

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

HORSEHEAD CORPORATION,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-227
)	
THE ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

INTRODUCTION

1. The first Notice was issued by the Department on October 3, 2014 assessing in the amount of \$497,579.00 in tax, \$213,983 in penalties and \$213,489.13 in interest for taxable periods January 1, 2007 through June 30, 2009. A copy of the first Notice is attached to this Petition as Exhibit B.

ANSWER: The Department admits that a copy of the first Notice is attached to the Petition as Exhibit B. The Department states that the Notices of Tax Liability speak for themselves and therefore deny the characterization thereof and any and all other allegations in paragraph 1 of the petition.

2. The second Notice was issued by the Department on October 3, 2014 assessing in the amount of \$452,854.00 in tax, \$96,547.00 in penalties and \$46,588.98 in interest for taxable periods July 1, 2009 through June 30, 2011. A copy of the second Notice is likewise attached to this Petition as Exhibit B.

ANSWER: The Department admits that a copy of the second Notice is attached to the Petition as Exhibit B. The Department states that the Notices of Tax Liability speak for themselves and therefore deny the characterization thereof and any and all other allegations in paragraph 2 of the petition.

3. Petitioner is a corporation with its principal place of business in Pittsburgh, Pennsylvania, but with a location in Calumet City, Illinois.

ANSWER: The Department admits that Petitioner is a corporation with a location in Calumet City, Illinois. The remaining allegations in paragraph 3 of the petition are vague and conclusory and are denied.

4. The primary office is located at 4955 Steubenville Pike, Suite 405, Pittsburgh, PA 15206 (please note that the Notices were sent to 300 Frankfort Road, Monaca, PA, 15061-221). Its telephone number is 724-774-1020. The Taxpayer Account number is 20-0447346 and Account ID number is 3860-1567.

ANSWER: The Department admits the allegations contained in Paragraph 4.

5. Objection to Notice of Tax Liability/Statement of Fact:

- i. Petitioner operates a zinc refining facility located in Calumet City, Illinois.

ANSWER: The Department admits the allegations in Paragraph 5(i).

- ii. During the audit periods, Petitioner purchased carbon based “coke” in connection with its zinc refining operations; coke is a carbon based element and fuel source that is used as a critical component of, and reagent in, the zinc refining operation.

ANSWER: The Department states that the allegations in paragraph 5ii of the petition are vague and conclusory and are denied.

- iii. The basis of the Notices is that the Department is seeking to impose Retailers' Occultation Tax, E911 Surcharge Tax and Use Tax (collectively, "Sales Tax") on Petitioner's purchase of the coke.

ANSWER: The basis of the assessment/Notices is as set forth in the audit file including the audit narrative, and the Department therefore denies the Petitioner's characterization thereof and all other allegations in paragraph 5(iii) of the petition.

- iv. In the Notices, the Department contends that the coke does not affect a direct change in the finished product, nor is it incorporated into the finished product, and should be subject to Sales Taxes.

ANSWER: The basis of the assessment/Notices is as set forth in the audit file including the audit narrative, and the Department therefore denies the Petitioner's characterization thereof and all other allegations in paragraph 5(iv) of the petition.

6. Matter at issue and applicable law:

- i. Petitioner objects to the Notices in that the coke that is purchased acts as a catalyst causing a direct change on the finished zinc product and is also directly incorporated (in part) into the finished zinc product.

ANSWER: The allegations in paragraph 6(i) of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

- ii. The coke falls within the definition of a "Type I" product in that it is added for the purchase of modifying the finished products (zinc), and a measurable part of the coke becomes a part of the end zinc, *see*, 86 Illinois Administrative Code Sections

130.1901(c) and (d); further, the coke qualifies as an exempt catalyst pursuant to 86 Illinois Administrative Code Section 130.330(c)(6).

ANSWER: The allegations in paragraph 6(ii) of the petition consist not of material allegations of fact, but primarily of factual and legal conclusions and are denied.

- iii. Petitioner sells the zinc directly to other users, and thus the coke purchases should be exempt from Sales Tax.

ANSWER: The allegations in paragraph 6(iii) of the petition consist not of material allegations of fact, but primarily of factual and legal conclusions and are denied.

- iv. Further, the Notices impose a late payment and late filing penalty, and Petitioner objects to those penalties.

ANSWER: The Department states that the Notices of Tax Liability speak for themselves and therefore deny the characterization thereof and any and all other allegations in paragraph 6(iv) of the petition.

WHEREFORE, the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notices correctly reflect the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: January 6, 2015

Respectfully submitted,
Illinois Department of Revenue

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