

ILLINOIS INDEPENDENT
TAX TRIBUNAL

WACHS VALVE AND HYDRANT)	
SERVICES, LLC,)	
)	
Petitioner,)	
v.)	No. 14 TT 19
)	
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	Judge Brian Barov
)	
Respondent.)	

DEPARTMENT' S ANSWER TO PETITIONER' S PETITION

NOW COMES the Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Petitioner' s Petition ("Petition"), hereby states as follows:

1. Petitioner is Wachs Valve and Hydrant Services, LLC, an Illinois limited liability company. Petitioner' s principal office and mailing address is 801 Asbury Drive, Buffalo Grove, Illinois 60089. Petitioner' s telephone number is 800-525-5821.

ANSWER: The Department admits the allegations contained in paragraph 1.

- 2 Petitioner' s representatives are:

- (a) Edwin I. Josephson. Address: Chuhak & Tecson, P.C., 30 S. Wacker Drive, Suite 2600, Chicago, IL 60606. Telephone: 312-444-9300. Email: ejosephson@chuhak.com; and

(b) David B. Shiner. Address: Chuhak & Tecson, P.C., 30 S. Wacker Drive, Suite 2600, Chicago, IL 60606. Telephone: 312-444-9300. Email: dshiner@chuhak.com.

ANSWER: The Department admits the allegations contained in paragraph 2.

3. Petitioner's federal taxpayer identification number is 36-4377643 and Petitioner's Illinois account ID is 12390-21568.

ANSWER: The Department admits the allegations contained in paragraph 3.

4. The Notices of Tax Liability have been transferred by Respondent's Administrative Hearings Division to the Illinois Independent Tax Tribunal pursuant to an order dated January 22, 2014 issued by Administrative Law Judge Kenneth J. Galvin. A copy of the order dated January 22, 2014 is attached hereto and marked as Exhibit A.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to Petitioner's Petition as Exhibit A and referred to in paragraph 4 and state that such document speaks for itself.

5. A copy of the Notices of Tax Liability are attached hereto and marked as Exhibit B.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to Petitioner's Petition as Exhibit B and referred to in paragraph 5 and state that such documents speaks for themselves.

6. The liabilities as determined by Respondent are in use tax and penalties or interest for the following periods and for the following amounts:

Audit period ending	Assessment amount
March 28, 2011	\$15,364.06
April 27, 2011	\$ 7,029.34
May 10, 2011	\$ 569.92
June 9, 2011	\$ 7,721.36
July 1, 2011	\$ 1,192.14
August 24, 2011	\$ 2,421.11
September 16, 2011	\$ 4,879.44
January 19, 2012	\$ 3,316.36
February 29, 2012	\$ 715.30
November 1, 2012	\$ 432.75
December 23, 2012	\$ 3,770.50

The entire above stated liabilities in use tax and penalties or interest determined or proposed is in dispute.

ANSWER:: The Department admits the existence, force and effect, at all relevant times of its Notices of Tax Liability attached to Petitioner's Petition as Exhibit A and referred to in paragraph 6 and state that such documents speaks for themselves.

7. The determination of tax and penalties or additions to tax set forth in the said notices of liability is based upon the following errors:
- (a) Petitioner disputes Respondent's determination that equipment purchased from a United Kingdom vendor was used in Illinois.
 - (b) Petitioner disputes Respondent's determination that the temporary storage exemption under 35 ILCS 105/3-55(e) does not apply.
 - (c) Petitioner disputes Respondent's determination that late payment penalties should be imposed.
 - (d) Petitioner disputes Respondent's determination that late filing penalties should be imposed.
 - (e) Petitioner disputes Respondent's determination that interest should be imposed

ANSWER: Although paragraph 7 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 7. With respect to paragraph 7's subparts, the Department admits that Petitioner disputes the Department's determinations in its Notices of Tax Liability but denies any legal conclusion expressed therein.

8. The facts upon which Petitioner relies, as the basis of Petitioner's case, are as follows:

ANSWER: Although paragraph 8 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 8.

- 8(a) Petitioner is a leading provider of water distribution system asset management solutions.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(a) and therefore neither admits or denies the allegations.

8(b) The company employs 150 dedicated employees located in strategic hubs throughout North America and has completed over 200 infrastructure renewal projects, including the largest known projects in Baltimore and Atlanta.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(b) and therefore neither admits or denies the allegations.

8(c) During the applicable periods, Petitioner purchased equipment from a vendor in the United Kingdom in pursuit of an entirely new service offering to augment the company's core business of maintaining and rehabilitating water delivery systems, such as valves, hydrants and water mains.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(c) and therefore neither admits or denies the allegations.

8(d) Delivery of the equipment was accepted at the Company's headquarters in Buffalo Grove, Illinois and temporarily stored there.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(d) and therefore neither admits or denies the allegations.

8(e) The equipment was purchased pursuant to a license agreement providing for activity-based royalty payments to the seller.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(e) and therefore neither admits or denies the allegations.

8(f) The equipment formed two discrete inspection systems that were installed in separate vans.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(f) and therefore neither admits or denies the allegations.

8(g) Use of the equipment was tracked by a third party.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(g) and therefore neither admits or denies the allegations.

8(h) During the applicable periods, equipment was used in various projects in North America such as, in Mexico, Canada, Barbados, Maryland, Texas, North Carolina and Virginia, but never in Illinois. A copy of the Company's revenue schedule reflecting the equipment use by state was attached to the Company's protest letter.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(h) and/or the document referred to in paragraph 8(h) and therefore neither admits nor denies the allegations and neither admits nor denies the authenticity of the document attached to Petitioner's protest letter.

8(i) Ultimately, a majority of equipment at issue was returned or disposed of in 2013 as demand has not materialized and the business unit has remained unprofitable.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8(i) and therefore neither admits or denies the allegations.

8(j) Illinois imposes a use tax on the privilege of using, in Illinois, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See, 86 Ill. Adm. Code 150.101.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 8(j) and state such regulation speaks for itself.

8(k) However, there is no use tax on the temporary storage in Illinois of tangible personal property which is acquired outside of Illinois and which subsequent to being brought into Illinois and stored here temporarily is used solely outside of Illinois. 35 ILCS 105/3-55(e); 86 Ill. Adm. Code 150.310(a)(4).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 8(k) and state such regulation speaks for itself.

9(l) Here, the equipment at issue was acquired in the United Kingdom.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9(l) and therefore neither admits or denies the allegations

9(m) The equipment was then brought into Illinois and stored here temporarily.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9(m) and therefore neither admits or denies the allegations

9(n) The equipment was then used solely outside of Illinois.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9(n) and therefore neither admits or denies the allegations.

9(o) Because the use of the property falls within the Temporary Storage Exemption of 35 ILCS 105/3-55(e), no use tax should be imposed.

ANSWER: Although paragraph 9(o) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 9(o).

9(p) Further, because no use tax should be imposed, late filing penalties, late payment penalties and interest should be abated.

ANSWER: Although paragraph 9(p) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 9(p).

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter;
- B) That the Department's Notices of Tax Liability be determined to be correct.

C) That this Tribunal grant such other additional relief it deems just and proper

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-4142

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By: Michael Coveny,
Assistant Attorney General

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMAN)

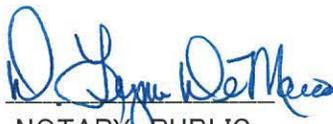
AFFIDAVIT AS TO LACK OF SUFFICIENT KNOWLEDGE

I, WILLIAM GAFFIGAN, being first duly sworn, deposes and says that I am an employee and duly authorized agent of the Illinois Department of Revenue, that I have read the foregoing Department's Answer to Petitioner's Petition, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that I lack the required personal knowledge to either admit or deny those allegations the Department states it is unable to admit or deny, pursuant to 735 ILCS 5/2-610(b) and Tribunal Rule 5000.310(b)(3). I hereby certify that the statements set forth in this affidavit are true and correct to the best of my knowledge, information and belief.



William Gaffigan
Illinois Department of Revenue

SIGNED and SWORN TO before me
this 14th day of March, 2014



NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Verified Answer to Petitioner's Verified

Petition upon:

David B. Shiner
Chuhak & Tecson, P.C.
30 South Wacker Drive
Suite 2600
Chicago, IL 60606

By email to dshiner@chuhak.com on March 14, 2014.