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PREPAYMENT OF COURT COSTS
NOT REQUIRED (La. R.S. 13:4521)

JAN 05 2015
BY _____ DY. CLERK OF COURT

TIM A. BARFIELD, SECRETARY, DEPARMENT OF REVENUE, STATE OF LOUISIANA

DOCKET NUMBER: 636103

19th JUDICIAL DISTRICT COURT

SEC. 2

VERSUS

PARISH OF EAST BATON ROUGE

ALON USA OPERATING, INC.

STATE OF LOUISIANA

PETITION TO COLLECT TAX

Petitioner, Tim A. Barfield, in his official capacity as the duly appointed Secretary of the Louisiana Department of Revenue ("LDR"), respectfully submits the following:

1.

Made defendant herein is Alon USA Operating, Inc. ("Taxpayer"), a foreign corporation not licensed to do business in the State of Louisiana. Taxpayer is an affiliate of Alon USA GP, LLC and Alon USA Delaware, LLC ("Affiliates", collectively). These Affiliates co-own Alon USA, LP ("Partner"). Partner owns Alon Refining Krotz Springs, Inc. ("Refining"). Partner and/or Refining is/are authorized to do business and did, in fact, do taxable business in Louisiana during the 2009, 2010 and 2011 CFT periods ("Tax Period").

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.

La. R.S. 47:1561 expressly imposes a statutory duty on LDR 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.

Taxpayer is engaged in taxable activity/activities in Louisiana, through its ownership and/or control of Partner and/or Refining. Taxpayer's business activity/activities in Louisiana includes, but is not limited to, refining of crude oil and/or delivery of refined oil and/or oil-based products to one or more wholesaler(s)/distributor(s) and/or retailer(s)/dealer(s).

5.

LDR conducted an audit of Taxpayer's Louisiana corporation income and franchise tax returns for the Tax Period pursuant to La. R.S. 47:601, et seq. ~~and/or La. R.S.~~ 47:1561, et seq.

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6.

La. R.S. 47:601 expressly provides that foreign corporations shall be subject to Louisiana corporation franchise tax ("CFT") if they: (1) are licensed to do business or actually do business in this state and/or (2) own or use any part or all of their capital, plant or any other property in this state. During Tax Period, Taxpayer exercised and/or enjoyed act(s), power(s), right(s), privilege(s), or immunity/immunities in this state, as incident to and/or by virtue of the power(s) and privilege(s) acquired by the nature of business done and/or services and/or property bought, sold and/or procured by Taxpayer and/or its affiliated entity/entities in Louisiana. Further or in the alternative, Taxpayer owned and/or used part of its capital, plant and/or other property in this state in a corporate capacity. So, Taxpayer is subject to Louisiana CFT for the Tax Period under La. R.S. 47:601, et seq.

7.

La. R.S. 47:605 and/or LAC 61:I.305 expressly provide(s), in pertinent part, that entries to the books of any corporation to record a decreased value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. But this is only allowed in cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below the cost of any such investment to the taxpayer shall not be allowed. No reduction below zero will be recognized. Rather, any reduction below zero shall result in a corresponding adjustment to the value of any such asset for purposes of determining the property value factor. Taxpayer reported one or more investment(s) at a value below its cost. Accordingly, LDR made any/all adjustment(s) required by La. R.S. 47:605 and/or LAC 61:I.305. This/these adjustment(s) resulted in CFT liability. LDR seeks to recover this liability.

8.

Further or in the alternative, La. R.S. 47:603 expressly provides, in pertinent part, that all real and actual indebtedness used to finance or carry on a taxpayer's business shall be borrowed capital. La. R.S. 47:605.1 expressly provides, in pertinent part, that when a corporation's total debt to all related parties exceeds its capital stock, surplus and undivided profits, as determined in accordance with La. R.S. 47:604 and/or 605, fifty percent (50%) of any excess indebtedness shall be included in and reported as capital stock, surplus and/or undivided profits. LAC 61:I.303 expressly provides, in pertinent part, only the excess of the amount due by one related entity over

the amount of receivables due from an affiliate shall be deemed borrowed capital in cases where such indebtedness between them is equally demandable and payable, and of the same type. Taxpayer's return(s) used: (1) one or more receivable(s) due to one of its affiliated entities to offset of one or more payable(s) for which another affiliated entity was responsible; (2) transactions of unlike kinds to offset each another; and/or (3) decreased surplus to offset intercompany debt and/or borrowed capital. Accordingly, LDR made any/all adjustment(s) required by La. R.S. 47:603 and 605.1, and/or LAC 61:I.303. This/these adjustment(s) resulted in CFT liability. LDR seeks to recover this liability.

9.

In addition or in the alternative, La. R.S. 47:606 expressly provides, in pertinent part, that receivable trade accounts and/or trade notes shall be allocated by reference to the transaction(s) from which they arose, on the basis of the location to which items sold were delivered or the location at which services were performed. LAC 61:I.306 expressly provides, in pertinent part, that such accounts and notes may be allocated to separate states based on upon the ration of credit sales made in the individual states. But Taxpayer's allocation is inconsistent with the sales made in Louisiana. Accordingly, LDR made any/all adjustment(s) required by La. R.S. 47:606 and/or LAC 61:I.306. This/these adjustment(s) resulted in CFT liability. LDR seeks to recover this liability.

10.

Moreover or in the alternative, La. R.S. 47:606 expressly provides, in pertinent part, that the volume ratio of income shall be based on sales made to customers in the regular course of business. LAC 61:I.306 expressly provides, in pertinent part, that sales of stock, bonds and/or other investment on the open market shall not be included in the revenue factor. But Taxpayer's return(s) reports income from Taxpayer's affiliated limited liability companies in calculating its volume of business ratio. Accordingly, LDR made any/all adjustment(s) required by La. R.S. 47:606 and/or LAC 61:I.306. This/these adjustment(s) resulted in CFT liability. LDR seeks to recover this liability.

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Petitioner, Tim 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 LDR and against Taxpayer in the amount of $418,539.51, plus interest, which shall continue to accrue pursuant to La. R.S. 47:1601;
2. Any/all cost(s) of this lawsuit; and
3. Any/all other general and equitable relief to which LDR may be entitled under the facts and circumstances of this case.

Respectfully submitted by:

Brian DeJean (#28332)
Monica Washington Doss (#24695)
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CIVIL

- ☐ 01-DAMAGES
- ☐ 02-CONTRACT
- ☐ 03-PRISONER SUIT
- ☐ 04-EXECUTORY PROCESS
- ☐ 05-SUIT [illegible]
- ☐ 06-[illegible]
- ☐ 07-WORKMENS COMPENSATION
- ☐ 08-JUDICIAL REVIEW
- ☐ 09-PROPERTY RIGHTS
- ☐ 10-INJUNCTION MANDAMUS
- ☐ 11-COMM. PROP. PARTITIONS
- ☐ 12-PUBLIC SERV. COMM.
- ☐ 13-OTHER PARTITIONS
- ☒ 14-OTHER
- ☐ 15-D.E.Q.
- ☐ 16-
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- ☐ 18-
- ☐ 19-
- ☐ 20-

INSTRUCTIONS FOR SERVICE

Please return a **Certified Copy of this Petition to Collect Tax and the Citation** to Plaintiff, Louisiana Department of Revenue, for service, under the Louisiana Long-Arm Statute, La. R.S. 13:3201, et seq., on the defendant:

Associates First Capital Corporation
Through its Registered Agent:
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

CERTIFIED
TRUE COPY

JAN 14 2015

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