

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>GMODELO CORP., INC.</b>	)	
	)	
<b>Petitioner</b>	)	
<b>v.</b>	)	<b>14-TT-82</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**NOTICE OF FILING**

TO: Mr. Brian L. Browdy  
Mr. Scott A. Browdy  
Ryan Law Firm LLP  
22 W. Washington, Suite 1500  
Chicago, IL 60602  
(312) 262-5889

PLEASE TAKE NOTICE, that on November 7, 2014, the undersigned representative for the Illinois Department of Revenue (the "Department") filed the Department's Answer to GModelo Corporation, Inc.'s petition with the Illinois Tax Tribunal, located at 160 North LaSalle Street, Room N506, Chicago, IL 60601.

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Rickey A. Walton  
Special Assistant Attorney General

Rickey A. Walton  
Illinois Department of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-1016 phone  
(312) 814-4344 facsimile  
[rick.walton@illinois.gov](mailto:rick.walton@illinois.gov)

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<b>Petitioner</b>	)	
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<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**ANSWER**

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

**PARTIES**

1. Petitioner filed refund claims for the years at issue on January 11, 2013. The amount of the claim for each year exceeds \$15,000, exclusive of interest.

**ANSWER:** Admit.

2. Section 909(e) of the Illinois Income Tax Act provides that if the Department has failed to approve or deny a claim within 6 months from when the claim was filed, the taxpayer may treat the claim as denied and protest accordingly. 35 ILCS 5/909(e).

**ANSWER:** Paragraph 2 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 2 and states that such statute speaks for itself.

3. This section provides in addition that after July 1, 2013, protests concerning matters that are subject to the jurisdiction of this Tribunal shall be filed not with the Department of Revenue (Department) but with this Tribunal. *Id.*

**ANSWER:** Paragraph 3 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 3 and states that such statute speaks for itself. Further, the Department admits that certain matters, as set forth in the applicable statute, that are subject to the jurisdiction of this Tribunal must be filed with this Tribunal, not the Department of Revenue.

4. As of the date of this filing, the Department has failed to approve or deny any of Petitioner's claims (with the result that there is no statutory notice to attach to this petition).

**ANSWER:** Admit.

5. This Tribunal therefore has jurisdiction over this matter pursuant to sections 909(d) and 910(a) of the Illinois Income Tax Act, and section 1-45(a) of the Illinois Independent Tax Tribunal Act. *Id.*; 35 ILCS 5/910(a); 35 ILCS 1010/1-45(a).

**ANSWER:** Paragraph 5 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 5 and states that such statute speaks for itself. Further, the Department admits that this Tribunal has jurisdiction over the "deemed denial" of the

Petitioner's claims for refund for tax years ending December 31, 2009, December 31, 2010 and December 31, 2011 (the "Years at Issue").

**Background Facts**

6. Petitioner is a subsidiary of Diblo S.A. de C.V., which is itself a subsidiary of Grupo Modelo, S.A. de C.V. Grupo Modelo is a leading producer, distributor and marketer of beer. During the years at issue, Grupo Modelo operated multiple breweries in Mexico.

**ANSWER:** Admit.

7. The laws in several (U.S.) states prohibit the importation of alcoholic beverages, except through a special regulatory apparatus where foreign sellers may distribute beer only through licensed wholesalers, who in turn may sell only to other wholesalers and licensed retailers.

**ANSWER:** Paragraph 7 contains a legal conclusion, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). However, the Department admits that Crown was part of what is commonly referred to as a "four tier" system in which Crown as the importer was tier one, the distributors who purchased from Crown comprised tier two, the retailers who purchased from the distributors made up tier three and the individual consumers comprised tier four.

8. In 2007, Petitioner and Constellation Beers, Ltd., an unrelated third party, thus formed Crown Imports LLC (Crown), a fifty-fifty joint venture partnership, to facilitate the importation of Grupo Modelo brands into the United States.

**ANSWER:** Admit.

9. To this end, in 2007, Crown entered into a special importer agreement with a GModelo affiliate. Pursuant to this agreement, the affiliate purchases beer from the Grupo Modelo breweries in Mexico and supplies it to Crown, who resells it to wholesalers through the United States.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 9 and demands strict proof thereof.

10. During the years at issue, Crown maintained a substantial inventory of shipping supplies (e.g., airbags, seals, dividers) at the Grupo Modelo breweries in Mexico.

**ANSWER:** The Department admits that Crown maintained an inventory of shipping supplies (e.g., airbags, seals, dividers) at the Grupo Modelo breweries in Mexico. The Department lacks sufficient knowledge to either admit or deny whether Crown's inventory of shipping supplies in Mexico was "substantial," and therefore demands strict proof thereof.

11. Crown's supply chain personnel also made regular and systematic visits to the breweries during these years.

**ANSWER:** The Department admits that Crown's supply chain personnel visited the breweries during the years at issue. The Department lacks sufficient knowledge to either admit or deny whether such visits were "regular and systematic," and therefore demands strict proof thereof.

12. Crown maintained an inventory of Grupo Modelo imports at warehouses in several states, including Illinois. Most orders for the imported beer were filled from these Crown inventories.

**ANSWER:** Admit.

13. In certain cases, however, the Crown customer, i.e., the domestic distributor, would instead request that Crown ship the beer from the Grupo Modelo brewery in Mexico directly to the distributor's facility in the United States.

**ANSWER:** Admit.

14. In some of these instances, the beer was imported from the Grupo Modelo brewery to customer distribution centers in states where Crown did not file income tax returns or pay income taxes. This petition concerns gross receipts from beer sales fitting this description (the "sales at issue").

**ANSWER:** Admit.

15. Petitioner amended its income and replacement tax returns for the years at issue, claiming refunds for these years in the amount of \$957,308, \$802,685, \$1,212,087, respectively.

**ANSWER:** Admit.

16. On its amended returns, Petitioner recomputed its liability by undoing the effects of the so-called "double-throwback" rule employed on its original returns; specifically, Petitioner

reversed the effects of this rule by excluding from the apportionment fraction numerator the gross receipts from the sales at issue.

**ANSWER:** The Department admits that Petitioner recomputed its Illinois corporate income tax liability by excluding from the numerator of its Illinois apportionment factor gross receipts Crown derived from the sale of beer imported from Mexico and sold in U.S. states where Crown was not subject to a tax measured by net income.

### **The Double-Throwback Rule**

17. Where, as here, a person has income from sources inside and outside Illinois, the portion of the person's net income that is taxable in Illinois is figured using a special statutory apportionment formula.

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

18. Using this formula, the person multiplies its net income by an apportionment fraction, with the product of this computation yielding the percentage of the person's income that is subject to tax in this state. 35 ILCS 5/304(a).

**ANSWER:** Paragraph 18 contains legal conclusions, not material allegations of facts, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 18 and states that such statute speaks for itself.

19. This statutory fraction is the ratio of the person's total sales in Illinois over the person's total sales everywhere. 35 ILCS 5/304(a)(3), (g).

**ANSWER:** Paragraph 19 contains legal a conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 19 and states that such statute speaks for itself.

20. The general rule is that sales of goods are counted as “in Illinois” if the property is delivered or shipped to a purchaser in this state. 35 ILCS 5/304(a)(3)(B)(i); 86 Ill. Admin. Code §100.3370(c)(1)(A).

**ANSWER:** Paragraph 20 contains legal a conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 20 and states that such statute and regulation speak for themselves.

21. There are two exceptions—under the one relevant here, the double-throwback rule, sales of goods shipped to another state are “thrown back” and counted as sales “in Illinois” if the seller is taxable in Illinois, but is taxable in neither the sate to, nor from which the goods are shipped. 86 Ill. Admin. Code §100.3380(c)(1).

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the regulation set forth or referred to in Paragraph 21 and states that such regulation speaks for itself.

**COUNT I – There is No Throwback for the Sales at Issue  
Because Petitioner Was “Taxable In Mexico**

22. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as if fully set forth herein.

23. A person is “taxable” in another state (and there is therefore no throwback) if the state has jurisdiction to subject the person to a net income tax, regardless of whether the state does or does not subject the person to such a levy. 35 ILCS 5/303(f)(2); 86 Ill. Admin. Code §100.32200(a)(1)(B).

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 23 and states that such statute and regulation speak for themselves.

24. If Crown, Petitioner’s fifty-percent owned joint venture partnership, is taxable in Mexico, then as partner in the venture, Petitioner is derivatively taxable there too. *Borden Chemicals & Plastics, L.P. v. Zehnder*, 312 Ill. App. 3d 35 (1<sup>st</sup> Dist. 2000).

**ANSWER:** Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

25. Petitioner was “taxable” in Mexico in that, as the result of Crown’s local activities, the republic had jurisdiction to subject it to a net income tax.

**ANSWER:** Paragraph 25 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations in Paragraph 25 and demands strict proof thereof.

26. Whether a foreign nation has jurisdiction to subject a person to a net income tax is governed by the standards of P.L. 86-272 (15 U.S.C. §§381-384). 86 Ill. Admin. Code §100.9720(c)(8)(B).

**ANSWER:** Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 26 and states that such statute and regulation speak for themselves.

27. In general, this federal law provides that a nonresident is immune from income tax in a given state if the person's activities in the state are limited to solicitation for orders for sales of goods. 15 U.S.C. §§381-384; *Wisconsin Dep't of Revenue v. Wm. Wrigley, Jr. Co.*, 505 U.S. 214 (1992).

**ANSWER:** Paragraph 27 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits the existence, force and effect at all relevant times of the statute and court decision set forth or referred to in Paragraph 26 and states that such statute and court decision speak for themselves.

28. Crown, and derivatively, Petitioner, would not be immune from income tax in Mexico under the standards of P.L. 86-272 because Crown maintained an inventory of shipping supplies at the Grupo Modelo breweries and because Crown's supply chain personnel made regular and systematic quality control visits to these facilities—manifestly nonsolicitation activities.

**ANSWER:** Paragraph 28 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). The Department admits that Crown maintained shipping supplies at the Grupo Modelo breweries and that Crown's supply chain personnel visited these facilities. The Department denies all other factual allegations contained in Paragraph 28 and demands strict proof thereof.

29. Mexico thus had jurisdiction to subject Crown, and derivatively, Petitioner, to an income tax, with the result that (i) Petitioner was "taxable" in Mexico within the meaning of 35 ILCS 5/303(f)(2) and 86 Ill. Admin. Code §100.3200(a)(1)(B); and (ii) that the double-throwback rule does not apply to the sales at issue.

**ANSWER:** Paragraph 29 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 29 and states that such statute and regulation speak for themselves.

**WHEREFORE,** the Department respectfully requests this Tribunal enter an order finding that:

- a. Petitioner was *not* “taxable” in Mexico as the result of Crown’s activities in the country;
- b. The double-throwback rules applies to the sales at issue; and that
- c. Petitioner is *not* entitled to the refunds claimed on its amended returns for the Years at Issue.

**COUNT II – The “Treaty” Amendment Impermissibly Narrows  
The Scope of 35 ILCS 5/303(f)**

30. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as if fully set forth herein.

31. There is a tax treaty between the United States and Mexico which provides that U.S. companies are exempt from Mexican income taxes under certain circumstances.

**ANSWER:** Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that there is a tax treaty between the United States and Mexico that governs the taxation of income of companies engaged in business transactions in the United States and Mexico.

32. In August 2010, a new Department rule went into effect, providing that for purposes of throwback, where a person is not subject to income tax in a foreign country as the result of a treaty, the person is not “taxable” in that jurisdiction as a matter of law—even through the person’s activities in the country would otherwise subject it to tax. 86 Ill. Admin. Code §100.3200(a)(2)(C). (This amendment is hereafter referred to as the “treaty amendment”).

**ANSWER:** Paragraph 32 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that 86 Ill. Admin. Code §100.3200 was amended, effective August 19, 2010, to add subsection 100.3200(a)(2)(C). Accordingly, the Department admits the existence, force and effect of the regulation cited above and states that such regulation speaks for itself.

33. An administrative rule may not limit the scope of the statute it purports to interpret. *Du-Mont Ventilating Co. v. Dep't of Revenue*, 73 Ill. 2d 243, 247-49 (1978).

**ANSWER:** Paragraph 33 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

34. The treaty amendment violates this prohibition because it results in a more restrictive definition of “taxable” than provided by 35 ILCS 5/303(f)(2).

**ANSWER:** Paragraph 34 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 34 and states that such statute speaks for itself.

35. The statute holds, without qualification, that a person is taxable in another state if that state has jurisdiction to subject the person to a net income tax, regardless of whether the state in fact exercises such authority.

**ANSWER:** Paragraph 35 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times the statute referenced in Paragraph 35 and states that such statute speaks for itself.

36. The treaty amendment impermissibly narrows the scope of the statute because a foreign nation that enters a tax treaty has no less jurisdiction to subject a person to tax than does a (domestic) state which, in the same exercise of its sovereign authority, elects to have no income tax at all.

**ANSWER:** Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the regulation (i.e., the treaty amendment) referenced in Paragraph 36 and states that such regulation speaks for itself.

37. Crown, and derivatively, Petitioner was taxable in Mexico, notwithstanding the income tax treaty between Mexico and the United States.

**ANSWER:** Paragraph 37 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

38. The double-throwback rule does not apply to the sales at issue.

**ANSWER:** Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE**, the Department respectfully requests this Tribunal enter an order finding that:

- a. The Department's regulation, 86 Ill. Admin. Code §100.3200(a)(2)(C), does *not* impermissibly narrow the scope of 35 ILCS 5/303(f)(2) because it is a correct and reasonable interpretation of 35 ILCS 5/303(f)(2), and therefore is valid and enforceable;
- b. That Petitioner was *not* "taxable" in Mexico;
- c. The double-throwback rule *applies* to the sales at issue;
- d. Petitioner is *not* entitled to the refunds claimed accordingly; and that
- e. Petitioner is *not* entitled to attorney's fees under 5 ILCS 100/10-55(c).

**COUNT III – The Treaty Amendment is Not a Reasonable Interpretation of 35 ILCS 5/303(f)(2)**

39. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as if fully set forth herein.

40. An agency regulation will be upheld only if it is a reasonable interpretation of Illinois law. *Matthews v. Will County Dep't of Labor*, 152 Ill. App. 3d 176, 180 (1<sup>st</sup> Dist. 1984); 35 ILCS 5/140(a).

**ANSWER:** Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the decision referenced in Paragraph 40 and states that such decision speaks for itself.

41. The operative language in section 303 is virtually identical to the language in section 3 of the Uniform Division of Income for Tax Purposes Act (UDITPA).

**ANSWER:** The Department admits that the language in 35 ILCS 5/303 is virtually identical to the language in section 3 of the Uniform Division of Income for Tax Purposes Act (UDITPA).

42. The UDITA is a model act containing guidelines for apportioning the income of multistate taxpayers. *Hartmarx Corp. v. Zehnder*, 309 Ill. App. 3d 959, 964 (1<sup>st</sup> Dist. 1999).

**ANSWER:** The Department admits that UDIPTA provides guidelines for apportioning the income of multistate taxpayers for states that are members of the Multistate Tax Compact. Such guidelines are only advisory or recommendatory. Illinois is not a member of the Multistate Tax Compact.

43. The UDITPA was incorporated into Article IV of the Multistate Tax Compact, which became effective in Illinois in 1967. *Id.* at 964-65.

**ANSWER:** The Department admits that the Multistate Tax Compact became effective in 1967.

44. The Compact establishes the Multistate Tax Commission as its administrative agency. In 1973, the Commission promulgated a series of model regulations interpreting the UDIPTA's apportionment provisions.

**ANSWER:** The Department admits that UDIPTA provides guidelines for apportioning income of multistate taxpayers for states that are members of the Multistate Tax

Compact. Such guidelines are only advisory or recommendatory for states that are members of the Multistate Tax Compact.

45. The model rule governing when a person is “taxable” in a foreign country provides that if jurisdiction is otherwise present, the country is not considered without jurisdiction to tax by reason of a tax treaty between that country and the United States.

**ANSWER:** Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

46. Illinois repealed the Compact in 1975, but the official commentary for the Illinois Income Tax Act states that section 303 (among others) still embodies “the principles underlying” the UDITPA. *Caterpillar Tractor Co. v. Lenckos*, 84 Ill.2d 102, 121 (Ill. 1981).

**ANSWER:** Paragraph 46 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that Illinois repealed the Compact in 1975.

47. But among the Compact states codifying the model regulations either in whole or in part, except Illinois, all of them adopt the rule that, as a matter of law, a person may be “taxable” in a foreign country, notwithstanding that the person is not required to pay income tax there because of a treaty between that country and the United States.

**ANSWER:** Paragraph 47 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

48. The treaty amendment is out of step with the principles of the UDITPA and is unenforceable as an unreasonable interpretation of 35 ILCS 5/303(f)(2).

**ANSWER:** Paragraph 48 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** the Department respectfully requests this Tribunal enter an order finding that:

- a. The treaty amendment is a reasonable interpretation of 35 ILCS 3/303(f)(2), and therefore is valid and enforceable;
- b. Petitioner was *not* “taxable” in Mexico;
- c. The double-throwback rule *applies* to the sales at issue;
- d. Petitioner is *not* entitled to the refunds claimed on the amended returns for the Years at Issue.
- e. Petitioner is *not* entitled to attorney’s fees under 5 ILCS 100/10-55(c).

49. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as if fully set forth herein.

50. The treaty amendment was codified effective August 18, 2010. *See* 34 Ill. Reg. 12891.

**ANSWER:** The Department admits that the treaty amendment was codified effective August 19, 2010.

51. A regulation is construed under the same rules as is a statute. *Lipman v. Bd. Of Review of Dep't of Labor*, 123 Ill. App. 3d 176, 180 (1<sup>st</sup> Dist. 1984). Thus like changes to statutes, changes to regulations are presumed to apply prospectively only, and will not be given retroactive effect unless there is clear language mandating it in the enactment. *First of Am. Bank, N.A. v. Netsch*, 166 Ill.2d 165, 182 (1995).

**ANSWER:** Paragraph 51 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

52. Because there is no such language here, even if the treaty amendment is otherwise valid (which Petitioner does not concede), it does not apply to Petitioner's claim for the 2009 tax year.

**ANSWER:** Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** the Department respectfully requests this Tribunal enter an order finding that:

- a. The treaty amendment *applies* to Petitioner's claim for the 2009 tax year;
- b. Petitioner is *not* entitled to the refund claimed for tax year 2009.

53. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 21 as if fully set forth herein.

54. A person is “taxable” in another state (and throwback does not apply) if the state has jurisdiction to subject the person to a net income tax, regardless of whether the state does or does not subject the person to such levy. 35 ILCS 5/303(f)(2); 86 Ill. Admin. Code §100.3200(a)(1).

**ANSWER:** Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 54 and states that such statute and regulation speak for themselves.

55. The political subdivision of a foreign nation, like the individual Mexican states where the beer at issue is brewed, are considered “states” for purposes of the foregoing rule. 35 ILCs 5/1501(22).

**ANSWER:** Paragraph 55 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 55 and states that such statute speaks for itself.

56. The determination of whether the political subdivision of another country has jurisdiction to subject a person to a net income tax is made as if the political subdivision were a state of the United States. 86 Ill. Admin. Code §100.3200(a)(2)(C).

**ANSWER:** Paragraph 56 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department

admits the existence, force and effect at all relevant times of the regulation set forth or referred to in Paragraph 56 and states that such regulation speaks for its.

57. A state has jurisdiction to subject a person to a net income tax if in that state, the person owns or maintains a stock of goods, or if its activities there otherwise go beyond the mere solicitation of orders for sales of goods. *Wm. Wrigley, Jr. Co.*, 505 U.S. at 216; 86 Ill. Admin. Code §100.9720(c)(4)(O)(vi).

**ANSWER:** Paragraph 57 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

58. The individual Mexican states where the beer is brewed (and from which the beer is shipped) had jurisdiction to subject Crown, and derivatively, Petitioner, to a net income tax because Crown maintained an inventory of shipping supplies at the Grupo Modelo breweries, and because Crown personnel regularly visited these facilities.

**ANSWER:** Paragraph 58 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that Crown maintained an inventory of shipping supplies at the Grupo Modelo breweries and that Crown personnel visited these facilities.

59. A person is “taxable” in a state, in this case, an individual Mexican state, if the state could subject it to a net income tax, even if the state does not in fact impose one.

**ANSWER:** Paragraph 59 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

60. The Mexican Constitution grants each of the Mexican states the power to impose taxes on corporate profits.

**ANSWER:** Paragraph 60 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

61. As part of the country's National Tax Coordination System, however, each of the states has entered into a separate agreement with the federal government where, in exchange for increased participation in federal revenues, the states have agreed to forgo imposition of their own corporate income taxes.

**ANSWER:** Admit.

62. However, there is nothing in Mexican constitutional or statutory law that limits the ultimate authority of the state to impose taxes on corporate income, and each state has the independent power to withdraw from the agreement at any time and in its sole discretion, with the approval of its State Congress.

**ANSWER:** Paragraph 62 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

63. Thus the individual Mexican states are in this respect no different than certain U.S. states which can, but in their sovereign discretion do not, impose general taxes on corporate income.

**ANSWER:** Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

64. The individual Mexican states where Crown maintained inventories of shipping supplies, and where Crown employees made regular visits (i.e., the states where Grupo Modelo operated breweries) could subject Crown, and derivatively, Petitioner, to a net income tax, notwithstanding that they did not in fact impose such levies.

**ANSWER:** Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent Paragraph 64 contains any factual allegations, the Department denies those allegations.

65. Crown, and therefore Petitioner, was “taxable” in these Mexican states within the meaning of 35 ILCS 5/303(f)(2) and 86 Ill. Admin. Code §100.3200(a)(1)(B).

**ANSWER:** Paragraph 58 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect at all relevant times of the statute and regulation set forth or referred to in Paragraph 65 and states that such statute and regulation speak for themselves.

66. The double-throwback rule does not apply to the sales at issue.

**ANSWER:** Paragraph 66 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE**, the Department respectfully requests this Tribunal enter an order finding that:

- a. Petitioner was *not* “taxable” in the individual Mexican states where the beer was brewed;
- b. The double-throwback rule *applies* to the sales at issue; and that
- c. Petitioner is *not* entitled to the refunds claimed on its amended returns for the Years at Issue.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
State of Illinois

By: \_\_\_\_\_  
Rickey A. Walton  
Special Assistant Attorney General

Rickey A. Walton  
Special Assistant Attorney General  
Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601  
Telephone: (312) 814-1016  
Facsimile: (312) 814-4344  
Email: [rick.walton@Illinois.gov](mailto:rick.walton@Illinois.gov)



**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>H&amp;R BLOCK BANK</b>	)	
	)	
<b>Petitioner</b>	)	
<b>v.</b>	)	<b>14-TT-0029</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

TO: Mr. Brian L. Browdy  
Mr. Scott A. Browdy  
Ryan Law Firm LLP  
22 W. Washington, Suite 1500  
Chicago, IL 60602  
(312) 262-5889

Please take notice that the undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on November 7, 2014, he served the Department's Answer to GModelo Corporation, Inc.'s Petition by electronic mail at the electronic mail address shown above at the time shown on the electronic transmission confirmation.

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Rickey A. Walton  
Special Assistant Attorney General

Rickey A. Walton  
Illinois Dept. of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-1016 phone  
(312) 814-4344 facsimile  
[rick.walton@illinois.gov](mailto:rick.walton@illinois.gov)