20160199

SEC. 22

KIMBERLY LEWIS ROBINSON,
SECRETARY, DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

N. AKHTER L.L.C.

NUMBER 646521 DIVISION

19th JUDICIAL DISTRICT COURT Kelley

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

# SUMMARY PROCEEDING:

**RULE TO CEASE BUSINESS FOR**
**FAILURE TO PAY**
**SALES AND WITHHOLDING TAXES**
**PURSUANT TO La. R.S. 47:314, 47:1574.1, and/or 47:1582.**

The petition for rule to show cause of the Louisiana Department of Revenue respectfully represents the following:

1.

The petitioner is entitled to a hearing in this matter in not less than two or more than ten days, exclusive of holidays, as this is a summary proceeding brought under the provisions of La. R.S. 47:314, 47:1574.1, and/or 47:1582.

FILED
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DEPUTY CLERK OF COURT

2.

The petitioner is the Louisiana Department of Revenue and is officially domiciled in the Parish of East Baton Rouge.

3.

Herein made defendant is N. AKHTER L.L.C., a limited liability company organized under the laws of Louisiana, having its domicile address at 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739, Parish of East Baton Rouge.

4.

Jurisdiction is proper pursuant to Article V, Section 16 of the Louisiana Constitution. Venue is proper pursuant to Louisiana Code of Civil Procedure Article 42 (2).

5.

Defendant is engaged in business as a "dealer," as defined in La. R.S. 47:301(4), at 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739, in the Parish of East Baton Rouge, and has been so engaged continually since on or before September 2011.

6.

Defendant failed to correctly report its taxable sales to petitioner as required by La. R.S. 47:306 and/or collect and remit the applicable sales taxes to the petitioner as required by La. R.S. 47:304 (C) during the sales tax periods encompassing April 2012 through August 2015.

7.

Due to defendant's failure to correctly report its sales and/or collect and remit Louisiana sales taxes, the petitioner has determined that the defendant is indebted to the petitioner in the amount of $17,660.36; with sales tax in the amount of $11,888.00, penalties and fees in the amount of $4,955.24, and interest in the amount $1,430.86, in accordance with and being more fully shown on a sworn affidavit annexed hereto and made a part hereof. This amount is now delinquent pursuant to the authority granted by La. R.S. 47:307 as calculated through November 18, 2015.

8.

Petitioner issued to defendant formal sales and use tax assessments for those sales tax periods encompassing April 2012 through August 2015. Said assessments were issued in accordance with all statutory requirements. The defendant neither paid nor protested the assessments. The time for appealing the assessments have run, no appeal has been taken, and insufficient payments (or payments under protest) have been made on the assessments. Accordingly, by law, the assessments are now final and are an established liability of the

defendant. The assessments are now the equivalent of judgments, pursuant to La. R.S. 47:1581.

9.

As an employer, Defendant is required, under La. R.S. 47:112, to deduct and withhold Louisiana income taxes from taxable wage payments made to his employees in Louisiana, or to Louisiana residents outside the state.

10.

Defendant failed to file Louisiana withholding tax returns for the periods December 2013 through June 2015, and failed to timely remit the withholding due for those tax periods.

11.

Inasmuch as the defendant has failed to file and/or pay the withholding income tax required for the aforementioned withholding tax periods to the Department of Revenue, the Department has determined the amount owed for the aforementioned period (either pursuant to the returns filed and/or the authority granted in La. R.S. 47:1562) to be the amount indebted to the petitioner in the amount of $3,175.21; withholding tax in the amount of $2,526.00, penalties and fees in the amount of $476.88, and interest in the amount $172.33, in accordance with and being more fully shown on a sworn affidavit annexed hereto and made a part hereof. This amount, calculated through November 18, 2015, is now delinquent pursuant to the authority granted by La. R.S. 47:307.

12.

No payments have been made on the withholding assessments. The time for appealing the assessments have run, no appeal has been taken, and no payments (or payments under protest) have been made on the assessments. Accordingly, by law, the assessments are now final and are an established

liability of the defendant. Assessments are equivalent to judgments, pursuant to La. R.S. 47:1581.

13.

Subsequent to the issuance of the assessments, additional taxes have become due from the defendant which has not been remitted to petitioner. Defendant is also liable to the petitioner for these additional taxes, together with applicable interest and penalty as provided by law.

14.

Because the aforesaid taxes are delinquent, petitioner is entitled to an injunction, pursuant to La. R.S. 47:314, enjoining the defendant from the further pursuit of business as a dealer until payment in full of the amount due are tendered to the petitioner.

15.

Pursuant to La. R.S. 47:1577, the petitioner is entitled to recognition of its lien and privilege on all property, real and personal, of defendant to secure the payment of the amount due.

16.

An affidavit of correctness which declares that the facts as alleged are true to the best of the affiant's knowledge or belief and a Schedule of Outstanding Liabilities are attached to this rule and identified as Exhibit "A", *in globo*. Thus, pursuant to La. R.S. 47:1574.1(D), all of the facts alleged shall be accepted as prima facie true and constitute a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the taxpayer.

**WHEREFORE,** the petitioner prays that defendant, N. AKHTER L.L.C., show cause on a date and time to be fixed by this Honorable Court why Judgment should not be rendered against it and why it should not be ordered to cease

further operation of his business pursuant to the provisions of La. R.S. 47:314, 47:1574.1, and/or 47:1582.

The plaintiff further prays that after all due proceedings are had that this rule be made absolute, the assessments of the petitioner be made executory, and that this Honorable Court render a Judgment in favor of the plaintiff and against the defendant, N. AKHTER L.L.C.:

(1) ordering N. AKHTER L.L.C., to cease and desist from the operation of its business, until such time as it has paid to the Louisiana Department of Revenue all delinquent tax, interest, penalties and other fees due up to and including any amounts due as of the date of the hearing;

(2) ordering the East Baton Rouge Parish Sheriff's Office to: (a) enter the business location of the defendant located at, 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739; and (b) cause all business activity to cease immediately and (c) post a notice outside of each entrance of the said premises stating that the defendant's business has been shut down for failure to pay Louisiana taxes; and

(3) ordering the defendant to pay all court costs incurred in this lawsuit.

Respectfully submitted by:

Donald M. Bowman (#29774)

Attorney for the Secretary of the
Department of Revenue, State of Louisiana
P.O. Box 4064
617 N. Third Street (70802)
Baton Rouge, LA 70821-4064
Tele: (225) 219-2080, Fax: (225) 231-6244

| | |
|---|---|
| KIMBERLY LEWIS ROBINSON,<br>SECRETARY, DEPARTMENT OF REVENUE,<br>STATE OF LOUISIANA | NUMBER _____DIVISION____<br><br>19th JUDICIAL DISTRICT COURT |
| VERSUS | PARISH OF EAST BATON ROUGE |
| N. AKHTER L.L.C. | STATE OF LOUISIANA |

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ORDER

Considering the above and foregoing rule;

IT IS ORDERED that the defendant, N. AKHTER L.L.C., appear before this Honorable Court on the _____ day of _____, 2016 at _____ o'clock _____.m. in courtroom _____ to show cause why the foregoing rule should not be made absolute; why the assessments issued by petitioner should not be recognized as judgment of this Court and made executory; why defendant should not be condemned to pay to petitioner the tax, interest, penalties, and attorney fees hereinabove set forth, together with the costs of these proceedings; why the lien and privilege of petitioner should not be recognized and enforced; and why defendant should not be enjoined from the further pursuit of business, until such taxes and related sums have been paid up to date.

Thus done Signed at Baton Rouge, Louisiana, on this _____ day of _____ 2016.

_____
19th JUDICIAL DISTRICT COURT JUDGE

SHERIFF, PLEASE RUSH SERVICE UPON:

N. AKHTER L.L.C.
Through its Registered Agent
Mir M. Hassan
10465 Hillmont Ave
Baton Rouge, LA 70810

CLERK PLEASE MAIL NOTICE TO:

Donald Bowman
LOUISIANA DEPARTMENT OF REVENUE
LEGAL DIVISION
P.O. BOX 4064
BATON ROUGE, LA 70821-4064

| | |
|---|---|
| KIMBERLY LEWIS ROBINSON,<br>SECRETARY, DEPARTMENT OF REVENUE,<br>STATE OF LOUISIANA | NUMBER _____DIVISION___ |
| | 19th JUDICIAL DISTRICT COURT |
| VERSUS | PARISH OF EAST BATON ROUGE |
| N. AKHTER L.L.C. | STATE OF LOUISIANA |

AFFIDAVIT OF CORRECTNESS

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared

> Catonya Smith a person of the full age of majority, who serves as the duly appointed Tax Officer of the Office of Business Tax Enforcement for the Louisiana Department of Revenue,

who after being duly sworn, did depose and say that all of the facts stated herein are based on her personal knowledge, that she has read the foregoing Petition; and that to the best of her knowledge and belief all of the allegations of fact contained therein are true and correct.

Affiant stated that in the course of her employment as a Revenue Tax Officer in the Business Tax Enforcement for the Louisiana Department of Revenue, she was assigned the tax account belonging to N. AKHTER L.L.C.

Affiant stated that upon her review of N. AKHTER L.L.C.'s tax account, it was determined that the business failed to remit sales taxes on all of its sales. As shown on the attached schedule of liabilities, Affiant stated that N. AKHTER L.L.C. has a Louisiana sales tax deficiency in the amount of $17,660.36; with sales tax in the amount of $11,888.00, penalties and fees in the amount of $4,955.24, and interest in the amount $1,430.86, plus interest as provided for by La. R.S. 47:1601 along with late penalties that shall continue to accrue until the aforesaid deficiency is paid in full to the Louisiana Department of Revenue.

PLAINTIFF'S EXHIBIT
A

Affiant further stated that N. AKHTER L.L.C. is indebted to the petitioner in the amount of $3,175.21; withholding tax in the amount of $2,526.00, penalties and fees in the amount of $476.88, and interest in the amount $172.33, plus interest as provided for by La. R.S. 47:1601 along with late penalties that shall continue to accrue until the aforesaid deficiency is paid in full to the Louisiana Department of Revenue.

Affiant further stated that said amounts are now delinquent, and that this affidavit is made for the purpose of enforcing the collection of said amounts.

Catonya Smith, Tax Officer II,
Office of Business Tax Enforcement,
Louisiana Department of Revenue

Sworn to and subscribed before me,

this 2nd day of March 2016,

Donald Bowman, Notary Public
State of Louisiana
LA Bar Roll: #29774
Commissioned for Life

Louisiana Department of Revenue

Run Date: November 18, 2015

## Schedule of Outstanding Tax Liabilities

ID: 7491335-001-400

Legal Name: N. AKHTER LLC

Location Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

Trade Name: CAFE DELPHI

Mailing Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

| Account Type | Filing Period | Status | Tax Due | Interest | Delinquent Penalty | Late Payment Penalty | Negligence Penalty | NSF Penalty | Warrant Penalty | UET Penalty | Fees / Others | Credits | Balance Due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Corporation Income & Franchise** | | | | | | | | | | | | | |
| 7491335-001-200 | | | | | | | | | | | | | |
| | 12/31/2011 | E | 199.00 | 49.50 | 49.75 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 164.12 | 0.00 | 472.37 |
| | 12/31/2012 | E | 500.00 | 89.40 | 125.00 | 0.00 | 25.00 | 0.00 | 10.00 | 0.00 | 187.89 | 0.00 | 937.29 |
| | 12/31/2013 | E | 500.00 | 54.40 | 125.00 | 0.00 | 25.00 | 0.00 | 0.00 | 0.00 | 185.20 | 0.00 | 889.60 |
| | 12/31/2014 | E | 500.00 | 19.41 | 125.00 | 0.00 | 25.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 669.41 |
| | | | **1,699.00** | **212.71** | **424.75** | **0.00** | **75.00** | **0.00** | **20.00** | **0.00** | **537.21** | **0.00** | **2,968.67** |
| **Corporation Income & Franchise** | | | **1,699.00** | **212.71** | **424.75** | **0.00** | **75.00** | **0.00** | **20.00** | **0.00** | **537.21** | **0.00** | **2,968.67** |
| **Sales** | | | | | | | | | | | | | |
| 7491335-001-400 | | | | | | | | | | | | | |
| | 04/30/2012 | R | 304.00 | 48.24 | 76.00 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 34.22 | 188.50 | 283.96 |
| | 05/31/2012 | R | 312.00 | 63.77 | 78.00 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 64.83 | 425.24 | 103.36 |
| | 06/30/2012 | R | 292.00 | 67.26 | 73.00 | 0.00 | 14.60 | 0.00 | 10.00 | 0.00 | 62.61 | 0.00 | 519.47 |
| | 07/31/2012 | R | 284.00 | 63.63 | 71.00 | 0.00 | 14.20 | 0.00 | 10.00 | 0.00 | 60.64 | 0.00 | 503.47 |
| | 08/31/2012 | R | 272.00 | 58.06 | 68.00 | 0.00 | 13.60 | 0.00 | 20.00 | 0.00 | 57.64 | 0.00 | 489.30 |
| | 09/30/2012 | R | 276.00 | 58.59 | 69.00 | 0.00 | 13.80 | 0.00 | 10.00 | 0.00 | 58.43 | 0.00 | 485.82 |
| | 10/31/2012 | R | 296.00 | 61.17 | 74.00 | 0.00 | 14.80 | 0.00 | 10.00 | 0.00 | 62.42 | 0.00 | 518.39 |
| | 11/30/2012 | R | 288.00 | 57.99 | 72.00 | 0.00 | 14.40 | 0.00 | 10.00 | 0.00 | 60.49 | 0.00 | 502.88 |
| | 12/31/2012 | R | 260.00 | 50.70 | 65.00 | 0.00 | 13.00 | 0.00 | 10.00 | 0.00 | 54.36 | 0.00 | 453.06 |
| | 01/31/2013 | R | 280.00 | 52.86 | 70.00 | 0.00 | 14.00 | 0.00 | 10.00 | 0.00 | 58.30 | 0.00 | 485.16 |

R = Return
E = Estimate
A = Audit

Interest will continue to accrue until tax is paid in full.
Additional penalties and fees may be due.

roberg03

Louisiana Department of Revenue

Run Date: November 18, 2015

**Schedule of Outstanding Tax Liabilities**

ID: 7491335-001-400

Legal Name: N. AKHTER LLC

Location Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

Trade Name: CAFE DELPHI

Mailing Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

| Account Type | Filing Period | Status | Tax Due | Interest | Delinquent Penalty | Late Payment Penalty | Negligence Penalty | NSF Penalty | Warrant Penalty | UET Penalty | Fees / Others | Credits | Balance Due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 02/28/2013 | R | 284.00 | 52.08 | 71.00 | 0.00 | 14.20 | 0.00 | 10.00 | 0.00 | 58.91 | 0.00 | 490.19 |
| | 03/31/2013 | R | 292.00 | 51.81 | 73.00 | 0.00 | 14.60 | 0.00 | 10.00 | 0.00 | 60.29 | 0.00 | 501.70 |
| | 04/30/2013 | R | 296.00 | 50.89 | 74.00 | 0.00 | 14.80 | 0.00 | 10.00 | 0.00 | 60.88 | 0.00 | 506.57 |
| | 05/31/2013 | R | 288.00 | 47.93 | 72.00 | 0.00 | 14.40 | 0.00 | 10.00 | 0.00 | 58.98 | 0.00 | 491.31 |
| | 06/30/2013 | R | 296.00 | 47.31 | 74.00 | 0.00 | 14.80 | 0.00 | 10.00 | 0.00 | 60.34 | 0.00 | 502.45 |
| | 07/31/2013 | R | 284.00 | 43.74 | 56.80 | 14.20 | 14.20 | 0.00 | 10.00 | 0.00 | 57.66 | 0.00 | 480.60 |
| | 08/31/2013 | R | 276.00 | 40.96 | 41.40 | 27.60 | 13.80 | 0.00 | 10.00 | 0.00 | 55.79 | 0.00 | 465.55 |
| | 09/30/2013 | R | 272.00 | 38.72 | 27.20 | 40.80 | 13.60 | 0.00 | 10.00 | 0.00 | 54.74 | 0.00 | 457.06 |
| | 10/31/2013 | R | 296.00 | 40.45 | 14.80 | 59.20 | 14.80 | 0.00 | 10.00 | 0.00 | 59.31 | 0.00 | 494.56 |
| | 11/30/2013 | R | 248.00 | 32.51 | 62.00 | 0.00 | 12.40 | 0.00 | 10.00 | 0.00 | 0.00 | 0.00 | 364.91 |
| | 12/31/2013 | R | 228.00 | 28.44 | 57.00 | 0.00 | 11.40 | 0.00 | 10.00 | 0.00 | 135.00 | 0.00 | 469.84 |
| | 01/31/2014 | R | 288.00 | 34.32 | 72.00 | 0.00 | 14.40 | 0.00 | 10.00 | 0.00 | 0.00 | 0.00 | 418.72 |
| | 02/28/2014 | R | 288.00 | 32.78 | 72.00 | 0.00 | 14.40 | 0.00 | 10.00 | 0.00 | 0.00 | 0.00 | 417.18 |
| | 03/31/2014 | R | 296.00 | 31.86 | 74.00 | 0.00 | 14.80 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 416.66 |
| | 04/30/2014 | R | 300.00 | 30.63 | 75.00 | 0.00 | 15.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 420.63 |
| | 05/31/2014 | R | 288.00 | 27.69 | 72.00 | 0.00 | 14.40 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 402.09 |
| | 06/30/2014 | R | 284.00 | 25.58 | 71.00 | 0.00 | 14.20 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 394.78 |
| | 07/31/2014 | R | 280.00 | 23.62 | 70.00 | 0.00 | 14.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 387.62 |
| | 08/31/2014 | R | 280.00 | 21.84 | 70.00 | 0.00 | 14.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 385.84 |
| | 09/30/2014 | R | 292.00 | 21.22 | 73.00 | 0.00 | 14.60 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 400.82 |

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Interest will continue to accrue until tax is paid in full.
Additional penalties and fees may be due.

roberg03

Louisiana Department of Revenue

Run Date: November 18, 2015

## Schedule of Outstanding Tax Liabilities

ID: 7491335-001-400

Legal Name: N. AKHTER LLC

Location Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

Trade Name: CAFE DELPHI

Mailing Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

| Account Type | Filing Period | Status | Tax Due | Interest | Delinquent Penalty | Late Payment Penalty | Negligence Penalty | NSF Penalty | Warrant Penalty | UET Penalty | Fees / Others | Credits | Balance Due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 10/31/2014 | R | 304.00 | 20.28 | 76.00 | 0.00 | 15.20 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 415.48 |
| | 11/30/2014 | R | 308.00 | 18.68 | 77.00 | 0.00 | 15.40 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 419.08 |
| | 12/31/2014 | R | 276.00 | 15.19 | 69.00 | 0.00 | 13.80 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 373.99 |
| | 01/31/2015 | R | 292.00 | 14.33 | 73.00 | 0.00 | 14.60 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 393.93 |
| | 02/28/2015 | R | 304.00 | 13.28 | 76.00 | 0.00 | 15.20 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 408.48 |
| | 03/31/2015 | R | 308.00 | 11.65 | 61.60 | 15.40 | 15.40 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 412.05 |
| | 04/30/2015 | R | 312.00 | 10.00 | 46.80 | 31.20 | 15.60 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 415.60 |
| | 05/31/2015 | R | 292.00 | 7.50 | 29.20 | 43.80 | 14.60 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 387.10 |
| | 06/30/2015 | R | 296.00 | 6.03 | 14.80 | 44.40 | 14.80 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 376.03 |
| | 07/31/2015 | R | 276.00 | 3.97 | 0.00 | 41.40 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 321.37 |
| | 08/31/2015 | E | 400.00 | 3.30 | 100.00 | 0.00 | 20.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 523.30 |
| | | | **11,888.00** | **1,430.86** | **2,611.60** | **318.00** | **549.80** | **0.00** | **240.00** | **0.00** | **1,235.84** | **613.74** | **17,660.36** |
| **Sales** | | | **11,888.00** | **1,430.86** | **2,611.60** | **318.00** | **549.80** | **0.00** | **240.00** | **0.00** | **1,235.84** | **613.74** | **17,660.36** |
| **Withholding** | | | | | | | | | | | | | |
| 7491335-001-300 | | | | | | | | | | | | | |
| | 12/31/2013 | R | 278.00 | 34.18 | 0.00 | 27.80 | 0.00 | 0.00 | 10.00 | 0.00 | 51.18 | 0.00 | 401.16 |
| | 03/31/2014 | R | 348.00 | 36.84 | 0.00 | 87.00 | 0.00 | 0.00 | 10.00 | 0.00 | 70.63 | 0.00 | 552.47 |
| | 06/30/2014 | E | 400.00 | 35.28 | 0.00 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 64.56 | 0.00 | 509.84 |
| | 09/30/2014 | E | 400.00 | 26.92 | 0.00 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 63.30 | 0.00 | 500.22 |
| | 12/31/2014 | E | 400.00 | 21.01 | 0.00 | 0.00 | 0.00 | 0.00 | 10.00 | 0.00 | 62.41 | 0.00 | 493.42 |

R = Return
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Interest will continue to accrue until tax is paid in full.
Additional penalties and fees may be due.

roberg03

Louisiana Department of Revenue

Run Date: November 18, 2015

## Schedule of Outstanding Tax Liabilities

ID: 7491335-001-400

Legal Name: N. AKHTER LLC

Location Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

Trade Name: CAFE DELPHI

Mailing Address: 18564 MAGNOLIA BRIDGE RD STE 109 GREENWELL SPRINGS LA 707394643

| Account Type | Filing Period | Status | Tax Due | Interest | Delinquent Penalty | Late Payment Penalty | Negligence Penalty | NSF Penalty | Warrant Penalty | UET Penalty | Fees / Others | Credits | Balance Due |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 03/31/2015 | E | 300.00 | 10.81 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 310.81 |
| | 06/30/2015 | E | 400.00 | 7.29 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 407.29 |
| | | | **2,526.00** | **172.33** | **0.00** | **114.80** | **0.00** | **0.00** | **50.00** | **0.00** | **312.08** | **0.00** | **3,175.21** |
| **Withholding** | | | **2,526.00** | **172.33** | **0.00** | **114.80** | **0.00** | **0.00** | **50.00** | **0.00** | **312.08** | **0.00** | **3,175.21** |
| **Grand Total:** | | | **16,113.00** | **1,815.90** | **3,036.35** | **432.80** | **624.80** | **0.00** | **310.00** | **0.00** | **2,085.13** | **613.74** | **23,804.24** |

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Interest will continue to accrue until tax is paid in full.
Additional penalties and fees may be due.

roberg03

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|---|---|
| KIMBERLY LEWIS ROBINSON, SECRETARY, DEPARTMENT OF REVENUE, STATE OF LOUISIANA | NUMBER _____DIVISION____ |
| | 19th JUDICIAL DISTRICT COURT |
| VERSUS | PARISH OF EAST BATON ROUGE |
| N. AKHTER L.L.C. | STATE OF LOUISIANA |

## MEMORANDUM OF AUTHORITY

MAY IT PLEASE THE COURT:

The Department of Revenue for the State of Louisiana ("Petitioner"), through undersigned counsel, submits its memorandum in support of its Rule to Cease Business, against the defendant herein N. AKHTER L.L.C. ("Defendant").

### Summary of Facts

The defendant is a Louisiana corporation and owes sales taxes for business transactions occurring at its location at 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739. The petitioner made numerous unsatisfied demands for payment of the delinquent taxes owed by defendant. Consequently, the petitioner is entitled to have the instant rule made absolute and to have the company enjoined from the further pursuit of business until the taxes at issue have been paid.

FILED
EAST BATON ROUGE PARISH, LA
2016 MAR -2 PM 12:39
DEPUTY CLERK OF COURT

The outstanding sales tax obligations total $17,660; with sales tax in the amount of $11,888.00, penalties and fees in the amount of $4,955.24, and interest in the amount $1,430.86, calculated through November 18, 2015.

The outstanding withholding tax obligations total $3,175.21; withholding tax in the amount of $2,526.00, penalties and fees in the amount of $476.88, and interest in the amount $172.33 calculated through November 18, 2015.

The defendant has failed and refuses to cooperate with revenue officers, agents, and employees of the Louisiana Department of Revenue in its efforts

collect the delinquent taxes, interest, and penalties owed by defendant as required by law.

## Issue Presented

Whether the plaintiff is entitled to have the rule made absolute and thereby entitled to an order enjoining and prohibiting the defendant from further pursuit of business until such time as he has paid the delinquent tax, interest, penalties, fees and costs associated with this proceeding?

## Summary of the Law

Sales Tax:

La. R.S. 47:302 and 47:331 levy a tax upon the sale at retail, use, consumption, distribution and storage thereof of items or articles of tangible personal property. There is a similar tax imposed on the lease of those same types of property. The sales/use tax "shall be collected by the dealer from the purchaser or consumer [except as otherwise provided by law]." La. R.S. 47:304. The tax imposed under La. R.S. 47:302 shall be collectible from all persons engaged as dealers. La. R.S. 47:303(A)(1).

All persons and dealers subject to the tax under the sales tax laws are expected and required to file a sales tax return either monthly or quarterly and to accrue and remit the amount of tax due to the Secretary of the Department of Revenue for the State of Louisiana. La. R.S. 47:306. In the event a dealer fails to make a report and pay the sales tax required or in the event a dealer makes a grossly incorrect report or a report that is false or fraudulent, the Secretary of the Department of Revenue has authority "to assess and collect the tax, together with any interest and penalty that may have accrued thereon, which assessment shall be considered prima facie correct and the burden of showing the contrary shall rest upon the dealer." La. R.S. 47:307.

Withholding Tax:

"Every employer making payment of wages shall deduct and withhold from such wages a tax in amounts provided in withholding tables promulgated by the Secretary [of the Department of Revenue for the State of Louisiana]." La. R.S. 47:112(A). Every person who deducts and withholds any amount from any wage payment is required to file a monthly, semi-monthly, or quarterly return and an annual or final return to the Secretary of the Department of Revenue, State of Louisiana, and to pay therewith the tax required to be withheld but in no case less than the amount actually withheld. La. R.S. 47:114. "If the taxpayer fails to make and file any return or report required by law, the Secretary of the Department of Revenue has the authority to determine the tax, penalty and interest due by estimate or otherwise. La. R.S. 47:1562.

Rule to Cease Business:

Title 47 contains three applicable provisions that allow the Secretary to request from a court of competent jurisdiction a rule against a taxpayer ordering the taxpayer to cease business activity for failure to pay amounts collected from others:

(1) La. R.S. 47:314, found in Chapter 2 (Sales Taxes), Subtitle II (Provisions Relating to Taxes Collected and Administered by the Collector of Revenue) of Title 47 (Revenue and Taxation) provides:

> Failure to pay any tax due as provided in this Chapter shall ipso facto, without demand or putting in default, cause the tax, interest, penalties, and costs to become immediately delinquent, and the collector has the authority, on motion in a court of competent jurisdiction, to take a rule on the dealer, to show cause in not less than two or more than ten days, exclusive of holidays, why the dealer should not be ordered to cease from further pursuit of business as a dealer. This rule may be tried out of term and in chambers, and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, prohibiting the dealer from the further pursuit of said business until such time as he has paid the delinquent tax, interest, penalties and costs, and every violation of

> the injunction shall be considered as a contempt of court, and punished according to law. For the purpose of the enforcement of this Chapter and the collection of the tax levied hereunder, it is presumed that all tangible personal property imported or held in this state by any dealer is to be sold at retail, used or consumed, or stored for use or consumption in this state, or leased or rented within this state, and is subject to the tax herein levied; this presumption shall be prima facie only, and subject to proof furnished to the collector.

La. R.S. 47:314 (emphasis added).

(2) La. R.S. 47:1574.1, found in Chapter 18, (Administrative Provisions), Part III (Assessment and Collection Procedures) of Subtitle II (Provisions Relating to Taxes Collected and Administered by the Collector of Revenue) of Title 47 (Revenue and Taxation) provides in relevant part:

> A. On motion in a court of competent jurisdiction, the secretary may take a rule on a taxpayer, to show cause in not less than two or more than ten days, exclusive of holidays, why the taxpayer should not be ordered to cease from further pursuit of his business for failure to pay to the state amounts collected from others by his business as sales and use tax or as withholding income tax, along with any interest, penalty, and costs related to such taxes. Such rule may be taken only for amounts due as a result of assessments or judgments which have become final and non-appealable.
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> B. This rule may be tried out of term and in chambers, and shall always be tried by preference.
>
> C. (1) *If the rule is made absolute*, the order rendered thereon shall be considered a judgment in favor of the state, and the court shall enjoin and prohibit the taxpayer from the further pursuit of his business until such time as he has paid the delinquent tax, interest, penalties, and all costs or has entered into an agreement with the secretary to do so.
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> . . . .
>
> D. Whenever the pleadings filed on behalf of the secretary shall be accompanied by an affidavit of the secretary or of one of his assistants or representatives or of the attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in the pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the taxpayer.

> E. The collection procedure provided for in this Section shall be in addition to any other collection procedure provided by law.

La. R.S. 47:1574.1 (emphasis added).

(3) La. R.S. 1582 Chapter 18, (Administrative Provisions), Part III (Assessment and Collection Procedures) of Subtitle II (Provisions Relating to Taxes Collected and Administered by the Collector of Revenue) of Title 47 (Revenue and Taxation) provides:

> A. Failure by any person obligated to collect any tax from taxpayers on behalf of the state to remit such taxes collected shall, without demand or putting in default, cause the tax, interest, penalties, and costs to become immediately delinquent and the secretary has the authority, on motion in a court of competent jurisdiction, to take a rule on such person, to show cause in not less than two or more than ten days, exclusive of holidays, why such person should not be ordered to cease from further pursuit of business. This rule may be tried out of term and in chambers and shall always be tried by preference. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the state, prohibiting the person from the further pursuit of said business until he has paid the delinquent tax, interest, penalties, and costs, and every violation of the injunction shall be considered as a contempt of court and punished according to law.
>
> B. <u>The provisions of this Section shall not apply if the taxpayer has entered into an installment agreement for the payment of delinquent taxes with the department and is in compliance with the terms of the agreement</u>.

La. R.S. 47:1582 (emphasis added).

<u>Discussion</u>

Sales Tax:

For the periods in question, the Defendant engaged in the business of retail sales, and the Defendant is responsible for the collection of the sales tax on each retail sales transaction pursuant to the provisions of La. R.S. 47:303. For the periods in question, the Defendant has failed to file all necessary tax returns and failed to pay the delinquent taxes, penalties, interest and fees due under the provisions of La. R.S. 47:306. Inasmuch as the defendant has failed

to make a report and/or pay the sales tax required by law to the Secretary of the Department of Revenue, the Secretary has determined the tax owed for those periods pursuant to La. R.S. 47:307.

Withholding Tax:

At all times relevant the defendant employed persons to perform services for it. With respect to each withholding period the defendant either failed to file all the required withholding income tax returns and withhold and remit the amount due or filed required returns and failed to remit the amount due. Inasmuch as the defendant has failed to make a report and/or pay the withholding income tax required for a particular period to the Secretary of the Department of Revenue, the Secretary has determined the tax owed for that period pursuant to La. R.S. 47:1562.

Affidavit of Correctness:

An affidavit of correctness signed by the Tax Officer assigned to the account in question, a representative of the Louisiana Department of Revenue for this purpose, accompanied the pleading filed. Accordingly, all of the facts alleged in the pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the taxpayer. La. R.S. 47:1574.1(D), La. R.S. 13:5034. Should the defendant have a defense to this action, under these provisions, all defenses must be presented in an answer prior to the time fixed for hearing, and no court shall consider any defense unless so presented and filed. Nor may any court grant a continuance for the purpose of filing an answer. If any defense is asserted in an answer filed prior to the hearing and it becomes necessary to present other evidence in rebuttal, a supplemental memorandum will be filed on behalf of the petitioner.

## Conclusion

It is respectfully submitted that the petitioner is entitled to judgment in its favor ordering the defendant to cease business until the delinquent taxes at issue have been paid.

Respectfully submitted by:

Donald M. Bowman (#29774)

Attorney for the Secretary of the
Department of Revenue, State of Louisiana
P.O. Box 4064
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Baton Rouge, LA 70821-4064
Tele: (225) 219-2080, Fax: (225) 231-6244

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| KIMBERLY LEWIS ROBINSON,<br>SECRETARY, DEPARTMENT OF REVENUE,<br>STATE OF LOUISIANA | NUMBER _____DIVISION____<br><br>19th JUDICIAL DISTRICT COURT |
| VERSUS | PARISH OF EAST BATON ROUGE |
| N. AKHTER L.L.C. | STATE OF LOUISIANA |

## JUDGMENT

Considering the Judgment rendered in open court at the hearing on this matter held on the ____ day of _____, 2016;

**IT IS ORDERED, ADJUDGED AND DECREED** that the defendant N. AKHTER L.L.C. shall immediately cease the operation of its business at 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739, unless and until such time as all delinquent tax, interest penalties and other fees have been paid to the Louisiana Department of Revenue.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the East Baton Rouge Parish Sheriff's Office shall enter the premises of N. AKHTER L.L.C. located at 18564 Magnolia Bridge Road, Suite #109, Central, Louisiana 70739, and cause all business activity to cease immediately.

**IT IS ORDERED, ADJUDGED, AND DECREED** that the EAST BATON ROUGE SHERIFF'S OFFICE shall post a notice on the outside of the entrances of each of the foregoing premises stating that the defendant's business has been shut down for failure to pay Louisiana taxes.

FILED
EAST BATON ROUGE PARISH, LA
2016 MAR 7 PM 12: 5
DEPUTY CLERK OF COURT

**IT IS ORDERED, ADJUDGED, AND DECREED** that the defendant pay all court costs incurred in this lawsuit.

Signed at Baton Rouge, Louisiana, on this ____ day of _____, 2016.

_____

19th JUDICIAL DISTRICT COURT JUDGE

CLERK, PLEASE MAIL NOTICE OF THE SIGNING OF JUDGMENT TO:

N. AKHTER L.L.C.
18564 Magnolia Bridge Road,
Suite #109,
Central, Louisiana 70739

And

Donald Bowman
Legal Division
Louisiana Department of Revenue
P O Box 4064
Baton Rouge, Louisiana 70821-4064