

TIMOTHY A. BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

VERSUS

ORTHO SYNETICS, INC.

DOCKET NUMBER: 636087

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SEC. 27

PETITION TO COLLECT TAX

The petition of Timothy A. Barfield, in his official capacity as the duly appointed Secretary of the Louisiana Department of Revenue, (hereinafter referred to as "Department"), respectfully submits the following:

1.

Made defendant herein is OrthoSynetics, Inc. (hereinafter referred to as "OrthoSynetics"), a foreign corporation with its principal place of business in the State of Louisiana.

2.

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

3.

This action is brought pursuant to La. R.S. 47:1561(3), which provides the Department with the authority to proceed to enforce the collection of any state tax due by means of ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

4.

OrthoSynetics provides business services, such as orthodontic practice consulting, billing and accounting, marketing, financial reporting, purchasing, technology systems and support, real estate, business insurance, recruitment, payroll, and human resources services, to orthodontic practices in numerous states.

5.

Pursuant to La. R.S. 47:601, et seq., the Department conducted an audit of OrthoSynetics' Louisiana corporate franchise tax returns for the years ending December 31, 2008 through December 31, 2010.

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6.

Louisiana Revised Statute 47:601(A)(3) provides that the "...owning or using any part of its capital, plant or other property in this state in a corporate capacity..." shall create an incident that subjects a foreign corporation to the corporation franchise tax imposed by this state.

7.

Louisiana Revised Statute 47:605(A) states: "in computing surplus and undivided profits there shall be included all reserves other than those for definitely fixed liabilities, reasonable depreciation, bad debts and established valuation reserves, such reserves in all cases to be made under rules and regulations to be prescribed by the collector."

8.

Adjustments were made to increase the taxable base for the contingent liabilities, including the worker's compensation reserves and pre-petition tax reserves, in accordance with La. R.S. 47:605(A).

9.

Adjustments were made to include balance sheet assets omitted from the calculation of the property ratio used to allocate the taxable base, in accordance with La. R.S. 47:606(A).

10.

Adjustments were made to include interest income in the calculation of the volume of business ratio used to allocate the taxable base, in accordance with La. R.S. 47:606(A)(1)(h)-(i).

11.

As a result of the audit, it was determined that OrthoSynetics is justly and truly indebted unto the Department in the amount of One Hundred, Ninety-eight Thousand, Two Hundred Nineteen and 38/100 Dollars (\$198,219.38), plus any additional interest which becomes due pursuant to La. R.S. 47:1601. The indebtedness consists of corporation franchise tax in the amount of One Hundred, Twelve Thousand, Two Hundred Fifty-seven and 00/100 Dollars (\$112,257.00), interest calculated to December 1, 2014 in the amount of Fifty-seven Thousand, Eight Hundred Ninety-eight and 13/100 Dollars (\$57,898.13) and penalties in the amount of Twenty-eight Thousand, Sixty-four and 25/100 Dollars (\$28,064.25).

12.

On September 27, 2012, the Department issued a Notice of Proposed Tax Due. Despite amicable demand, OrthoSynetics has failed to pay the tax, interest and penalties due.

13.

The Department now seeks to collect the amount due through this lawsuit.

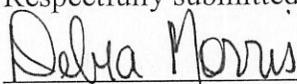
14.

This pleading is signed by a staff attorney employed by the Louisiana Department of Revenue. Pursuant to La. R.S. 47:1512, Timothy A. Barfield, Secretary of the Louisiana Department of Revenue, reserves the right to assign this case to private counsel to assist in the collection of the tax, interest and penalties herein alleged to be due.

WHEREFORE, Timothy A. Barfield, in his capacity as the duly appointed Secretary of the Louisiana Department of Revenue, respectfully prays for the following:

1. That after due proceedings are conducted, there be judgment in favor of the Department and against OrthoSynetics, Inc. in the amount of \$198,219.38, plus interest, which shall continue to accrue pursuant to La. R.S. 47:1601;
2. All court costs of this lawsuit; and
3. All other general and equitable relief to which the Department may be entitled under the facts and circumstances of this case.

Respectfully submitted by:



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