

**ILLINOIS INDEPDEPENDENT TAX TRIBUNAL**

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<b>TODD CHRISTOPHER, as representative,</b>	)	
<b>For T. CHRISTOPHER HOLDING</b>	)	
<b>COMPANY</b>	)	
	)	
T Christopher,	)	Case No. 19 TT 131 cons w/
	)	20 TT 54
v.	)	
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	Judge Brian F. Barov
Respondent.	)	

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**NOTICE OF MOTION**

TO: **Email:** [mmoyers@schiffhardin.com](mailto:mmoyers@schiffhardin.com); [dblickenstaff@schiffhardin.com](mailto:dblickenstaff@schiffhardin.com);  
[mdecarlo@schiffhardin.com](mailto:mdecarlo@schiffhardin.com); [brian.barov@illinois.gov](mailto:brian.barov@illinois.gov); [lori.jordan@illinois.gov](mailto:lori.jordan@illinois.gov)  
[alan.lindquist@illinois.gov](mailto:alan.lindquist@illinois.gov)

Michael K. Moyers	Judge Brian Barov
David C. Blickenstaff Meredith	Illinois Independent Tax Tribunal
R. W. DeCarlo	160 N. LaSalle St., Room N506
Schiff Hardin LLP	Chicago, Illinois 60601
233 S. Wacker Drive, Suite 7100	
Chicago, Illinois 60606	

Lori Jordan  
Alan Lindquist  
Illinois Department of Revenue  
100 W. Randolph, Level 7-900  
Chicago, Illinois 60601

Respondent informs Petitioner, T Christopher Holding Company, of Respondent's intent to file its Motion for Leave to File in Excess of 30 Interrogatories. During our last status, Petitioner does not agree to this Motion. Accordingly, pursuant to Section 500.315(b) of the Illinois Independent Tax Tribunal administrative rules, Respondent states that Petitioner has not agreed to this Motion.

Respondent requests an oral argument on the Motion.

Date: April 27, 2021

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s/Sean P. Cullinan  
Sean P. Cullinan  
Special Assistant Attorney General

Illinois Department of Revenue  
100 West Randolph Street Level 7-900  
Chicago, IL 60601; (312) 814-3078

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**CERTIFICATE OF SERVICE**

The undersigned representative for the Illinois Department of Revenue certifies that, on April 27, 2021, he served the Department's Motion for Leave to File in Excess of 30 Interrogatories on the individuals identified below, at their email addresses identified below.

TO: **Email:** [mmoyers@schiffhardin.com](mailto:mmoyers@schiffhardin.com); [dblickenstaff@schiffhardin.com](mailto:dblickenstaff@schiffhardin.com);  
[mdecarlo@schiffhardin.com](mailto:mdecarlo@schiffhardin.com); [brian.barov@illinois.gov](mailto:brian.barov@illinois.gov); [lori.jordan@illinois.gov](mailto:lori.jordan@illinois.gov)  
[alan.lindquist@illinois.gov](mailto:alan.lindquist@illinois.gov)

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**RESPONDENT'S MOTION FOR LEAVE  
TO SERVE IN EXCESS OF 30 INTERROGATORIES**

Now comes the State of Illinois, Department of Revenue, (hereinafter "Respondent") by its duly authorized representatives, Sean Cullinan, Lori Jordan and Alan Lindquist, Special Assistants Attorney General, and pursuant to Illinois Supreme Court Rule 213 and 86 Ill. Admin. Code Sec. 5000.325, moves this Tribunal to enter an order granting the Department leave to serve in excess of 30 interrogatories on T. Christopher Holding Company (hereinafter referred to as "T Christopher"), and in support thereof, states as follows:

1. This case involves two petitions filed by T Christopher. The first Petition was filed on September 9, 2019 and assigned docket number 19 TT 131 by the Tribunal. The first Petition took exception to the Notice of Deficiency issued by Respondent on July 11, 2019 for TYE 2014. During the first few status conferences, T Christopher requested Respondent to file an answer in order to fully understand the Respondent's position. The Respondent argued the answer remain stayed, but the Respondent was ordered on March 18, 2020 to answer the Petition in the 19 TT 131 docket number. That answer was filed on April 10, 2020.

2. The second Petition was filed on May 22, 2020 and assigned docket

number 20 TT 54 by the Tribunal. The second Petition took exception to the Notice of Deficiency issued by Respondent on April 9, 2020 for TYE 2016. During the initial status conference in this matter, T Christopher again requested Respondent file an answer in order to fully understand the Respondent's position. The Respondent argued for a second time that the answer be stayed and also that the first Petition was fully answered, but the Respondent insisted Case No. 20 TT 54 be answered. On July 14, 2020, the Respondent was ordered to answer the Petition in docket number 20 TT 54. That answer was filed on August 14, 2020.

3. On October 16, 2020 T Christopher filed a Motion to Consolidate. In its Motion, T Christopher argues that "Case Nos. 19 TT 131 and 20 TT 54 involve the same parties and the same issues, the resolution of which will depend largely on the same evidence." (*See* T Christopher Motion to Consolidate ¶ 10) While it is true that both docket numbers involve whether capital gains received by T Christopher were business income, the two transactions involved different buyers, and otherwise differing circumstances.

4. In Case No. 19 TT 131, T Christopher sold a 49% interest in Vogue International LLC to the Carlyle Group ("Carlyle"). T Christopher maintained a 51% majority interest in Vogue International LLC ("Vogue").

5. In Case No. 20 TT 54, T Christopher sold its remaining 51% interest in Vogue to Johnson & Johnson. During that period Carlyle, through Sandra Holbach, was involved in the operations of Vogue. Moreover, Vogue issued debt of \$400 million and used the proceeds to make a distribution to its members, including T Christopher, for which, thereafter, large negative partner capital balances were reported on Vogue's 2014 and 2015 partnership federal income tax returns. *See* 2014 and 2015 Form IL-1065 US Return of Partnership Income, Page 5, Schedule L, Line 21 (Partner Capital Account) at DOR Bates 1060 and 1184.

Respondent should be able to investigate these activities, activities that did not relate to the 2014 gain.

6. Pursuant to Illinois Supreme Court Rule 213(c) and 86 Ill. Admin. Code Sec. 500.325, a party may be permitted to serve more than 30 interrogatories upon leave of court, granted upon a showing of good cause.

7. Attached as “Exhibit A” is T Christopher’s responses to the Respondent’s First Set of Interrogatories (“first set”) and it contains 12 interrogatories.

8. Attached as “Exhibit B” the Respondent’s Second Set of Interrogatories (“second set”) and it contains 19 interrogatories.

9. T Christopher, via email has stated its position that the Respondent’s second set exceeded 30 interrogatories.

10. T Christopher did not identify the interrogatories in the second set that they determine to be in excess of 30 interrogatories. The Respondent vigorously contests T Christopher’s assertion that it has exceeded its allotted interrogatories.

11. If Case Nos. 19 TT 131 and 20 TT 54 were not consolidated, there is no question Respondent would have been permitted 30 interrogatories for each case, for a total of 60 interrogatories, and there would be no issue here whether it had exceeded its allotted interrogatories. While actions can be consolidated for expedition, conservation of the time of the court, avoiding duplication of effort, and saving unnecessary expense; the statute requires it be done whenever it can be done without prejudice to a substantial right. *See* 735 ILCS 5/2-1006.

12. The United States Supreme Court in Hall vs. Hall, 138 S. Ct. 1118 (2018) recently addressed the effect of case consolidation and held that individual cases remain separate causes of actions and that consolidation cannot effect substantive rights of parties in litigating

the cases – e.g. Court noted consolidation could not reduce number of preemptory challenges to which litigants are entitled if cases had been tried separately. Similarly, here there are independent facts and circumstances, including differing sales transactions, debt issuances, managements, tax years and proposed tax liability amounts.

13. Even if consolidation did limit the total interrogatories here to 30, the second set did not put Respondent over this 30 interrogatories limit. The first three interrogatories in the second set are identical to the first three interrogatories in the first set and were only asked because it involved different years and matters and couldn't have been covered in the first set. (See Exhibits A & B)

14. There are a number of interrogatories with subparts which T Christopher is apparently counting as separate interrogatories but are not appropriately counted as such. The subparts are not separate questions but instead simply facilitate a response to the general question by identifying facts that should be included in response to the single general question posed in the interrogatory – e.g. Second Set of Interrogatory No 4. asks “Please describe in detail the two distributions made in CYE 2014 and 2015” -- the subparts do not ask separate questions but just for detail to be included in the response to this single question, and accordingly the subparts are not counted as separate interrogatories.

15. Finally even if the Respondent has exceeded its allotted interrogatories, it has good cause here for exceeding the 30-interrogatory limit:

a. The determination as to whether the capital gains are business income and whether T Christopher is unitary with Vogue are factually intensive requiring an examination of numerous activities, transactions, and documents covering over three years and two audit periods.

b. The Case Nos. 19 TT 131 and 20 TT 54 involved two separate Notices of Deficiency, two separate transactions, two separate petitions, two separate answers to the petitions, two separate sales to two separate buyers.

c. The business income and unitary issues at the heart of this case are fact intensive legal issues, involving all factual circumstances surrounding two separate sales transactions separate by a period of two years. A determination of the business income issue requires an examination for each separate sales transaction of all facts that permits the income derived therefrom to be treated as apportionable business income under the Constitution of the United States. A determination of the unitary issue requires an examination at the time of each sales transaction of whether a group of persons, related through common ownership have business activities integrated with, dependent upon and that contribute to each other and that the members are functionally integrated through the exercise of strong centralized management. Respondent must be given the opportunity to discover facts regarding these fact intensive determinations.

16. The Respondent would be severely prejudiced if it was precluded from obtaining the information requested in its interrogatories because it would be unable to thoroughly examine various facts and refute T Christopher's attempts to rebut the Respondent's *prima facie* case.

17. All of the Respondent's interrogatories in its second set are narrowly tailored and request relevant, admissible evidence and/or information that will lead to relevant, admissible evidence. The Respondent therefore has good cause in filing this Motion.

WHEREFORE, the Respondent requests that its Motion for Leave to Serve in Excess of 30 Interrogatories be granted.

Date: April 27, 2021

Respectfully submitted,

s/Sean P. Cullinan  
Sean Cullinan  
Special Assistant Attorney General

Sean Cullinan, SAAG  
(312) 814-3078  
Lori Jordan, SAAG  
(312) 814-3842  
Alan Lindquist, SAAG  
(312) 814-7054  
Special Assistant Attorneys General  
Illinois Department of Revenue  
100 W. Randolph St., 7-900  
Chicago, IL 60601