IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RECEIVED
JAN 21 2014
BY:

LANSAL, INC.	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 14TT 4
	)	
BRIAN HAMER, in his official capacity as DIRECTOR OF THE ILLINOIS DEPARTMENT OF REVENUE, and the ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendants.	)	

PETITION

Petitioner, Lansal, Inc. ("Petitioner"), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendants, the Illinois Department of Revenue ("Department") and Brian Hamer, Director of the Department ("Director Hamer"), and alleges as follows:

PARTIES

1. Petitioner is a Massachusetts corporation located at 134 Avocado Street, Springfield, Massachusetts, 01104-3306, and can be reached at 847-288-9183.

2. Petitioner is a wholly owned subsidiary of Hot Mama's Foods, Inc.

3. Petitioner is represented by Horwood Marcus & Berk attorney David A. Hughes, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-3212 or dhughes@hmblaw.com.

4. Petitioner's Illinois Business Tax number is 4017-5103.

5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

6. Director Hamer is the current Director of the Department.

7. Director Hamer is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the Director of the Department. 20 ILCS 5/5-20.

NOTICES

8. On November 20, 2013, Petitioner received two Notices of Tax Liability ("Notices"), the first of which covers reporting periods July 1, 2005 through June 30, 2009, and the second of which covers reporting periods July 1, 2009 through December 31, 2012. The periods from July 1, 2005 through December 31, 2012 are hereafter referred to as the "periods in issue." The Notices reflect $81,148 in tax due, as well as $30,920 in penalties and $25,113.59 in interest. The Notices are attached hereto as Exhibits A and B respectively.

JURISDICTION

9. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

10. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

BACKGROUND

11. Petitioner is a manufacturer of custom gourmet foods, which it sells at wholesale primarily to grocery stores and distributors.

12. During the periods in issue, Petitioner manufactured all of its custom gourmet food products at either its Franklin Park or Elk Grove, Illinois locations.

13. Petitioner makes no retail sales of its food products.

14. Defendants audited Petitioner's books and records for the periods in issue, including its fixed assets used in its business, and concluded that the equipment is subject to Illinois use tax.

15. Petitioner uses most of the equipment at issue in the process of manufacturing the food that it sells to retailers and wholesalers.

16. Petitioner did not file any Illinois sales and use tax returns for the periods in issue.

COUNT I

Petitioner's equipment qualifies for the manufacturing exemption

17. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 16, inclusive, hereinabove.

18. Equipment generally used in manufacturing and assembly is exempt from use tax. 35 ILCS 105/3-5(18).

19. Equipment used in the production or processing of food, except for equipment used in the preparation of food and beverages by a retailer for retail sale, is exempt from sales and use tax in Illinois. 86 Ill. Admin. Code §130.330(d)(3)(F).

20. The equipment at issue was used in Petitioner's business of manufacturing food to be sold at wholesale.

21. Petitioner's equipment used in the manufacturing of Petitioner's food is exempt from use tax under the manufacturing exemption.

22. Contrary to the Department's audit determination, Petitioner's equipment used in manufacturing the food Petitioner sells at wholesale is not subject to Illinois use tax.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) finds and declares that Petitioner's equipment at issue is not subject to use tax because the equipment is used in manufacturing and assembling;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notices;

(c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notices of Tax Liability; and

(d) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause

23. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 22, inclusive, hereinabove.

24. In its Notices, the Department assessed penalties in an amount totaling $30,920, comprising both late payment and late filing penalties.

25. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS §734-8.

26. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

27. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

28. The equipment at issue was used in the process of manufacturing Petitioner's food products.

29. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois use tax on the equipment because the equipment qualified for the manufacturing exemption from use tax.

30. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) finds and declares that all penalties should be fully abated based on reasonable cause;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of penalties on the Notices; and

(c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

LANSAL, INC.
Petitioner

By: _____
One of Petitioner's Attorneys

David A. Hughes
Christopher T. Lutz
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing **Petition** are true, accurate and correct.

By: _____

Name: William J. Kenealy

Its: Chief Financial Officer
Hot Mama's Foods, Inc.

Subscribed and Sworn to before me
this 21st day of January, 2014.

_____
Notary Public

OFFICIAL SEAL
MARIA L ARELLANO
Notary Public - State of Illinois
My Commission Expires 04/19/2015

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X138 78X8 6X86#
LANSAL INC
HOT MAMAS NATURAL FOODS
134 AVOCADO ST
SPRINGFIELD MA 01104-3306

November 20, 2013

Letter ID: CNXXX13878X86X86

Account ID: 4017-5103

We have audited your account for the reporting periods July 01, 2005, through June 30, 2009. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	61,962.00	0.00	61,962.00
Late Payment Penalty Increase	24,785.00	0.00	24,785.00
Late Filing Penalty Increase	1,914.00	0.00	1,914.00
Interest	23,773.59	0.00	23,773.59
Assessment Total	$112,434.59	$0.00	**$112,434.59**

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **January 21, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX XX85 X937 6963#
LANSAL INC
HOT MAMAS NATURAL FOODS
134 AVOCADO ST
SPRINGFIELD MA 01104-3306

November 20, 2013

Letter ID: CNXXXX85X9376963

Account ID: 4017-5103

We have audited your account for the reporting periods July 01, 2009, through December 31, 2012. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	19,186.00	0.00	19,186.00
Late Payment Penalty Increase	3,837.00	0.00	3,837.00
Late Filing Penalty Increase	384.00	0.00	384.00
Interest	1,340.00	0.00	1,340.00
Assessment Total	$24,747.00	$0.00	**$24,747.00**

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **January 21, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

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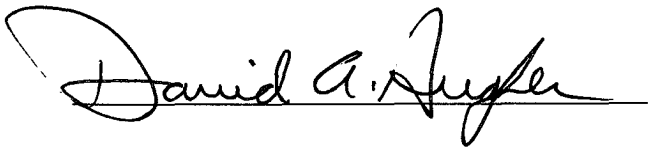
BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be placed in an envelope, properly addressed and deposited in the U.S. Mail at 500 W. Madison, Chicago, IL 60661 before the hour of 5:00 p.m. on the 21st day of January, 2014.

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601