

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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|--|---|-------------------------|
| <b>GMODELO CORP., INC.</b>             | ) |                         |
|  | ) |                         |
| <b>Petitioner</b>                      | ) |                         |
| <b>v.</b>                              | ) | <b>14-TT-0082</b>       |
|  | ) |                         |
| <b>ILLINOIS DEPARTMENT OF REVENUE,</b> | ) | <b>James M. Conway,</b> |
|  | ) | <b>Chief Judge</b>      |
| <b>Defendant</b>                       | ) |                         |

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**NOTICE OF MOTION**

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 June 4, 2014, at 10:00 a.m., or as soon as possible thereafter, the undersigned will appear before James Conway, Chief Judge, Illinois Independent Tax Tribunal, or another Administrative Law Judge designated in his stead, at 160 North LaSalle Street, 5<sup>h</sup> Floor, Chicago, Illinois 60601, and then and there present the Illinois Department of Revenue's Motion to Stay in the above-captioned matter and will then and there request a hearing.

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Rickey A. Walton  
Special Assistant Attorney General

Illinois Department of Revenue  
100 W. Randolph, 7-900  
Chicago, IL 60601  
(312) 814-1016

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**DEPARTMENT'S MOTION TO STAY**

Now comes the State of Illinois, Department of Revenue (the "Department"), by its duly authorized representative, Special Assistant Attorney General, Rickey A. Walton, pursuant to 86 Ill. Adm. Code, Ch. I., Section 5000.315, and moves this Tribunal to enter an order to stay the date on which the Illinois Department of Revenue is required to respond to GModelo Corporation, Inc.'s ("Petitioner") petition filed with this Tribunal, and in support thereof states as follows:

1. Petitioner is a subsidiary of Diblo S.A. de C.V., which is a wholly owned subsidiary of Grupo Modelo, a Mexican entity that brews beer in several Mexican states.
2. During the tax years ending December 31, 2009, December 31, 2010 and December 31, 2011 (the "Tax Years at Issue"), Petitioner owned a 50% interest in Crown Imports LLC ("Crown"), an entity created for the sole purpose of importing beer from Mexico to the United States. Constellation Beers, Ltd., an unrelated third party, owned the other 50% interest in Crown, which was taxed as a partnership for tax purposes.
3. During the Tax Years at Issue, Crown shipped beer from Mexico to its warehouses located in various U.S. states, including Illinois. Most of Crown's shipments of

beer to its customers were made from these warehouses.

4. In other instances, Crown shipped beer from Mexico directly to distributors in states where neither Crown nor Petitioner was taxable. The sales derived from these transactions are the sales at issue in this matter.
5. On its original returns for the Tax Years at Issue, Petitioner included its pro rata share of sales at issue in the numerator of its Illinois apportionment factor.
6. However, Petitioner asserts that it or Crown was taxable by the Mexican federal government or by one or more of the individual Mexican states, and therefore the sales were not subject to the Department's double throw back rule set forth in Regulation 86 Ill. Admin. Code §100.3380(c)(1).
7. Therefore, Petitioner asserts that the sales at issue should not be thrown back to Illinois and included in the numerator of its apportionment factor.
8. Accordingly, Petitioner filed amended returns to exclude the sales at issue from the numerator of its sales factor, thereby producing overpayments that Petitioner claimed as refunds on amended returns in the following amounts:

|         |             |
|---------|-------------|
| 12/2009 | \$957,308   |
| 12/2010 | \$802,685   |
| 12/2011 | \$1,212,087 |
9. As of the date of this motion, the Department has not processed the Petitioner's refund claims because the Department has not audited the claims.
10. However, the Department's Audit Division has assigned an auditor to audit the claims, and therefore anticipates that the audit of the claims for refund will be completed in approximately six months.

11. Inasmuch as the Department has not yet audited the Petitioner's refund claims, the Department moves this Tribunal to stay the date for the Department to respond to the Petitioner's petition and to stay all proceedings in this matter until the Department has completed the audit of the Petitioner's amended returns for the Tax Years at Issue.
12. The audit results may provide answers to certain allegations contained in the Petition in the instant matter.
13. Accordingly, staying the instant matter until after the Department completes the audit of the Petitioner's amended returns is more efficient than going forward with litigation and then conducting the "audit" during discovery.
14. WHEREFORE, the Department moves this Tribunal to enter an order staying the date (and all subsequent proceedings) on which the Department is required to file an answer in response to the Petition in the instant matter until after the Department completes the audit of the Petitioner's amended return for the Tax Years at Issue.

Respectfully submitted,

**LISA A. MADIGAN,  
ATTORNEY GENERAL, STATE OF ILLINOIS**

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Rickey A. Walton  
Special Assistant Attorney General  
100 West Randolph Street, 7-900  
Chicago, Illinois 60601

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|  | ) | <b>Chief Judge</b>      |
| <b>Defendant</b>                       | ) |                         |

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**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL TRANSMISSION**

TO: [brian.browdy@ryanlawllp.com](mailto:brian.browdy@ryanlawllp.com)  
[Scott.browdy@ryanlawllp.com](mailto:Scott.browdy@ryanlawllp.com)  
Mr. Brian L. Browdy  
Mr. Scott A. Browdy  
Ryan Law Firm, LLP  
22 W. Washington, Suite 1500  
Chicago, IL 60602  
(312) 262-5889

The undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on May 27, 2014, he served the Department's Motion to Stay on the individuals identified above, at the electronic mail addresses shown above.

Respectfully submitted,

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

[rick.walton@illinois.gov](mailto:rick.walton@illinois.gov)  
Illinois Department of Revenue  
100 W. Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-1016 (telephone)  
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