

TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

DOCKET NO. 040331
19TH JUDICIAL DISTRICT COURT

SEC. 23

VERSUS

PARISH OF EAST BATON ROUGE

DAVID MATHERSON
D/B/A HEARTS
D/B/A HEARTS NO 2

STATE OF LOUISIANA

**RULE TO CEASE BUSINESS
FOR FAILURE TO PAY SALES AND WITHHOLDING TAXES**

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

1.

This is a summary proceeding brought under the provisions of LSA-R.S. §47:314, §47:1574.1, and/or §47:1582.

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 David Matherson, individually and D/B/A HEARTS D/B/A HEARTS

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 9945 Airline Highway, Suite D, East Baton Rouge Parish, Louisiana, 70816-8149, and has been so engaged continually since on or before January 2003.

FILED
EAST BATON ROUGE PARISH LA
2015 JUN 24 PM 2:54

DEPUTY CLERK OF COURT

6.

SALES TAX

Defendant failed to correctly report its taxable sales to the petitioner as required by La. R.S. 47:306 during the sales tax periods encompassing December 2010.

7.

Defendant failed to collect and remit the applicable Louisiana sales taxes as required by La. R.S. 47:304(C) and La. R.S. 47:306 on its taxable sales during the sales tax periods encompassing November 2009 through May 2015. Defendant filed sales tax returns, but failed to timely remit the sales taxes due for those tax periods.

8.

Defendant has failed to pay the delinquent self-assessed sales tax due (including the tax, interest, penalties and other fees), and/or maintain his books and records as required by law, the plaintiff has determined the amount of the taxes due for the aforementioned returns (based on the filed returns and/or pursuant to the authority granted by LSA-R.S. §47:307) to be ONE HUNDRED NINETY-THREE THOUSAND, SIX HUNDRED FIFTY-FOUR DOLLARS AND SEVENTY-FIVE CENTS (\$193,654.75) which includes the sales tax of \$123,999.66, penalties of \$34,464.84, fees of \$20,899.21, plus the interest of \$28,867.95, calculated through June 22, 2015; all in accordance with and being more fully shown on a sworn affidavit annexed hereto and made a part hereof. This amount is now delinquent.

9.

WITHHOLDING TAX

Defendant has failed to timely remit the applicable Louisiana withholding taxes due for periods encompassing January 2010 through June 2014. Defendant filed withholding tax returns, but failed to timely remit the withholding taxes due for those tax periods.

10.

Defendant has self-assessed the withholding tax periods to the Louisiana Department of Revenue (based on the filed returns and/or pursuant to the authority granted by LSA-R.S. §47:307) to be EIGHTEEN THOUSAND, THREE HUNDRED SEVENTY-SEVEN DOLLARS (\$18,377.00), which includes the withholding tax of \$14,144.43, plus the interest of \$2,942.54, penalties of \$3,600.43, and fees of \$2,300.43, calculated through June 22, 3015, all in accordance with and being more fully shown on a sworn affidavit annexed hereto and made a part hereof. This amount is now delinquent.

11.

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 amounts due are tendered to the petitioner.

12.

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.

13.

Subsequent to the filing of this Rule, additional taxes may have become due from the Defendant, which have not been remitted to Petitioner. Defendant is also liable to the petitioner for these additional taxes, together with applicable interest, penalty and fees, as provided by law.

14.

Pursuant to LSA-R.S. §47:314, §47:1574.1(A), and §47:1582(A), the Petitioner is entitled to a hearing in this matter in not less than two or greater than ten days, exclusive of holidays.

15.

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 LSA-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, David Matherson D/B/A HEARTS D/B/A HEARTS NO 2, be ruled into court to 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 and that this Honorable Court render a Judgment in favor of the plaintiff and against the defendant, David Matherson D/B/A HEARTS D/B/A HEARTS NO 2:

- (1) ordering David Matherson D/B/A HEARTS D/B/A HEARTS NO 2 to cease and desist from the operation of its business at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana 70816-4607 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) further ordering the East Baton Rouge Parish Sheriff's Deputies to: (a) enter the business location of the defendant located at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana 70816-4607 and (b) cause all business activity to cease immediately and (c) post a notice outside of the entrance of each premises stating that the defendant's business has been shut down for failure to pay Louisiana taxes; and
- (3) further 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) 231-6235

TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

DOCKET NO. _____ DIV. _____
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DAVID MATHERSON
D/B/A HEARTS
D/B/A HEARTS NO 2

STATE OF LOUISIANA

ORDER

CONSIDERING the above and foregoing rule;

IT IS ORDERED that the defendant, David Matherson D/B/A HEARTS D/B/A HEARTS NO 2, and appear before this Honorable Court on the 2ND day of July, 2015 at 8:30 o'clock A.m. to show cause why the foregoing rule should not be made absolute; 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 and Signed at Baton Rouge, Louisiana, on this _____ day of

_____ 2015.

19th JUDICIAL DISTRICT COURT JUDGE

SHERIFF, PLEASE RUSH SERVICE UPON:

David Matherson
9914 Hawthorne Drive
Baton Rouge, Louisiana, 70809-4607

CLERK PLEASE MAIL NOTICE TO:

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

TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

DOCKET NO. _____ DIV. _____
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DAVID MATHERSON
D/B/A HEARTS
D/B/A HEARTS NO 2

STATE OF LOUISIANA

AFFIDAVIT OF CORRECTNESS

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Before me, the undersigned authority, personally came and appeared

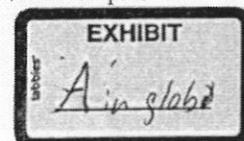
Gwendolyn Robertson, a person of the full age of majority, who serves as a Revenue Tax Officer in the Office of Field Collections for the Louisiana Department of Revenue,

who after being duly sworn, did depose and say that all of the facts stated herein are based on her personal knowledge, that she 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.

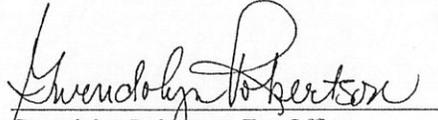
Affiant stated that in the course of her employment as a Revenue Tax Officer she was assigned tax account belonging to David Matherson D/B/A HEARTS D/B/A HEARTS NO 2.

Affiant stated that upon her review of David Matherson's tax account it was determined the business failed to file and remit sales taxes on all of its sales of tangible personal property. As shown on the attached schedule of liabilities, Affiant stated that David Matherson has a Louisiana sales tax deficiency in the amount of \$193,654.75; with sales tax in the amount of \$123,999.66, penalties in the amount of \$34,464.84, fees in the amount of \$20,899.21 and interest in the amount of \$28,867.95 plus interest as provided for by La. R.S. 47:1601, along with late penalties that shall accrue until the aforesaid deficiency is paid in full to the Louisiana Department of Revenue. Affiant further stated that said amount is now delinquent, and that this affidavit is made for the purpose of enforcing the collection of said amount.

Affiant further stated that Defendant has failed to timely remit the withholding taxes. As shown on the attached schedule of liabilities, Affiant stated that David Matherson has a Louisiana withholding tax deficiency of \$18,377.00, which includes the withholding tax of \$14,144.43, plus the interest of \$2,942.54, penalties of \$3600.43, and fees of \$2300.43 plus



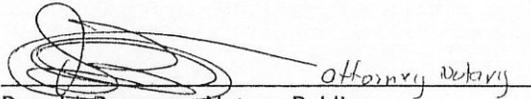
interest as provided for by La. R.S. 47:1601, along with late penalties that shall accrue until the aforesaid deficiency is paid in full to the Louisiana Department of Revenue. Affiant further stated that said amount is now delinquent, and that this affidavit is made for the purpose of enforcing the collection of said amount.



Gwendolyn Robertson, Tax Officer
Office of Field Collections,
Louisiana Department of Revenue

Sworn to and subscribed before me,

this 22nd day of June 2015,



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

Run Date: June 22, 2015

Schedule of Outstanding Tax Liabilities

Louisiana Department of Revenue

ID: 4708848-007-400

Legal Name: MATHERSON DAVID

Trade Name: HEARTS

Location Address: 11470 CEDAR PARK AVE BATON ROUGE LA 708094250
Mailing Address: 9914 HAWTHORNE DR BATON ROUGE LA 708094607

Account Type	Filing Period	Status	Tax Due	Interest	Delinquent Penalty	Late Payment Penalty	Negligence Penalty	NSF Penalty	Warrant Penalty	UJET Penalty	Fees/ Others	Credits	Balance Due
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Sales

4708848-007-400

12/31/2010	E		810.66	209.76	202.65	0.00	40.53	20.00	10.00	0.00	0.00	466.63	826.97
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4708848-008-400

123,999.66													
				28,867.95	26,012.35	3,436.55	4,481.53	54.41	480.00	0.00	20,899.21	14,576.91	193,654.75
11/30/2009	R		3,391.00	128.95	0.00	847.75	0.00	34.41	10.00	0.00	656.66	4,582.02	486.75
12/31/2009	R		4,289.00	1,615.06	1,072.25	0.00	0.00	0.00	10.00	0.00	917.81	0.00	7,904.12
03/31/2010	R		4,028.00	1,449.78	1,007.00	0.00	0.00	0.00	10.00	0.00	851.99	0.00	7,346.77
04/30/2010	R		3,217.00	1,140.74	804.25	0.00	0.00	0.00	10.00	0.00	678.08	0.00	5,850.07
06/30/2010	R		3,190.00	1,094.06	797.50	0.00	159.50	0.00	20.00	0.00	689.42	0.00	5,950.48
07/31/2010	R		3,522.00	1,189.64	880.50	0.00	176.10	0.00	30.00	0.00	758.16	0.00	6,556.40
08/31/2010	R		2,985.00	989.89	746.25	0.00	149.25	0.00	20.00	0.00	639.99	0.00	5,530.38
09/30/2010	R		2,625.00	855.34	656.25	0.00	131.25	0.00	20.00	0.00	560.61	0.00	4,848.45
10/31/2010	R		3,134.00	1,002.39	783.50	0.00	156.70	0.00	20.00	0.00	666.45	0.00	5,763.04
11/30/2010	R		2,920.00	919.33	730.00	0.00	146.00	0.00	10.00	0.00	618.68	0.00	5,344.01
12/31/2010	R		3,788.00	1,171.23	947.00	0.00	189.40	0.00	20.00	0.00	799.26	0.00	6,914.89
01/31/2011	R		3,354.00	1,014.48	838.50	0.00	167.70	0.00	10.00	0.00	704.49	0.00	6,089.17
02/28/2011	R		3,701.00	1,101.10	925.25	0.00	185.05	0.00	10.00	0.00	774.51	0.00	6,696.91
03/31/2011	R		3,421.00	998.83	855.25	0.00	171.05	0.00	10.00	0.00	712.96	0.00	6,169.09
04/30/2011	R		2,986.00	853.55	746.50	0.00	149.30	0.00	10.00	0.00	619.72	0.00	5,365.07
05/31/2011	R		2,987.00	835.95	746.75	0.00	149.35	0.00	20.00	0.00	617.26	0.00	5,356.31

Interest will continue to accrue until tax is paid in full.
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A = Audit

Run Date: June 22, 2015

Louisiana Department of Revenue

Schedule of Outstanding Tax Liabilities

ID: 4708848-007400

Legal Name: MATHERSON DAVID

Trade Name: HEARTS

Location Address: 11470 CEDAR PARK AVE BATON ROUGE LA 708094250

Mailing Address: 9914 HAWTHORNE DR BATON ROUGE LA 708094607

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
	06/30/2011	R	2,871.00	787.03	717.75	0.00	143.55	0.00	10.00	0.00	590.81	0.00	5,120.14
	07/31/2011	R	3,232.00	866.11	808.00	0.00	161.60	0.00	10.00	0.00	662.04	0.00	5,739.75
	08/31/2011	R	2,952.00	775.36	738.00	0.00	147.60	0.00	20.00	0.00	602.23	0.00	5,235.19
	09/30/2011	R	2,809.00	721.59	702.25	0.00	140.45	0.00	20.00	0.00	570.63	0.00	4,963.92
	10/31/2011	R	3,240.00	810.91	648.00	0.00	162.00	0.00	10.00	0.00	655.19	0.00	5,688.10
	11/30/2011	R	2,412.00	590.48	361.80	0.00	120.60	0.00	10.00	0.00	485.74	0.00	4,221.82
	12/31/2011	R	3,196.00	763.25	319.60	0.00	159.80	0.00	10.00	0.00	640.78	0.00	5,568.83
	01/31/2012	R	2,819.00	655.55	704.75	0.00	140.95	0.00	10.00	0.00	0.00	0.00	4,330.25
	02/29/2012	R	5,069.00	1,152.23	506.90	0.00	253.45	0.00	10.00	0.00	0.00	0.00	7,751.93
	03/31/2012	R	3,913.00	866.53	195.65	0.00	195.65	0.00	10.00	0.00	0.00	0.00	5,963.43
	05/31/2012	R	3,048.00	598.96	762.00	0.00	152.40	0.00	20.00	0.00	363.32	1,971.34	2,973.34
	07/31/2012	R	3,154.00	0.00	788.50	0.00	0.00	0.00	10.00	0.00	299.63	3,154.00	1,098.13
	08/31/2012	R	2,865.00	536.99	716.25	0.00	143.25	0.00	10.00	0.00	609.87	0.00	4,881.36
	09/30/2012	R	2,980.00	554.04	745.00	0.00	0.00	0.00	10.00	0.00	611.36	0.00	4,900.40
	10/31/2012	R	2,929.00	429.39	732.25	0.00	146.45	0.00	10.00	0.00	445.31	552.92	4,139.48
	11/30/2012	R	2,457.00	429.03	614.25	0.00	122.85	0.00	10.00	0.00	518.32	0.00	4,151.45
	12/31/2012	R	2,927.00	492.59	731.75	0.00	146.35	0.00	10.00	0.00	616.20	0.00	4,923.89
	03/31/2013	R	3,468.00	524.86	867.00	0.00	173.40	0.00	10.00	0.00	720.92	0.00	5,764.18
	08/31/2013	R	3,093.00	377.56	773.25	0.00	0.00	0.00	10.00	0.00	606.42	0.00	4,860.23
	10/31/2013	R	3,265.00	361.11	653.00	0.00	0.00	0.00	10.00	0.00	634.39	0.00	5,086.75
	03/31/2015	R	3,740.00	4.30	187.00	0.00	0.00	0.00	0.00	0.00	0.00	3,850.00	81.30
	05/31/2015	R	3,212.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,212.00

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

R = Return
E = Estimate
A = Audit

Louisiana Department of Revenue
Schedule of Outstanding Tax Liabilities

Run Date: June 22, 2015

ID: 4708848-007-400

Legal Name: MATHERSON DAVID

Trade Name: HEARTS

Location Address: 11470 CEDAR PARK AVE BATON ROUGE LA 708094250
Mailing Address: 9914 HAWTHORNE DR BATON ROUGE LA 708094607

Account Type	Filing Period	Status	Tax Due	Interest	Delinquent Penalty	Late Payment Penalty	Negligence Penalty	NSF Penalty	Warrant Penalty	UFT Penalty	Fees/ Others	Credits	Balance Due
			123,999.66	28,867.95	26,012.35	3,436.55	4,481.53	54.41	480.00	0.00	20,899.21	14,576.91	193,654.75
			138,144.09	31,810.49	27,479.79	4,964.31	4,806.76	154.41	660.00	0.00	23,199.64	19,187.74	212,031.75
Sales													
Withholding													
	01/31/2010	R	787.40	234.43	196.85	0.00	31.80	0.00	20.00	0.00	167.86	151.40	1,286.94
	02/28/2010	R	758.35	69.11	189.60	0.00	37.92	0.00	10.00	0.00	159.42	1,213.24	11.16
	03/31/2010	R	874.64	312.77	218.65	0.00	43.73	0.00	10.00	0.00	218.97	0.00	1,678.76
	04/30/2010	R	649.08	228.19	162.25	0.00	32.45	0.00	10.00	0.00	162.30	0.00	1,244.27
	05/31/2010	R	562.29	194.78	140.55	0.00	28.11	0.00	10.00	0.00	140.36	0.00	1,076.09
	06/30/2010	R	487.00	165.59	121.75	0.00	24.35	0.00	10.00	0.00	121.30	0.00	929.99
	07/31/2010	R	583.89	195.45	145.95	0.00	29.19	0.00	10.00	0.00	144.67	0.00	1,109.15
	08/31/2010	R	461.80	152.09	92.36	0.00	23.09	0.00	10.00	0.00	114.36	0.00	876.79
	09/30/2010	R	541.46	175.03	81.21	0.00	27.07	0.00	10.00	0.00	133.34	0.00	1,022.26
	10/31/2010	R	438.55	139.37	43.86	0.00	21.93	0.00	10.00	0.00	107.92	0.00	827.41
	11/30/2010	R	511.79	159.58	25.59	0.00	25.59	0.00	10.00	0.00	125.24	0.00	960.15
	12/31/2010	R	704.00	215.86	0.00	176.00	0.00	20.00	10.00	0.00	136.82	0.00	1,262.68
	07/31/2011	R	488.22	8.43	48.82	24.41	0.00	20.00	10.00	0.00	16.75	488.22	128.41
	06/30/2012	R	1,189.26	239.50	0.00	297.32	0.00	20.00	10.00	0.00	4.50	0.00	1,760.58
	09/30/2012	R	1,245.34	228.80	0.00	311.34	0.00	0.00	10.00	0.00	268.46	0.00	2,063.94
	12/31/2012	R	1,273.91	211.58	0.00	318.48	0.00	20.00	10.00	0.00	274.22	0.00	2,108.19
	09/30/2013	R	1,330.38	0.00	0.00	0.00	0.00	0.00	10.00	0.00	1.50	1,330.38	11.50
	06/30/2014	R	1,257.07	11.98	0.00	154.83	0.00	20.00	0.00	0.00	2.44	1,427.59	18.73

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

R = Return
E = Estimate
A = Audit

Run Date: June 22, 2015

Louisiana Department of Revenue

Schedule of Outstanding Tax Liabilities

ID: 4708848-007-400

Legal Name: MATHERSON DAVID

Trade Name: HEARTS

Location Address: 11470 CEDAR PARK AVE BATON ROUGE LA 708094250
Mailing Address: 9914 HAWTHORNE DR BATON ROUGE LA 708094607

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
			14,144.43	2,942.54	1,467.44	1,527.76	325.23	100.00	180.00	0.00	2,300.43	4,610.83	18,377.00
Withholding			138,144.09	31,810.49	27,479.79	4,964.31	4,806.76	154.41	660.00	0.00	23,199.64	19,187.74	212,031.75
Grand Total:			138,144.09	31,810.49	27,479.79	4,964.31	4,806.76	154.41	660.00	0.00	23,199.64	19,187.74	212,031.75

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

TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

DOCKET NO. _____ DIV. _____
19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DAVID MATHERSON
D/B/A HEARTS
D/B/A HEARTS NO 2

STATE OF LOUISIANA

MEMORANDUM OF AUTHORITY

MAY IT PLEASE THE COURT:

The Department of Revenue for the State of Louisiana, through undersigned counsel, submits its memorandum in support of its position in the Rule *Nisi*, Summary Proceeding for Failure to Pay Sales and Withholding Taxes, which is referred to as a Rule to Cease Business, against the defendant herein, David Matherson D/B/A Hearts D/B/A Hearts NO 2.

The defendant is a Louisiana sole proprietorship doing business at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana, 70816-8149. The defendant owes sales taxes and withholding taxes for its location at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana, 70816-8149. Defendant has self-assessed his sales and withholding taxes for each tax period on the "Schedule of Outstanding Tax Liabilities" attached to Exhibit A.

The outstanding sales tax obligations total ONE HUNDRED NINETY-THREE THOUSAND, SIX HUNDRED FIFTY-FOUR DOLLARS AND SEVENTY-FIVE CENTS (\$193,654.75) including the tax, plus the interest, penalties and fees calculated through June 22, 2015. The outstanding withholding tax obligations total EIGHTEEN THOUSAND, THREE HUNDRED SEVENTY-SEVEN DOLLARS (\$18,377.00) including the tax, plus the interest, penalties and fees calculated through June 22, 2015.

Additional Louisiana sales and withholding tax periods may become due prior to the hearing on this matter; the additional tax periods will be reflected on the updated Schedule of Outstanding Tax Liabilities introduced at the hearing on this matter.

The defendant has failed and refuses to cooperate with revenue officers, agents, and employees of the Louisiana Department of Revenue by failing to pay the delinquent taxes, interest, and penalties as required by law. Attached to the Rule to Cease Business is an affidavit of a Tax Officer for the Department of Revenue attesting that the facts alleged therein are true and correct, accompanied by a "Schedule of Outstanding Liabilities." The aforesaid Affidavit

and Schedule includes a calculation of the sum due for the aforementioned sales and withholding tax periods through June 22, 2015.

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 his 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:

LSA-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]." LSA-R.S. §47:304. The tax imposed under LSA-R.S. §47:302 shall be collectible from all persons engaged as dealers. LSA-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. LSA-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." LSA-R.S. §47:307.

Withholding Income 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]." LSA-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, 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. LSA-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. LSA-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) LSA-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.

LSA-R.S. §47:314 (emphasis added).

(2) LSA-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.
- 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.

....

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.

LSA-R.S. §47:1574.1 (emphasis added).

(3) LSA-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. 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.

LSA-R.S. §47:1582 (emphasis added).

Discussion

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 LSA-R.S. §47:303. For the periods in question, the Defendant has failed to file all necessary tax returns with remittance filed or filed the returns while failing to pay the delinquent taxes, penalties, interest and fees due under the provisions of LSA-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 LSA-R.S. §47:307.

Withholding Income 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 LSA-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.

Conclusion

Sales Tax:

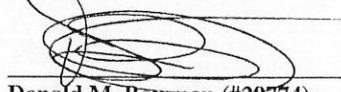
The self-assessed sales taxes with respect to the tax periods included on the Schedule of Outstanding Tax Liabilities have become final, pursuant to LSA-R.S. §47:314, §47:1574.1 and §47:1582, the Plaintiff is entitled to the relief requested and prays that a rule absolute and order be issued by this Court prohibiting the Defendant from the further pursuit of business until such time as the Defendant has paid the delinquent taxes, due to the State of Louisiana up to and including any amounts that may be due as the date of this hearing.

Withholding Tax:

The self-assessed withholding taxes with respect to the tax periods included on the Schedule of Outstanding Tax Liabilities have become final, pursuant to LSA-R.S. §47:314, §47:1574.1 and §47:1582, the Plaintiff is entitled to the relief requested against the defendant and prays that a rule absolute and order be issued by this Court prohibiting the Defendant from the further pursuit of business until such time as the Defendant has paid the delinquent taxes, due

to the State of Louisiana up to and including any amounts that may be due as the date of this hearing.

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
Tel: (225) 219-2080
Fax: (225) 231-6235

TIM BARFIELD, SECRETARY,
DEPARTMENT OF REVENUE,
STATE OF LOUISIANA

DOCKET NO. _____ DIV. _____

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

DAVID MATHERSON
D/B/A HEARTS
D/B/A HEARTS NO 2

STATE OF LOUISIANA

JUDGMENT

CONSIDERING the Judgment rendered in open court at the hearing on this matter held on the ____ day of _____, 2015;

IT IS ORDERED, ADJUDGED AND DECREED that the defendant David Matherson D/B/A Hearts D/B/A HEARTS NO 2, shall immediately cease the operation of its business at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana, 70816 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 FURTHER ORDERED, ADJUDGED, AND DECREED that the East Baton Rouge Sheriff's Office shall enter the premises at 9945 Airline Highway, Suite D, Baton Rouge, Louisiana, 70816-8149, and cause all business activity to cease immediately.

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

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

Signed at Baton Rouge, Louisiana, on this _____, day of _____, 2015.

19TH JUDICIAL DISTRICT COURT JUDGE

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

Donald Bowman
Legal Division
Louisiana Department of Revenue
Post Office Box 4064
Baton Rouge, Louisiana 70821-4064

and

David Matherson
D/B/A Hearts
D/B/A Hearts No 2
9914 Hawthorne Drive
Baton Rouge, Louisiana 70809-4607