

**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 May 21, 2015, at 1:30 p.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 Compel in the above-captioned matter.

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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

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
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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**DEPARTMENT’S MOTION TO COMPEL**

Now comes the State of Illinois, Department of Revenue (“ Department”), by its duly authorized representative, Rick Walton, Special Assistant Attorney General, and moves the Tribunal, pursuant to Illinois Supreme Court Rules 213 and 214 and Ill. Admin. Code Ch. I, § 5000.315, to enter an order compelling GModelo Corporation, Inc. (“GModelo”) to fully respond to the Department’s First Set of Interrogatories and First Request for Production of Documents, and in support thereof states as follows:

A. Background.

1. Grupo Modelo, a Mexico company that produces and distributes beer, is the ultimate parent company of GModelo.
2. GModelo and an unrelated third party created Crown Imports LLC (“Crown”), a fifty-fifty joint venture that is taxed as a partnership, to import beer from Mexico to the United States.
3. In some situations, Crown maintained inventories of beer imported from Mexico in Illinois and certain other U.S. states.

4. In other instances, Crown imported beer directly from Mexico to purchasers in states where Crown did not file income tax returns or pay income tax during the tax years ending December 31, 2008, December 31, 2009 and December 31, 2010 (the "Years at Issue"). It is these sales (the "Sales at Issue") that are at issue in the instance matter. Therefore, the issue in this matter is whether the sales Crown derived from beer imported from Mexico and sold to purchasers in states where Crown neither filed income tax returns nor paid taxes are considered sales in Illinois and therefore must be thrown back to Illinois and included in the numerator of GModelo's sales factor pursuant the "double throwback" rule set forth in 86 Ill. Admin. Code §100.3380(c)(1) ("Reg. 100.3380(c)"). In other words, does the "double throwback" rule set forth in Department's Reg. 100.3380(c) apply in the instant matter.

5. As a fifty-percent owner of Crown, GModelo included its *pro rata* share of Crown's sales in the numerator of its apportionment factor on its original Illinois Corporation Income and Replacement Tax Return ("IL-1120") for the Years at Issue.

6. Subsequently, GModelo filed Illinois Amended Corporation Income and Replacement Tax Returns ("IL-1120-X"), dated January 9, 2013, to remove the Sales at Issue from the numerator of its apportionment factor for the Years at Issue.

7. On its IL-1120X, GModelo claimed refunds in the amounts of \$957,308, \$802,685 and \$1,212,087 for tax years ending December 31, 2008, December 31, 2009 and December 31, 2010, respectively.

8. As of May 14, 2014, the Department had not issued notices granting or denying the GModelo's refunds GModelo for the Years at Issue.

9. Therefore, on May 15, 2014, GModelo filed a petition (the "Petition") with this Tribunal pursuant to Section 909(e) of the Illinois Income Tax Act ("IITA") that permits a taxpayer to challenge the "deemed denial" of a refund claim when the Department has neither granted or denied a refund within six months of the date the taxpayer filed such claim. (35 ILCS 5/909(e)).

10. In its Petition, GModelo asserted, among other things, that Crown was subject to an income tax by the Mexican federal government and the individual Mexican state governments, and therefore the "double throwback" rule does not apply to the Sales at Issue, i.e., the sales derived from beer Crown imported from Mexico and sold to purchasers in U.S. states where Crown neither filed an income tax return nor paid income tax. (Dept's Exh. 5, Crown's Petition, ¶¶29 & 65).<sup>1</sup>

B. Discovery.

11. On October 22, 2014, the Department propounded its First Set of Interrogatories and First Request for Production of Documents (collectively, the "Discovery Requests").

12. On February 18, 2015, four months after the Department served its Discovery Requests, GModelo filed its responses to the Department's First Set of Interrogatories and First Request for Production of Documents. (Dept's Exhibits 2 and 3, respectively).

13. On April, 28, 2015, the Department's counsel sent GModelo's counsel a letter informing him that GModelo's responses to the Department's Discovery Requests

were not sufficient and asked GModelo's counsel to advise the Department's counsel by May 1, 2015 whether GModelo would supplement its responses to provide the information the Department sought in discovery, or alternatively, provide a date by which such information would be forthcoming. (Dept's Exh. 1).

14. As of May 18, 2015, GModelo has neither supplemented its responses to the Department's Discovery Requests nor provided a date by which it intends to supplement its responses.

15. The Department's Discovery Requests were designed to elicit facts pertaining to GModelo's amended returns for the Years at Issue and to examine allegations contained in GModelo's Petition.

16. In many of its responses, GModelo asserted that the Department's Discovery Requests were "overbroad [and] unduly burdensome." Many of the Department's Discovery Requests were designed to elicit specific information regarding one item/document pertaining to a statement in GModelo's Petition or a fact that relates to a requirement of the "double throwback" rule. Other Discovery Requests sought the identity of individuals who performed certain activities that relate to statements in GModelo's Petition or requirements contained in the "double throwback" regulation. Accordingly, the Department's Discovery Requests are neither overbroad nor unduly burdensome.

17. Further, GModelo frequently objected to the Department's Discovery Requests on the basis of relevance, stating that such requests are "not reasonably calculated

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<sup>1</sup> Hereinafter, references to GModelo's petition will be cited as "TP's Petition, ¶ \_\_\_\_."

to lead to discovery of admissible evidence.” (e.g., Dept's Exh. 2, Interrogatories Nos. 2, 3, 4, 6 & 7).

18. Illinois courts allow great latitude in the scope of discovery. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 556, 692 N.E.2d 790 (1<sup>st</sup> Dist. 1998). The concept of relevance is broader for discovery purposes than for purposes of admission of evidence at trial because it includes not only what is admissible at trial but also that which leads to what is admissible. *TTX Co.*, 295 Ill. App. 3d at 557; *Crnkovich v. Almeida*, 261 Ill. App. 3d 997, 999, 634 N.E.2d 1130, 1132 (3<sup>rd</sup> Dist. 1994); *United Nuclear Corp. v. Energy Conversion Devices, Inc.*, 110 Ill. App. 3d 88, 104, 441 N.E.2d 1163, 1174 (1<sup>st</sup> Dist. 1982). The Department's Discovery Requests sought information regarding statements GModelo made in its protest and information pertaining to requirements contained in the “double throwback” regulation. Accordingly, the Department's Discovery Requests are relevant, and therefore GModelo must be compelled to fully respond thereto.

C. Specific Interrogatories.

19. In its First Set of Interrogatories, the Department sought, among other things, the following specific information in its First Set of Interrogatories and First Request for Production of Documents.

20. In Interrogatory No. 2, the Department sought the value of the “substantial inventory of shipping supplies” Crown allegedly maintained at the Grupo Modelo Breweries in Mexico during the Years at Issue. (Dept's Exh. 2). In response to Interrogatory No. 2, GModelo stated the following:

Response Interrogatory No. 2: Petitioner objects to this interrogatory because it is overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence. (Dept's Exh. 2).

21. In its Petition, GModelo asserted that Crown maintained a "substantial inventory of shipping supplies" at the Grupo Modelo breweries in Mexico. The value of Crown's shipping supplies inventory is undoubtedly memorialized in a general ledger or similar account (consistent with general accepted account principles). Accordingly, requesting the value of one item for each of the Years at Issue is not overboard or unduly burdensome, especially since GModelo relies on Crown's "substantial inventory of shipping supplies" to support its legal argument that the Mexican government possessed the authority to subject Crown to a corporate income tax. Further, inasmuch as Interrogatory No. 2 sought information pertaining to a statement GModelo made in its Petition, the request is relevant. (See Dept's Exh. 5, ¶128). Moreover, relevant information is not only what is admissible at trial but information that will lead to admissible evidence. See *TTX Co. v. Whitley, supra*.

22. The Department's Interrogatory No. 3 sought information regarding the connection between the Sales at Issue and Crown's activities in Illinois. The Department's Reg. 100.3380(c) states, in relevant part, that:

In the case of sales where neither the origin nor the destination of the sale is within this State, and the person is taxable in neither the state of origin nor the state of destination, the sale will be attributed to this State (and included in the numerator of the sale factor) if the person's activities in this State in connection with the sales are not protected by the provisions of P.L. 86-272.

23. Reg. 100.3380(c) indicates that there must be some connection between activities in Illinois and the sales that the Department seeks to "throw back" to Illinois. 86 Ill. Admin. Code §100.3380(c).

24. In order to establish the requisite connection between Crown's Illinois activities and the Sales at Issue, the Department propounded Interrogatories Nos. 3, 4, 6 and 7 to obtain information regarding Crown's Illinois activities.

25. In particular, Interrogatory No. 3 asked GModelo to identify "Crown's supply chain personnel [who] made regular and systematic visits to the breweries" during the Years at Issue. (Dept's Exh. 2). Interrogatory No. 3 also sought information regarding the individuals who allegedly made regular and systematic visits to the breweries. In response to Interrogatory No. 3, GModelo stated:

Response Interrogatory No. 3: Petitioner objects to this interrogatory, including subparts, because it is overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence.

(Dept's Exh. 2).

26. Interrogatory No. 3 is not overbroad because the request is specific and it sought a finite amount of information, namely the identity of the individuals whom GModelo alleges made "regular and systematic" visits to Mexico. (Dept's Exh. 5, TP's Petition, ¶28). Identifying these individuals is not unduly burdensome, unless hundreds of individuals made "regular and systematic" visits to Mexico. GModelo argues in its Petition that Crown was subject to taxation in Mexico, in part, because Crown's employees made "regular and systematic" visits to Mexico. (TP's Petition, Count I, ¶28). It is disingenuous for GModelo to rely upon these "regular and systematic" visits to Mexico as factual support for its legal argument that Crown was subject to taxation in Mexico, and now assert that the Department's interrogatories pertaining to these "regular and systematic" visits are somehow not relevant. This Tribunal should reject GModelo's illogical argument and

compel GModelo to fully respond to the Department's Interrogatory No. 3, including all subparts.

27. The Department's Interrogatories Nos. 4, 6 and 7 sought similar information in that each interrogatory requested the identity of the Crown employees who performed certain activities, the location at which such activities were performed and the identity of the person(s) who approved those activities. GModelo set forth the same objection in response to each of the foregoing interrogatories.

28. In Interrogatory No. 4, the Department sought the identity of each person at Crown who placed beer orders with the Grupo Modelo breweries in Mexico, the location from which such individuals placed beer orders and the individual(s) who approved such orders. (Dept's Exh. 2). GModelo responded to Interrogatory No. 4 by stating that:

Response Interrogatory No. 4: Petitioner objects to this interrogatory, including subparts, because it is overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence.

(Dept's Exh. 2)

29. Interrogatory No. 6 sought the identity of each person at Crown who negotiated contracts between Crown and the common carriers for the shipment of beer from Mexico to the United States, the location from which these individuals negotiated such contracts and the identity of the individuals who approved the contracts. (Dept's Exh. 2). GModelo responded to Interrogatory No. 4 by stating that:

Response Interrogatory No. 6: Petitioner objects to this interrogatory, including subparts, because it is overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence.

(Dept's Exh. 2).

30. In Interrogatory No. 7, the Department requested the identity of the individuals who monitored/managed/tracked the shipments of beer from Grupo Modelo's breweries in Mexico to the United States. (Dept's Exh. 2). In response to Interrogatory No. 7, GModelo set forth the same objection as it did in response to Interrogatory Nos. 4 and 6, namely that:

Response Interrogatory No. 7: Petitioner objects to this interrogatory, including subparts, because it is overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence.

(Dept's Exh. 2).

31. Interrogatories Nos. 4, 6 and 7 are narrowly tailored to ascertain facts regarding Crown's Illinois business activities, including the identities of the individuals who performed such activities. Surely, it is not unduly burdensome for someone at Crown to identify these individuals and the location(s) where such activities were performed. Although Interrogatories Nos. 4, 6 and 7 may not be relevant to GModelo's legal argument, such responses are relevant to the Department's case because they establish a direct connection between Illinois and the Sales at Issue, and therefore are relevant. Moreover, relevance in discovery is broader than relevance at trial. *TTX Co.*, 295 Ill. App. 3d at 557. Accordingly, this Tribunal should compel GModelo to fully respond to Interrogatories Nos. 4, 6 and 7.

D. Document Requests.

32. GModelo also failed to fully respond to the Department's Requests for Production of Documents. The Department's Document Requests Nos. 7 and 8, requested all documents the individual GModelo identified as its controlled expert witness reviewed and/or relied upon in developing his opinion (Request No. 7) and all documents this individual reviewed and/or relied upon in preparing his report (Request No. 8). GModelo set forth the following response to Document Requests Nos. 7 and 8:

Response to Document Requests Nos. 7 & 8: Petitioner does not possess or control any such documents.

(Dept's Exh. 2).

33. Instruction No. 2 of the Department's First Request for Production of Documents indicates that:

This request for documents calls for production of all documents, as defined herein, in the possession, custody or control of Taxpayer, the entities included on Taxpayer's IL-1120 or IL-1120X for the tax year ending December 31, 2009, December 31, 2010 and December 31, 2011, and documents in the possession, custody or control of their present and former agents, employees, attorneys, representatives and entities which they own or control, wherever located, including all individual or company premises and all individual residences as well as the residence of any company director, officers, employees, agents or representatives.

(Dept's Exh. 2, Instruction No. 3).

34. Based on Instruction No. 2, Document Requests Nos. 7 and 8 required GModelo to produce all responsive documents, regardless of whether such documents were in the possession of GModelo, its counsel, representatives, agents, expert or any other individual or entity identified or described in Instruction No. 2. (Dept's Exh. 3, Instruction No. 2).

35. Therefore, if documents responsive to Document Requests Nos. 7 and 8 are in the possession or under the control of any individual or entity described in Instruction No. 2 or other representatives or agents of GModelo or Crown, GModelo has a duty to obtain the responsive documents from the individual (or entity), and thereafter produce such documents. If GModelo is allowed to circumvent the rules by hiding behind the fact that the responsive documents are in the possession or under the control of a third party, the Illinois Supreme Court's rules governing discovery with respect to the production of documents will be eviscerated.

36. In its Petition, GModelo asserted that the individual Mexican state governments entered into separate agreements with the Mexican federal government relinquishing their right to impose their own corporate income tax in exchange for an increased share of federal revenues. (Dept's Exh. 5, TP's Petition, ¶61).

37. GModelo asserted in its Petition that the individual Mexican states retained the authority to subject Crown (and other corporate taxpayers) to a corporate income tax, in spite of the separate agreements. (Dept's Exh. 5, TP's Petition, ¶¶61-65).

38. In Document Request No. 14, the Department requested copies of the separate agreements (Spanish and English versions) entered into by the individual Mexican state governments and the Mexican federal government. (Dept's Exh. 3). In response to Document Request No. 14, GModelo stated that:

Response to Document Request No. 14: Petitioner does not possess or control any such documents.

(Dept's Exh. 3, No. 14).

39. Although GModelo relied on the separate agreements as the center piece of its legal argument that the individual Mexican states retained the authority to subject Crown to a corporate income tax, GModelo refuses to produce these agreements in response to the Department's document requests.

40. Moreover, Mr. Moya, the individual GModelo identified as its controlled expert, heavily relied on these separate agreements for his opinion that the individual Mexican states retained the authority to impose a corporate income tax. (Dept's Exh. 4, pp.4-5). Mr. Moya devoted two of the six pages in his report discussing these separate agreements,

ultimately concluding that these agreements do not preclude the individual Mexican states from imposing a corporate income tax. (Dept's Exh. 4, pp.4-5).

41. GModelo cannot rely on documents to support its legal arguments and positions taken in its Petition and then refuse to produce such documents in response to discovery requests, especially considering that the individual GModelo identified as its controlled expert heavily relied upon the same documents as the basis, in part, for his opinion. Therefore, this Tribunal should compel GModelo to produce the separate agreements, or alternatively, preclude GModelo from making arguments based on these separate agreements, which includes prohibiting any individual from offering testimony (including affidavits) pertaining to these agreements.

42. Finally, Document Request No. 22 sought copies of the expense reports of the individuals whom GModelo alleged, in its Petition, made "regular and systematic visits to the breweries" in Mexico during the Year at Issue. (Dept's Exh. 3).

43. Document Request No. 23 requested "all service agreements relating or pertaining to the sale of beer or shipment of beer entered into by Crown and GModelo." (Dept's Exh. 3).

44. Document Requests Nos. 22 and 23 are similar to the Department's Interrogatories Nos. 4, 6 and 7 in that they sought information connecting the Sales at Issue to activities performed in Illinois, specifically the identities of individuals who performed certain activities (on behalf of Crown) and the location where such activities were performed.

45. In response to both Document Requests Nos. 22 and 23, GModelo stated:

Response to Document Requests Nos. 22 and 23: Petitioner objects to this request on grounds of relevance.

(Dept's Exh. 3).

46. GModelo's objection should be overruled because the Department's Document Request No. 22 relates directly to an allegation in GModelo's Petition. In particular, GModelo's asserted that certain Crown employees made "regular and systematic visits to the breweries" in Mexico. (Dept's Exh. 5, TP's Petition, ¶28). This assertion is the basis for GModelo's argument that Crown was subject to a corporate income tax in Mexico. Therefore, the Department's Document Request No. 22 is relevant because the expense reports would confirm whether such visits were "regular and systematic."

47. In Document Request No. 23, the Department sought copies of service agreements entered into by Crown and GModelo relating or pertaining to the sale of beer or shipment of beer. GModelo objected to Document Request No. 23 on the basis of relevance. Inasmuch as imported beer is the subject of this matter, service agreements between the two main players pertaining to this produce are relevant. Therefore, GModelo's objection should be overruled, and thereafter compelled to produce the requested documents.

48. The purpose of discovery is the ascertainment of truth and to promote either a fair settlement or a fair trial. *Computer Teaching Corp. v. Courseware Applications, Inc.* (4th Dist. 1990), 199 Ill.App.3d 154, 556 N.E.2d 816, *app. den.* 133 Ill.2d 553, 561 N.E.2d 688. Another purpose is to eliminate surprises so that a judgment will rest upon the

merits, and not upon the skillful maneuvering of counsel. *Mistler v. Mancini* (1st Dist. 1982) 111 Ill.App.3d, 443 N.E.2d 1125.

49. The Department's interrogatories and document requests sought information and documents pertaining to allegations contained in GModelo's Petition or comments contained in the reported provided by the individual GModelo identified as its controlled witness. Accordingly, the information and the documents are relevant. Allowing GModelo to ignore the Department's valid Discovery Requests circumvents the Illinois Supreme Court's rules, and will preclude the Department from obtaining the facts, and ultimately will deny the Department a trial based on the merits.

50. For all of the foregoing reasons, the Department moves the Administrative Law Judge to enter an order compelling GModelo to fully respond to the Department's First Set of Interrogatories and First Request for Production of Documents as set forth above.

Respectfully submitted,

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

By:

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Rickey A. Walton  
Spec. Asst. Atty. General

Date: \_\_\_\_\_

**DPEARTMENT'S  
MOTION TO COMPEL**

**DOCKET NO. 14-TT-82**

**EXHIBIT 1**



Office of Legal Services  
Litigation Section  
James R. Thompson Center  
100 West Randolph Street, 7-900  
Chicago, Illinois 60601  
April 28, 2015

Mr. Brian L. Browdy  
Mr. Scott Browdy  
Ryan Law Firm, LLP  
311 S. Wacker Driver, Suite 4800  
Chicago, IL 60606

RE: GModelo Corp., Inc.'s Responses to Department's Discovery  
(14-TT-82)

Dear Messrs. Brian and Scott Browdy:

This letter concerns GModelo Corporation, Inc.'s ("GModelo") responses to the Illinois Department of Revenue's (the "Department") First Set of Interrogatories and First Request for Production of Documents (collectively "Discovery Requests"). In particular, many of GModelo's responses to the Department's Discovery Requests are invalid or insufficient as explained below.

1. Interrogatory No. 2. The Department sought the value of the "inventory of shipping supplies" that Crown Imports, LLC ("Crown") maintained in Mexico (as GModelo asserted in its petition) during the tax years ending December 31, 2009, December 31, 2010 and December 31, 2011 (the "tax years at issue").

GModelo asserted that Interrogatory No. 2 was "overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence." The Department's Interrogatory No. 2 sought one item, namely the value of the "inventory of shipping supplies" that Crown maintained in Mexico during the years at issue. Accordingly, the foregoing direct request, seeking one specific item, is not overbroad. Further, relevance in discovery is much broader than relevance for the admissibility of evidence at trial. Specifically, relevance in discovery includes not just information that is relevant, but information that will lead to relevant admissible evidence. Moreover, inasmuch as GModelo raised this issue in its petition, the Department is entitled to explore this

area in discovery. Accordingly, the Department's Interrogatory No. 2 is relevant, and GModelo is required to fully respond.

2. Interrogatory No. 3. The Department sought the identities of Crown's supply chain employees who made "regular and systematic visits" to the breweries in Mexico (as GModelo stated in its petition) and specific information about these individuals (e.g., their other duties and responsibilities, the location where these individuals performed their duties, the total number of Crown's supply chain employees in Illinois, etc.).

GModelo asserted that Interrogatory No. 3 was "overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence." Unless hundreds of individuals made "regular and systematic visits" to Mexico, the Department does not believe this request is overbroad or unduly burdensome, especially since GModelo made this assertion in its petition. Further, GModelo has not indicated how or why it is burdensome to identify the number of Crown's supply chain employees who worked in Illinois during the tax years at issue. Therefore, GModelo should fully respond to Interrogatory No. 3, including all subparts.

3. Interrogatory No. 4 sought information (e.g., the identity of individuals who placed beer orders, the identity of individuals who approved beer orders, the city where the foregoing individuals worked, etc.) regarding GModelo's beer orders placed with the Grupo Modelo breweries in Mexico. In response, GModelo asserted that Interrogatory No. 3 was "overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence." Interrogatory No. 3 sought information regarding the Illinois activities that generated the sales the Department threw back to Illinois, which is a relevant inquiry under the Department's regulation. Therefore, GModelo's objections are not valid, and therefore must fully respond to Interrogatory No. 4.
4. Interrogatories Nos. 6 and 7 are similar to Interrogatory No. 3 in that they sought information regarding the activities in Illinois that helped generate the sales subject to the "throw back" rule. Once again, GModelo asserted that Interrogatories Nos. 6 and 7 were "overbroad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence." Pursuant to the Department's regulation, the Illinois activities that generated the sales subject to the "throw back" rule

are relevant. Therefore, GModelo must fully respond to Interrogatories Nos. 6 and 7.

5. Document Requests Nos. 7 and 8 sought copies of all documents GModelo's expert witnesses (independent and controlled) reviewed and/or relied upon in developing their opinions and in preparing their reports. In response, GModelo stated that it does not "possess or control any such documents." GModelo's responses to Documents Requests Nos. 7 and 8 are insufficient. It is irrelevant that the requested documents are not in GModelo's possession or control. Inasmuch as GModelo is calling these individuals as expert witnesses, it has a duty to obtain the requested documents from its expert(s) (or some other third party) and produce the documents that are responsive to the Document Request Nos. 7 and 8.
6. Document Request No. 14 sought copies of the separate agreements (Spanish and English versions) the individual Mexican state governments entered into with the Mexican federal government relinquishing their right to impose corporate income taxes. In response, GModelo stated that it does not "possess or control any such documents." GModelo's response to Document Request No. 14 is insufficient. GModelo's petition, in part, is based on its assertion that each individual Mexican state entered into an agreement with the Mexican federal government to relinquish its right to impose a corporate income tax in exchange for a share of certain federal revenues. GModelo referenced these separate individual agreements in its petition (Count V, ¶61). Based on the foregoing, the separate agreements are relevant, and therefore GModelo has a duty to produce the requested documents.
7. In Document Request No. 22, the Department requested copies of expense reports for Crown's supply chain employees who "made regular and systematic" trips to the Mexican breweries during the tax years at issue. GModelo objected to Document Request No. 22 on the basis of relevance. The requested documents are relevant because they relate to, among other things, the alleged "regular and systematic" trips these individuals made to Mexico to provide technical assistance. Accordingly, GModelo's is required to produce the requested documents.
8. Document Request No. 23 sought copies of agreements between Crown and GModelo relating to the sale of beer and/or shipment of beer. GModelo objected to Document Request No. 23 on the basis of relevance. Inasmuch as GModelo sold the beer that Crown imported from Mexico, the relationship between the two entities is relevant. And, that relationship is undoubtedly documented in agreement(s) entered into by the two entities. Therefore, such agreements are relevant. Accordingly, GModelo's relevance objection is not valid.

Messrs. Brian & Scott Browdy  
GModelo Corporation, Inc.  
Docket No. 14-TT-82  
April 28, 2015  
Page 2

I am requesting that GModelo provide the requested information by Friday, May 1, 2015 or indicate whether such information will be provided and when it will be provided.

You can contact me at (312) 814-1016 if you have questions regarding this matter.

Sincerely,



Rickey A. Walton

Spec. Asst. Attorney General

## Walton, Rick

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**From:** Walton, Rick  
**Sent:** Tuesday, April 28, 2015 4:24 PM  
**To:** 'Brian Browdy'; Scott Browdy  
**Subject:** GModelo Corp., Inc., Docket No. 14-TT-82  
**Attachments:** Dept's - Ltr TP's Resp to Dept's Discovery.PDF

Brian and Scott:

I have attached a letter regarding GModelo Corp.'s responses to the Department's First Set of Interrogatories and First Request for Production of Documents. You can contact me at (312) 814-1016 if you have questions regarding this matter. Thank you.

Rickey A. Walton  
Special Asst. Atty. General  
Office of Legal Services  
Illinois Dept. of Revenue  
100 W. Randolph Street, 7-900  
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**DPEARTMENT'S  
MOTION TO COMPEL**

**DOCKET NO. 14-TT-82**

**EXHIBIT 2**

ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

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GMODELO CORP., INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	14-TT-0082
	)	James M. Conway, Chief Judge
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

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**PETITIONER'S RESPONSE TO  
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Petitioner, GModelo Corp., Inc. ("Taxpayer"), hereby responds to Defendant's First Set of Interrogatories.

1. Identify each person with knowledge of the facts contained in GModelo Corporation, Inc.'s ("GModelo") petition, dated May 15, 2014, filed with the Independent Tax Tribunal in the instant matter.

**RESPONSE:**

**Name(s)**

Mr. Jose Maria Arreola, CFO (retired), GModelo Corp., Inc. Telephone – 314.577.2359. Address – One Busch Place, St. Louis, Missouri 63118.

Mr. Charles McKenna, President, GModelo Corp., Inc., Telephone – 314.577.2359. Address – One Busch Place, St. Louis, Missouri 63118.

2. In its petition, GModelo stated that Crown Imports, LLC ("Crown") maintained an "inventory of shipping supplies . . . at the Grupo Modelo Breweries in Mexico." State the value of Crown's inventory of shipping supplies that it maintained in Mexico during the tax years ending December 31, 2009 through December 31, 2011 (the "Years at Issue").

**RESPONSE:**

Petitioner objects on grounds of relevance.

3. In its petition, GModelo stated that "Crown's supply chain personnel also made regular and systematic visits to the breweries during these years." Identify Crown's supply chain personnel who made regular and systematic visits to the breweries during the Years at Issue.

**RESPONSE:**

Petitioner objects to this interrogatory, and each of the following subparts, on grounds of relevance.

- a. In addition to visiting the breweries in Mexico, state the other duties and responsibilities of Crown's supply chain personnel who visited the breweries in Mexico during the Years at Issue.
  - b. For each person identified, above, identify the location where each person performed his/her duties and responsibilities during the Years at Issue.
  - c. State the total number of Crown's supply chain personnel who worked in Illinois during the Years at Issue.
  - d. Identify documents evidencing GModelo's response to Interrogatory No. 3.
4. In its petition, GModelo stated that Crown "purchased beer from the Grupo Modelo breweries in Mexico..." Identify each person at Crown who placed beer orders with the Grupo Modelo breweries in Mexico during the Years at Issue.

**RESPONSE:**

Petitioner objects to this interrogatory, and each of the following subparts, on grounds of relevance.

- a. Identify the location from which the person at Crown placed beer orders with the Grupo Modelo breweries in Mexico.
- b. Identify each person who approved beer orders Crown placed with the Grupo Modelo breweries in Mexico during the Years at Issue.

- c. Identify the location from which the person at Crown approved the beer orders that Crown placed with the Grupo Modelo breweries in Mexico.
  - d. Identify documents evidencing GModelo's response to Interrogatory No. 4.
5. In its petition, GModelo stated that "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..."
- a. Identify the "GModelo affiliate" that entered into a special importer agreement with Crown.

**RESPONSE:**

Extrade II, S.A. DE C.V.

- b. Explain the meaning of the statement "the affiliate purchases beer from the Grupo Modelo breweries in Mexico and *supplies* it to Crown."

**RESPONSE:**

See: Crown Product Flow from Brewery to Distributor Memorandum.

6. Identify each person who negotiated contracts between Crown and the rail carriers and trucking companies that Crown used to ship beer from Mexico to the United States.

**RESPONSE:** Petitioner objects to this interrogatory, and each of the following subparts, on grounds of relevance.

- a. Identify the location of each person who negotiated contracts between Crown and the rail carriers and trucking companies that Crown used to ship beer from Mexico to the United States.
  - b. Identify documents evidencing GModelo's response to Interrogatory No. 6.
7. After the beer was loaded onto railcars or tanker truckers, identify the person who monitored/managed/tracked the shipment of beer from the Grupo Modelo breweries in Mexico to the United States.

**RESPONSE:**

Petitioner objects to this interrogatory on grounds of relevance.

8. With respect to the gross receipts derived from the sale of beer Crown imported from Mexico and sold to distributors in U.S. states where such gross receipts were not subject to a tax measured by income (i.e., the "Sales at Issue," which are the sales that the Department asserts are subject to the double "throw back" rule, and therefore should be included in the numerator of GModelo's Illinois sales factor), state whether Crown excluded the Sales at Issue from the numerator of its Illinois sales factor during the Years at Issue.

**RESPONSE:**

Crown did not exclude the Sales at Issue from the numerator of its Illinois sales apportionment factor during the Years at Issue.

9. Identify the amount of sales Crown derived from the sale of beer in Mexico.

**RESPONSE:**

Crown derived no sales from the sale of beer in Mexico.

- a. Identify the amount of sales GModelo derived from the sale of beer in Mexico.

**RESPONSE:**

GModelo derived no sales from the sale of beer in Mexico.

- b. Identify documents evidencing the response to Interrogatory No. 9.

**RESPONSE:**

Not applicable.

10. Identify (by type of property and street address) all real property located in Illinois that Crown and GModelo owned or leased during the Years at Issue.

**RESPONSE:**

<u>Address</u>	<u>Type</u>	<u>Possessor</u>	<u>Own/Lease</u>
1 South Dearborn Street, Chicago, Illinois 60603	Office	GModelo	Lease

- a. Describe the business activities that Crown or GModelo performed at each real property identified in response to Interrogatory No. 12.

**RESPONSE:**

GModelo performs business activities related to the distribution and marketing of beer.

- b. Identify documents evidencing GModelo's response to Interrogatory No. 12.

**RESPONSE:**

Not applicable.

11. Identify the person who determined that GModelo's IL-1120s, for the Years at Issue, should be amended to exclude the numerator of GModelo's Illinois sales factor the gross receipts derived from beer Crown imported from Mexico and sold to customers in U.S. states where Crown did not file income tax returns or pay income taxes.

**RESPONSE:**

**Name(s)**

Mr. Jose Maria Arreola, CFO (retired), GModelo Corp., Inc. Telephone – 314.577.2359. Address – One Busch Place, St. Louis, Missouri 63118.

Mr. Charles McKenna, President, GModelo Corp., Inc., Telephone – 314.577.2359. Address – One Busch Place, St. Louis, Missouri 63118.

12. Identify each witness GModelo will call to testify at trial and provide the information required by Illinois Supreme Court Rule 213(f).

**RESPONSE:**

**Name(s)**

Mr. Ronaldo Moya Alessio-Robles, Partner, Baker & McKenzie S.C. Telephone – 52.55.5351.4115 Address – Edificio Scotiabank Inverlat, Piso 12, Blvd. M. Avila Camacho 1, Mexico, D.F., 11009 Mexico

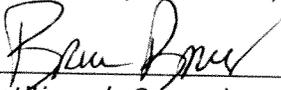
The other information required by Supreme Court Rule 213(f) may be found in Mr. Moya's affidavit and report, which are produced in response to the First Request To Produce Documents.

13. Identify any gross receipts Crown or GModelo derived from the sale of beer in Mexico. The term "gross receipts" refers to gross income received from selling tangible personal property.

**RESPONSE:**

No gross receipts were derived from the sale of beer in Mexico by Crown or GModelo.

Respectfully submitted,

  
\_\_\_\_\_  
Petitioner's Counsel

Scott A. Browdy  
Brian L. Browdy  
Ryan Law Firm, LLP  
311 S. Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
Telephone: 872.529.5038

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the **PETITIONER'S RESPONSE TO DEFENDANT'S FIRST SET OF INTERROGATORIES** was served upon the following attorneys of record by electronic mail and by first-class mail, postage prepaid on the 18 day of February 2015.

Rickey A. Walton  
Special Assistant Attorney General  
Illinois Department of Revenue  
100 W. Randolph Street, Level 7  
Chicago, Illinois 60601



---

Scott A. Browdy  
Brian L. Browdy  
Ryan Law Firm, LLP  
311 S. Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
Telephone: 872.529.5038

ATTESTATION

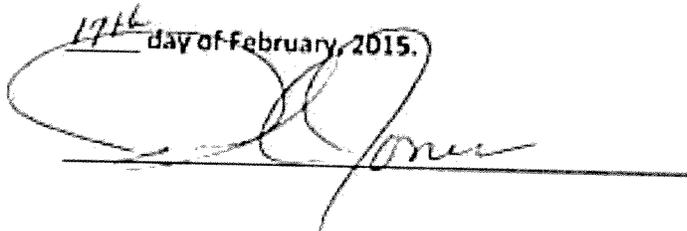
STATE OF )  
City ) SS.  
COUNTY OF St. Louis )

Greg Schwarztrauber, being first duly sworn on oath, deposes and states that he/she is Petitioner in the above-captioned matter, that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

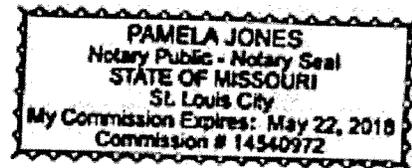


SIGNATURE

SUBSCRIBED and SWORN to before me this

17<sup>th</sup> day of February, 2015.  


NOTARY PUBLIC



**DPEARTMENT'S  
MOTION TO COMPEL**

**DOCKET NO. 14-TT-82**

**EXHIBIT 3**

ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

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GMODELO CORP., INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	14-TT-0082
	)	James M. Conway, Chief Judge
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

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**PETITIONER'S RESPONSE TO  
DEFENDANT'S FIRST REQUEST TO PRODUCE DOCUMENTS**

Petitioner, GModelo Corp., Inc. ("Taxpayer"), hereby responds to Defendant's First Request to Produce Documents.

1. All documents GModelo Corporation ("GModelo") identified in response to the Department's First Set of Interrogatories.

**RESPONSE:**

See Exhibit 1 (Crown Product Flow from Brewery to Distributor Memorandum).

2. Each document GModelo will introduce into evidence at the evidentiary hearing or use in support of a motion for summary judgment in this matter.

**RESPONSE:**

GModelo has not yet determined what documents it will introduce into evidence or use in support of a motion for summary judgment.

3. Each demonstrative exhibit that GModelo will use, rely upon, or refer to at the evidentiary hearing in this matter.

**RESPONSE:**

GModelo has not yet determined what demonstrative exhibits it will use, rely upon or refer to at the evidentiary hearing in this matter.

4. Each document GModelo will use, rely upon, or refer to at the evidentiary hearing but will not offer into evidence as a trial exhibit.

**RESPONSE:**

There are no documents responsive to this request.

5. Copies of reports prepared by GModelo's independent expert witness in connection with the instant matter.

**RESPONSE:**

Petitioner has not yet determined whether it will call an independent expert witness in this matter.

6. Copies of reports prepared by GModelo's controlled expert witness in connection with the instant matter.

**RESPONSE:**

See Exhibit 2 (Affidavit and Memorandum of Ronaldo Moya Alessio Robles).

7. Copies of all documents GModelo's expert witnesses (both independent and controlled) reviewed and/or relied upon in developing his/her opinion.

**RESPONSE:**

Petitioner does not possess or control any such documents.

8. Copies of all documents GModelo's expert witnesses (both independent and controlled) reviewed and/or relied upon in developing his/her expert report.

**RESPONSE:**

Petitioner does not possess or control any such documents.

9. Copies of all articles written by GModelo's expert witnesses (both independent and controlled) addressing or discussing the taxation of international transactions.

**RESPONSE:**

See Exhibits 3, 4, and 5. (MX Adheres to OECD Tax & Financial Info Exchange Proposal; MX Deductibility of Pro Rata Expenses to Foreign Related Parties; MX Internal Strategies Regarding VAT Balance Refund).

10. Copies of all articles written by GModelo's expert witnesses (both independent and controlled) addressing or discussing the taxation of transactions where the product that is the subject of the transaction is shipped from Mexico and sold in the United States.

**RESPONSE:**

There are no documents responsive to this request.

11. Copies of each article written or co-written by GModelo's expert witnesses (both independent and controlled) that relates to the opinion(s) he/she will give in the instant matter.

**RESPONSE:**

There are no documents responsive to this request.

12. Curriculum Vitae for GModelo's independent expert witness(es).

**RESPONSE:**

Petitioner has not yet determined whether it will call an independent expert witness in this matter.

13. Curriculum Vitae for GModelo's controlled expert witness(es).

**RESPONSE:**

This document will be produced upon its receipt by Petitioner.

14. Copies of the separate agreements (an original version in Spanish and an English version) the individual Mexican state governments entered into with the Mexican federal government forgoing imposition of their own corporate income taxes in exchange for increased participation in federal revenues. (See GModelo's Petition, Count V, Paragraph 61).

**RESPONSE:**

Petitioner does not possess or control any such documents.

15. GModelo's US-1120s (including any US-1120-X, i.e., amended federal returns).

**RESPONSE:**

See Exhibits 7, 8, and 9 (GModelo 2009 Federal Form 1120; GModelo 2010 Federal Form 1120; GModelo 2011 Federal Form 1120).

16. Crown Imports, LLC's ("Crown") US-1065s (including any US-1065-X, amended federal returns).

**RESPONSE:**

See Exhibit 10, 11, and 12 (Crown 2009 Federal Form 1065; Crown 2010 Federal Form 1065; Crown 2011 Federal Form 1065).

17. Copies of all income tax returns that Crown filed in Mexico at the federal and individual Mexican state level.

**RESPONSE:**

There are no documents responsive to this request.

18. Copies of all income tax returns that GModelo filed in Mexico at the federal and individual Mexican state level.

**RESPONSE:**

There are no documents responsive to this request.

19. Copies of documents evidencing the sale of beer by Crown in Mexico.

**RESPONSE:**

There are no documents responsive to this request.

20. Copies of documents evidencing the sale of beer by GModelo in Mexico.

**RESPONSE:**

There are no documents responsive to this request.

21. In its petition, dated May 15, 2014, GModelo stated that "Petition and Constellation Beers, Ltd., ... formed Crown Imports LLC (Crown), a fifty-fifty joint venture partnership, to facilitate the importation of Grupo Modelo brands into the United States." Provide a copy of the partnership agreement for the joint venture partnership referenced in GModelo's petition, paragraph No. 8.

**RESPONSE:**

See Exhibit 13 (Crown Imports Limited Liability Agreement a/k/a Joint Venture Agreement).

22. In its petition, dated May 15, 2014, GModelo stated that "Crown's supply chain personnel also made regular and systematic visits to the breweries during these years." Provide copies of expense reports for each Crown supply chain employee who "made regular and systematic visits to the breweries" in Mexico.

**RESPONSE:**

Petitioner objects to this request on grounds of relevance.

23. All service agreements relating or pertaining to the sale of beer or shipment of beer entered into by Crown and GModelo.

**RESPONSE:**

Petitioner objects to this request on grounds of relevance.

24. All service agreements relating or pertaining to the sale of beer or shipment of beer entered into by Crown and third parties.

**RESPONSE:**

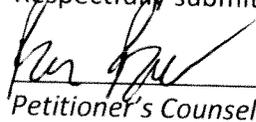
See Exhibits 14 and 15 (Importer Agreement between Extrade II, S.A. de C.V. and Crown Imports, LLC; Sub-License Agreement between Marcas Modelo, S.A. de C.V. and Crown Imports, LLC).

25. Organization chart for GModelo including, among other things, its ultimate parent and its subsidiaries.

**RESPONSE:**

See Exhibit 16 (Organizational Chart of Diblo, S.A. de C.V.).

Respectfully submitted,



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*Petitioner's Counsel*

Scott A. Browdy  
Brian L. Browdy  
Ryan Law Firm, LLP  
311 S. Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
Telephone: 872.529.5038

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the **PETITIONER'S RESPONSE TO DEFENDANT'S FIRST REQUEST TO PRODUCE DOCUMENTS** was served upon the following attorneys of record by electronic mail and by first-class mail, postage prepaid on the 18 day of February 2015.

Rickey A. Walton  
Special Assistant Attorney General  
Illinois Department of Revenue  
100 W. Randolph Street, Level 7  
Chicago, Illinois 60601



---

Scott A. Browdy  
Brian L. Browdy  
Ryan Law Firm, LLP  
311 S. Wacker Drive, Suite 4800  
Chicago, Illinois 60606  
Telephone: 872.529.5038

**VERIFICATION**

The undersigned verifies that, to the best of his/her knowledge and belief, the Petitioner's Responses to Department's First Request to Produce Documents is complete and in accordance with the Department's requests. Petitioner reserves the right to supplement the foregoing responses as may be necessary.

A handwritten signature in black ink, appearing to read "Raymond" followed by a stylized flourish.

**DPEARTMENT'S  
MOTION TO COMPEL**

**DOCKET NO. 14-TT-82**

**EXHIBIT 4**



SIN TEXTO

Department of Revenue v. GModelo Corp., Inc.

Case No. 12-IT-0219

Affidavit of Ronaldo Moya



SUBSCRIBED AND SWORN TO  
this 2<sup>nd</sup> day of April 2013

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YO, JOSÉ LUIS VILLAVICENCIO CASTAÑEDA, Titular de la Notaría RONALDO BRUNO MOYA ALESSIO ROBLES, por su propio derecho, a quien identifiqué, en los términos que se indican en el acta que se relaciona más adelante, reconoció como suya la firma que calza el presente documento en dos hojas útiles con texto sólo por el anverso en idioma inglés, y su respectivo anexo, en cinco hojas con texto sólo por el anverso en idioma inglés, en copia fotostática y ratificó el contenido del mismo, declarando que es la firma que acostumbra usar en todos los actos jurídicos que celebran.-----

Lo anterior se hizo constar en el acta número treinta y ocho mil seiscientos cuarenta y ocho, de fecha tres de abril de dos mil trece. -----  
 - - - El compareciente declaró que el documento cuya firma ratifica no requiere de traducción, debido a que conoce en todos sus términos el contenido del documento y en lo que éste consiste, liberando al suscrito Notario de cualquier responsabilidad que pudiese derivar del mismo.-----

----- CONSTE.-----



JOSÉ LUIS VILLAVICENCIO CASTAÑEDA  
 NOTARIO 218 DEL DISTRITO FEDERAL.



**Memorandum**

Baker & McKenzie México, S.C.  
Edificio Scotiabank Inverlat, Piso 12  
Blvd. M. Avila Camacho 1  
11009 México, D.F., México

Tel: +52 55 5279 2900  
Fax: +52 55 5279 2999  
Info.mexico@bakernet.com  
www.bakernet.com



**Date** January 17, 2011  
**To** Brian Browdy  
Ryan LLC  
**From** Héctor Reyes  
Ronaldo Moya  
**C.c.** Ted Bots  
John McLees  
**Re** Grupo Modelo Illinois Tax Dispute – Power of the Mexican States to Impose Income Tax on Company Profits

In connection with your representation of Grupo Modelo related to an Illinois Income Tax dispute, you have requested our assistance/advice regarding certain aspects of Mexican Law. Specifically, you have asked whether the Mexican states have the power to impose a local income tax on the profits of companies operating in their jurisdictions. This memorandum summarizes our comments and conclusions regarding this question.

**Summary**

The Mexican Constitution grants all of the States of Mexico the power to impose income tax on company profits. All of the Mexican States have entered into separate agreements with the Federal government of Mexico under Mexico's National Tax Coordination System, under which they have each agreed separately not to impose income tax on company profits and certain other taxes. Under Mexican law, however, each State has the independent power to withdraw from that agreement at any time in its sole discretion with the approval of its State Congress. Therefore, nothing in the Mexican law or Constitution limits the ultimate power of each of the Mexican States to impose income tax on company profits.

**Mexican Federal Constitution**

The United Mexican States ("Mexico") is politically organized as a federal, democratic and representative Republic, which is composed of free and sovereign States in all issues related to their internal regime, but united in a Federation based on the principles set forth by the Federal Constitution.<sup>1</sup>

According to the Federal Constitution, the Republic has taxation power which is defined as the power to establish necessary taxes required to fund the performance of governmental functions. Taxation power can be either "original," when it is created in the Constitution and thus is not received from another entity, or delegated when the taxation power is received by a given political entity from another that has the original power.

<sup>1</sup> Federal Constitution, Article 40.



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In Mexico, both the Federation and the States have original taxation powers granted by the Federal Constitution, and such powers coexist with certain limitations for the States that are expressly listed in the Federal Constitution.

Pursuant to article 73, section VII of the Federal Constitution, the Federal Congress has the power to create all necessary contributions (i.e. taxes) to fund the expenditures detailed in the federal budget. This legal provision has been interpreted in the sense that a supreme and unlimited taxation power has been granted to the Federation.

Additionally, article 73, section XXIX of the Federal Constitution reserves to the Federation the exclusive right to impose taxes on certain sources. Only the Federal Congress has the power to establish taxes on: (i) foreign trade; (ii) natural resources described in paragraphs 4 and 5 of article 27 of the Constitution (i.e. sources of water, oil, radioactive minerals); (iii) financial institutions and insurance companies; and (iv) public services that are concessioned or directly rendered by the Federation; or to establish special taxes on: electric energy, tobacco production and consumption, gasoline and other products derived from oil, matches and phosphorus, mead ("aguamiel") and products derived from its fermentation, forest exploitation, or beer production and consumption. Finally this constitutional provision sets forth that the States will have a participation in the proceeds from these special taxes in the proportions established by federal law.

The fact that the Federal Constitution has reserved exclusive rights to the Federation to impose taxes on certain specific sources does not entail a limitation to the Federation's general taxation power granted under article 73, section VII.

As to the taxation power granted by the Federal Constitution to the States, article 124 sets forth that the powers that are not expressly granted by the Constitution to the Federation are deemed reserved to the States. Additionally, as previously mentioned article 40 of the Federal Constitution sets forth that the States integrating the Republic are free and sovereign in all issues related to their internal regime.

Therefore, the States' taxation power resides in their sovereignty which necessarily entails the possibility for such States to create the taxes that they deem necessary to fund the performance of governmental functions related to their internal regime. In this sense the States have a general taxation power to impose taxes as they choose, except for those which are expressly reserved for the Federation (in article 73-XXIX) and those that Article 117 and 118 of the Federal Constitution expressly prohibits the States from imposing. Neither of these provisions restricts the power of the States to impose a local income tax on the profits of companies operating in their jurisdictions.

According to article 117, sections IV through VII, the States are not allowed to do any of the following: (i) to tax movement of individuals or goods; (ii) to prohibit or tax directly or indirectly the entrance and/or exit to its territory of national or foreign merchandise; (iii) to

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impose taxes or duties to the circulation or consumption of national or foreign goods; or (iv) to issue or maintain in force laws or tax provisions that entail differences in tax burdens or requirements by reason of the origin of foreign or domestic merchandise, whether such differences are established with respect to the production of similar goods in their jurisdiction or among similar productions of different origin.

Additionally, article 118 prohibits States from imposing: tonnage duties, port duties, and taxes or duties on imports and exports.

Regarding the distribution of taxation power set forth in the Federal Constitution, the Mexican Supreme Court of Justice has ruled that the Federal Constitution does not establish a delimitation of the federation and state powers to create taxes, instead it follows an analysis, the main premises of which are those mentioned above:: a) Coexistence of the Federation and States taxation powers in most income sources (article 73 section VII, and article 124); b) Limitation of the States taxation power by granting the Federation the exclusive right to impose taxes on certain sources (article 73, sections X and XXIX); and c) Specific restrictions to the States taxation power (article 117, sections IV, V, VI and VII, and article 118). The following Supreme Court decisions establish these principles as binding jurisprudence in Mexico:

- Volume 6, page 172. Amparo appeal 3368/65. Salvador Dámaso Zamudio Salas. June 26, 1969. Unanimity of 18 votes. Drafting Justice: Mariano Ramírez Vázquez.
- Volumes 151-156, page 141. Amparo appeal 1015/63. Angel Torrontegui Millán. July 29, 1969. Unanimity of 20 votes. Drafting Justice: Mariano Ramírez Vázquez.
- Volumes 151-156, page 141. Amparo appeal 1016/63. Hilario Guzmán Landeros, August 26 1969. Unanimity of 18 votes. Drafting Justice: José Rivera Pérez Campos.
- Volumes 151-156, page 141. Amparo appeal 1005/63. Martha Arellano Sandoval. Unanimity of 18 votes. Drafting Justice: Rafael Rojina Villegas.
- Volumes 151-156, page 93. Amparo appeal 3721/80. Industrias IEM, S.A. de C.V. and other. Drafting Justice: Atanasio González Martínez. Secretary: Pedro Esteban Penagos López."

The Court has published its confirmation that these decisions constitute binding jurisprudence as follows: TAXES. CONSTITUTIONAL SYSTEM REFERRED TO TAX MATTERS. CAPABILITY AMONG FEDERATION AND THE STATES TO ESTABLISH THEM: Seventh Age, First Part; Registration: 232505; Instance: Court sitting en banc; Court Precedent ("Jurisprudencia"); Source: Federation Judicial Gazette; 151-156 First Part; Subject(s): Constitutional, Administrative; Page: 149.

Considering the foregoing, the States do have taxation power which enables them to create the obligation for individuals or corporations in their jurisdictions to pay, among others, local income tax. Although in practice, due to several economic and political reasons, no

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State has actually created a law giving rise to obligation for companies to pay a state income tax, it is possible under the Federal Constitution for the States to create such obligations.

### **National Tax Coordination System**

Given the fact that the Federal Constitution sets forth a coexistence of the taxation powers of the Federation and the States, with certain limitations as explained above, the National Tax Coordination System was created. In general terms, this System is designed to prevent the different levels of government from creating federal and local (state and municipal) taxes on the same sources of wealth affecting the contribution capacity of taxpayers.

The scope of the Fiscal Coordination Law, which has been in force since 1980, comprises: State and Federation tax system coordination, State participation in federal revenues; distribution of federal revenues among the States; administrative collaboration rules among federal and state tax authorities; and creation of tax coordination entities.

According to this System, proceeds from the tax collection activity is to be distributed among the participants under certain rules, and guidelines are created for the administrative collaboration on taxes that represent a common interest to both the Federation and the States.

The States' participation in this System is optional. Each State can decide separately whether to implement it through an agreement which is executed by the Federation, represented by the Ministry of Finance and Public Credit, and the State, represented by its Executive Power (i.e. its Governor) with the approval of the State's Legislative Power (i.e. the State Congress). The agreement must be published in the Federation and State Official Gazettes. The State can terminate the agreement at any time in its sole discretion with the approval of its State Congress; provided that such termination must also be published in said Gazettes. Participation in this System is with respect to all federal revenues. The agreement with a State can provide for coordination regarding taxes only, or taxes and duties.<sup>2</sup>

While participating in the National Tax Coordination System, the States put on hold the collection of existing taxes in local legislation and limit their taxation power to prevent creating additional taxes in the State, as set forth in the agreement, in exchange for receiving participation on federal revenues. Specifically all of the agreements that States have entered into under this System provide that the States shall not maintain in force local (state or municipal) taxes that contravene the limitations set forth in specific provisions of the Value Added Tax Law that implement the National Tax Coordination System and in the laws of special taxes that can only be imposed by the Federation pursuant to the Constitution.

<sup>2</sup> Fiscal Coordination Law, Article 10.

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The provisions of the Value Added Tax Law to which the agreements between the Federation and each of the States make reference set forth that States desiring to adhere to the National Tax Coordination System and to receive participation in the terms set forth in the Fiscal Coordination Law will enter into agreements with the Ministry of Finance and Public Credit in which said States agree not to maintain local or municipal taxes on, among others, taxes on the profits or the capital of corporations or other companies.<sup>3</sup>

All of the States have individually entered into agreements on those terms with the Federation.

The fact that the Value Added Tax Law sets forth as a condition for a State to participate in federal revenues under the National Tax Coordination System that it shall not maintain local or municipal taxes on the profits or capital of companies itself makes clear that, absent such agreement, the States have the taxation power or authority enabling them to create, among others, local income tax on company profits.

In any event, as noted above each State has the power in its sole discretion to withdraw from its agreement under the National Tax Coordination System, which would remove any limitation on its power to impose and income tax of company profits.

\*\*\*\*

We hope that the above information is useful. In case you have additional questions or comments regarding this matter please let us know.

CHIDMS1/2850711.3

A handwritten signature in black ink, appearing to be "J. Villavieja", written over a horizontal line.

<sup>3</sup> Value Added Tax Law, Article 41 Section III.

SIN TEXTO

**DPEARTMENT'S  
MOTION TO COMPEL**

**DOCKET NO. 14-TT-82**

**EXHIBIT 5**



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.*
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).
5. This Tribunal therefore has jurisdiction over this matter pursuant to sections 909(e) 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).

#### ***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.
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.
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.
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 throughout the United States.

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.
11. Crown's supply chain personnel also made regular and systematic visits to the breweries during these years.
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.
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.
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").
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; and \$1,212,087, respectively.
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.

***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.
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).
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).
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).
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 state *to, nor from* which the goods are shipped. 86 Ill. Admin. Code § 100.3380(c)(1).

**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.
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 § 100.3200(a)(1)(B).

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).
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.
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).
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).
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 non-solicitation activities.
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.

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

- (a) Petitioner was “taxable” in Mexico as the result of Crown’s activities in the country;
- (b) The double-throwback rule does not apply to the sales at issue; and that
- (c) Petitioner is entitled to the refunds claimed accordingly.

**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.
- 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.
- 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 though 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”).
- 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, 247-48 (1978).
- 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).

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.
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.
37. Crown, and derivatively, Petitioner was taxable in Mexico, notwithstanding the income tax treaty between Mexico and the United States.
38. The double-throwback rule does not apply to the sales at issue.

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

- (a) The treaty amendment is invalid and unenforceable because it impermissibly narrows the scope of 35 ILCS 5/303(f)(2);
- (b) That Petitioner was "taxable" in Mexico, notwithstanding the treaty amendment;
- (c) The double-throwback rule does not apply to the sales at issue;
- (d) Petitioner is entitled to the refunds claimed accordingly; and that
- (e) Petitioner is 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.
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 5/1401(a).

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).
42. The UDITPA 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).
43. The UDITPA was incorporated into Article IV of the Multistate Tax Compact, which became effective in Illinois in 1967. *Id.* at 964-65.
44. The Compact establishes the Multistate Tax Commission as its administrative agency. In 1973, the Commission promulgated a series of model regulations interpreting the UDITPA's apportionment provisions.
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.
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).
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.
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).

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

- (a) The treaty amendment is invalid and unenforceable because it is not a reasonable interpretation of 35 ILCS 5/303(f)(2);
- (b) Petitioner was “taxable” in Mexico, notwithstanding the treaty amendment;
- (c) The double-throwback rule does not apply to the sales at issue;
- (d) Petitioner is entitled to the refunds claimed accordingly; and that
- (e) Petitioner is entitled to attorney’s fees under 5 ILCS 100/10-55(c).

**COUNT IV – Even If Valid, The Treaty Amendment Does Not Apply To  
Petitioner’s Claim For The 2009 Tax Year**

49. Petitioner realleges paragraphs 1 through 21 as if set forth fully herein.
50. The treaty amendment was codified effective August 18, 2010. *See* 34 Ill. Reg. 12891.
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).
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.

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

- (a) The treaty amendment does not apply to Petitioner’s claim for the 2009 tax year;  
and that
- (b) Petitioner is entitled to the refund claimed for this year.

**COUNT V – Petitioner Is “Taxable” In The**

### Individual Mexican States From Which The Beer Is Shipped

53. Petitioner realleges paragraphs 1 through 21 as if set forth fully 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 a levy. 35 ILCS 5/303(f)(2); 86 Ill. Admin. Code § 100.3200(a)(1).
55. The political subdivisions 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).
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).
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).
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.
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.

60. The Mexican Constitution grants each of the Mexican states the power to impose taxes on corporate profits.
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.
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.
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.
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.
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).
66. The double-throwback rule does not apply to the sales at issue.

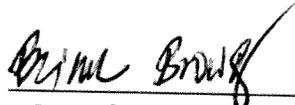
**WHEREFORE**, Petitioner respectfully requests this Tribunal enter an order finding that:

- (a) Petitioner was "taxable" in the individual Mexican states where the beer was brewed;
- (b) The double-throwback rule does not apply to the sales at issue; and that
- (c) Petitioner is entitled to the refunds claimed accordingly.

Dated: May 15, 2014.

**GMODELO CORP., INC.**

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By: 

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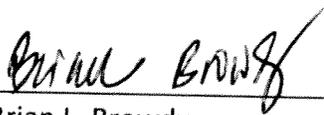
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CERTIFICATE OF SERVICE

I, Brian L. Browdy, hereby certify that on May 15, 2014, I hand delivered and served a copy of the foregoing Petition upon the Department of Revenue as follows:

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

  
\_\_\_\_\_  
Brian L. Browdy

**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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**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL TRANSMISSION**

TO: [Scott.browdy@ryanlawllp.com](mailto:Scott.browdy@ryanlawllp.com)  
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(847) 942-7318

The undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on May 18, 2015, he served the Department's Motion to Compel on the individuals identified above, at the electronic mail addresses shown above, at the date and time shown on the electronic mail confirmation sheet.

Respectfully submitted,

---

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Special Assistant Attorney General

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