehicle has an MV # of 073957151.

ANSWER: Respondent admits that Petitioner purchased a 2015 Peterbilt 367, with Vehicle Identification Number 1NPTX4TX5FD283868 (the “Truck”) on April 14, 2015, and that the Return Number or MV corresponding to such purchase is 073957151. Respondent denies that the Truck was purchased on April 11, 2015. Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 9, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

10. This Crane was transported into Illinois on July 31, 2015.

ANSWER: Respondent admits that the Truck was brought into Illinois on July 31, 2015. Respondent has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations in Paragraph 10, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

11. Petitioner immediately put the Crane up for sale upon its arrival in Illinois.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 11, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

12. Petitioner filed a RUT-25 form with the Illinois Department of Revenue for this Crane. The RUT-25 form was filed in error in that it did not identify Petitioner as being exempt from sales tax on this transaction as a retailer and the Crane was being used for Petitioner’s interim use only.

ANSWER: Respondent admits that Petitioner filed a Form RUT-25 with Respondent for Petitioner’s purchase of the Truck. Respondent denies the remaining allegations in Paragraph 12.

13. Petitioner later recognized this error and filed a corrected RUT-25, identifying the retailer exemption, and showing the tax due as \$0. A copy of the corrected RUT-25 is attached to this Petition as Exhibit D and is incorporated by reference herein.

ANSWER: Copies of the two documents attached to the Petition as Exhibit “D” are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2), but to the extent an answer is required, Respondent states that Exhibit D speaks for itself. Respondent admits that Petitioner previously submitted the two documents, attached to the Petition as Exhibit D, to Respondent. Respondent further admits that the Form RUT-25 in such Exhibit D claims the retailer exemption in Step 4, Line e, and does not have any figure entered in Step 5, Line 8, corresponding to the tax due. Respondent denies the remaining allegations in Paragraph 13.

14. The Crane has not yet been sold. However, Petitioner continues to hold the Crane for resale.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 14, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

15. Petitioner has obtained an active registration/resale number and ST-566 [sic] Transaction Return Account from the Department. That number is 2881-8113.

ANSWER: Respondent admits that Petitioner has, at different times, obtained from the Department an active ST-1 Sales/Use Tax & E911 Surcharge Account, and an active ST-556 Transaction Return Account, both with account number 2881-8113. Respondent denies any remaining allegations in Paragraph 15.

16. When the Crane is sold, Petitioner will file a 556ST [sic] form with the Department reflecting the tax for the resold Crane.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 16, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

APPLICABLE LAW

17. Under Illinois statutes and regulations, when a vehicle such as a crane is purchased from an out of state company for the purpose of resale, and therefore is being held on an interim basis, the purchaser is exempt from paying tax on that vehicle. See Illinois Department of Revenue Regulations Title 86 Part 130 Section 130.210.

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

ERROR

18. In this instance, Petitioner purchased the Crane from an out of state company, as a dealer or distributor for that out of state company.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 18, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

19. Petitioner purchased the Crane and transported it to Illinois with the intention of holding it on an interim basis only in order to resell it.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 19, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

20. Petitioner continues to market and attempt to resell the Crane.

ANSWER: Respondent has insufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 20, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

21. Petitioner is registered as a retailer with the State of Illinois. Its Illinois Account Identification Number is 2881-8113.

ANSWER: Respondent admits the allegations in the first sentence of Paragraph 21. Respondent admits that the account number for Petitioner's ST-1 Sales/Use Tax & E911 Surcharge Account is 2881-8113. Respondent denies any remaining allegations in Paragraph 21.

22. Accordingly, Purchaser should owe no tax on the purchase of the Crane, nor pay any penalties or interest related to this exempt tax.

ANSWER: Respondent denies the allegations in Paragraph 22.

CONCLUSIONS AND RELIEF REQUESTED

23. Petitioner requests this Tribunal overturn the assessment of the vehicle use tax against Petitioner for its purchase of the Crane, and rather, find that purchase to be exempt from such tax.

ANSWER: Respondent denies the allegations in Paragraph 23, and prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 1) is correct as issued;
- c. order judgment in favor of Respondent and against Petitioner; and

- d. grant such further relief as this Tribunal deems appropriate under the circumstances.

24. Petitioner further requests that all penalties and interest assessed against it for this transaction be withdrawn or rescinded.

ANSWER: Respondent denies the allegations in Paragraph 24, and prays that the Tribunal enter an order to find that Respondent's assessment of the penalties and interest contained in the Notice (as that term is defined in the Answer to Paragraph 1) was appropriate and conformed with the law.

WHEREFORE, Respondent prays that the Tribunal enter an order to:

- a. deny each prayer for relief in Petitioner's Petition;
- b. find that the Notice (as that term is defined in the Answer to Paragraph 1) is correct as issued;
- c. find that Respondent's assessment of the penalties and interest contained in the Notice (as that term is defined in the Answer to Paragraph 1) was appropriate and conformed with the law;
- d. order judgment in favor of Respondent and against Petitioner; and
- e. grant such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Daniel A. Edelstein
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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

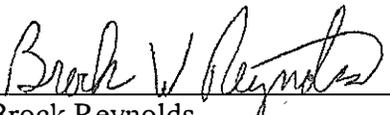
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AFFIDAVIT OF BROCK REYNOLDS
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS § 5/1-109, I, Brock Reynolds, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue (“Respondent”).
2. My current title is Senior Public Service Administrator.
3. I reviewed the Notice of Tax Liability issued by Respondent to Imperial Crane Sales, Inc. (“Petitioner”), dated December 3, 2015 and with Letter ID CNXXXX3215262885, and the related return and correspondence.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in the Petitioner’s Petition, Paragraphs 6-11, 14, 16, and 18-20.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

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 as aforesaid that she verily believes the same to be true.



Brock Reynolds
Senior Public Service Administrator
Illinois Department of Revenue

Date: 9/15/16