

- a. Pointsmith's fulfillment services are not taxable as part of the sales price of print materials because they are not part of the transfer of possession or title of the printed materials sold.
 - b. Alternatively, Pointsmith's fulfillment services are not taxable because Pointsmith provided them independently of the printed materials and Pointsmith's customers independently desired the fulfillment services.
2. Pointsmith was not obligated to collect City of Houston local tax, as Defendants conceded in their closing argument. Therefore, the audit errors for Exam 1000, as identified by Pointsmith in **Exhibit 3**, are properly taxed at 7.25%.
 3. Pointsmith's J-Signs transactions with Jiffy Lube International were improperly treated as audit errors (Audit Exam 1000 Rec IDs: 3301-217, 3301-274, 3301-275, 3301-261, 3301-305).
 4. Pointsmith no longer contests the taxability of its transaction with Mercury Signs (Audit Exam 1000 Rec ID 3301-207).

Exhibit 2 is based upon Exhibits 3-5, which are revised versions of Plaintiff's Trial Exhibits 68, 113, and 114. Pointsmith adjusted its trial summary calculations to withdraw its challenge the tax imposed upon its transaction with Mercury Signs.

Exhibit 3 adjusts Plaintiff's Trial Exhibit 68 to increase the taxable amount reflected for Mercury Signs (Rec ID 3301-207) from \$0 to \$590 (the taxable amount identified by the Comptroller's auditor). This adjustment increases the total taxable amount for Audit Exam 1000 from \$84,589.29 to \$85,179.29.

Exhibit 4 adjusts Plaintiff's Trial Exhibit 113 to comport with the increased taxable amount shown in Exhibit 2. Exhibit 3 increases the projected tax due under Exhibit 113 for Audit Exam 1000 from \$49,827.50 to \$50,175.04.

Exhibit 5 adjusts Plaintiff's Trial Exhibit 114 to comport with the increase in projected tax due for Exam 1000, as shown in Exhibit 3. As a result, the net tax recovery (not including penalty and interest) is decreased from \$73,857.27 to \$72,969.70.

PRAYER

Based on the above calculations and the evidence presented in support thereof, Pointsmith respectfully prays that this Court enter the proposed jurisdictional order and final judgment attached hereto as **Exhibits 1 and 2**.

Respectfully submitted,

MARTENS, TODD, LEONARD & AHLRICH
301 Congress Avenue, Suite 1950
Austin, Texas 78701
(512) 542-9898
Fax: (512) 542-9899

By: /s/ Jimmy Martens

James F. Martens
State Bar No. 13050720
Danielle V. Ahlrich
State Bar No. 24059215

**ATTORNEYS FOR PLAINTIFF,
POINTSMITH POINT-OF-PURCHASE
MANAGEMENT SERVICES, LP**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically on Defendants' Counsel, Jim B. Cloudt, Assistant Attorney General, Office of the Attorney General, Tax Division, P.O. Box 12548, MC 017-6, Austin, Texas 78711-2548, on December 22, 2017.

/s/ Jimmy Martens_____

James F. Martens

CAUSE NO. D-1-GN-11-001514

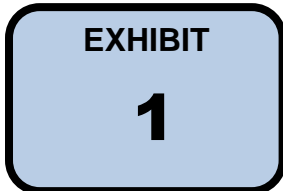
POINTSMITH POINT-OF-PURCHASE	§	IN THE DISTRICT COURT OF
MANAGEMENT SERVICES, LP,	§	
Plaintiff	§	
	§	
v.	§	
	§	
GLENN HEGAR,	§	TRAVIS COUNTY, TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS	§	
OF THE STATE OF TEXAS;	§	
AND KEN PAXTON, ATTORNEY	§	
GENERAL OF THE STATE OF TEXAS,	§	
Defendants.	§	200th JUDICIAL DISTRICT

Order Denying Defendants’ Partial Plea to the Jurisdiction

The Court, having considered the Plea and its exhibits, Plaintiff’s Response and the exhibits thereto, and all other arguments of counsel, determines that Defendants’ Plea should be DENIED.

SIGNED on the _____ day of _____, 2018.

THE HONORABLE JUDGE TIM SULAK
353rd District Court,
Travis County, Texas



Approved as to form and substance:

Approved as to form:

James F. Martens

jmartens@textaxlaw.com

Texas Bar No. 13050720

Danielle V. Ahlrich

dahlrich@textaxlaw.com

Texas Bar No. 24059215

Martens, Todd, Leonard & Ahlrich

301 Congress Ave., Ste.1950

Austin, TX 78701

(512) 542-9898 – Telephone

(512) 542-9899 – Fax

Attorneys for Plaintiff

Jim B. Cloudt

jim.cloudt@texasattorneygeneral.gov

Texas Bar No. 04410001

Assistant Attorney General

Tax Division

P.O. Box 12548, MC 017-6

Austin, TX 78711-2548

(512) 463-2078 – Telephone

(512) 477-2348 – Fax

Attorney for Defendants

APPROVED AS TO FORM AND
SUBSTANCE:

By: _____

James F. Martens
jmartens@textaxlaw.com
State Bar No. 13050720
Danielle V. Ahlrich
dahlrich@textaxlaw.com
State Bar No. 24059215
Martens, Todd, Leonard & Ahlrich
301 Congress Ave., Ste. 1950
Austin, TX 78701
(512) 542-9898 – Telephone
(512) 542-9899 – Fax

**Attorneys for Plaintiff,
Pointsmith Point-of-Purchase
Management Services, LP**

APPROVED AS TO FORM:

By: _____

Jim Cloudt
State Bar No. 04410001
jim.cloudt@texasattorneygeneral.com
Assistant Attorney General
Tax Division
P.O. Box 12548, MC 017-6
(512) 463-2078 – Telephone
(512) 477-2348 – Fax

Attorney for Defendants

Exam 1000 - Audit Sample Error Corrected Under Two Transaction Position

Comptroller Errors for Exam 1000				Pointsmith Adjustments	
Rec ID	Name	Inv No	Taxable Amount	Taxable Amount	Comments
3301-315	CHRIS HANNA	58503	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-317	CHRIS HANNA	58310	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-193	CITIGROUP	53307	\$ 6,339.49	\$ -	Fulfillment Charges
3301-273	CITIGROUP	57098	\$ 15,805.43	\$ -	Fulfillment Charges
3301-215	COFFEECOL	55766	\$ 52,154.70	\$ 52,154.70	Shipped to Texas
3301-301	COFFEECOL	59733	\$ 111.73	\$ -	Fulfillment Charges
3301-316	DANELL SPELHAUG	58502	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-314	DANELL SPELHAUG	59663	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-198	HAMBRIGHT, CALCAGNO & DOWNING (CHICAGO)	53316	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-205	HAMBRIGHT, CALCAGNO & DOWNING (VA)	53432	\$ 330.90	\$ 330.90	Unable to find backup - Should of Shipped to VA DMA
3301-216	HAMBRIGHT, CALCAGNO & DOWNING (VA)	55688	\$ 660.00	\$ 660.00	Unable to find backup - Should of Shipped to VA DMA
3301-217	J-SIGNS	55958	\$ 437.80	\$ -	Fulfillment Charges
3301-274	J-SIGNS	57156	\$ 21,260.94	\$ -	Inv 57156, 57157 Credited 11/18/2005 Re invoiced 57158 with Tax
3301-275	J-SIGNS	57232	\$ 564.30	\$ -	Fulfillment Charges
3301-261	J-SIGNS	58852	\$ 621.50	\$ -	Fulfillment Charges
3301-305	J-SIGNS	60136	\$ 764.50	\$ -	Fulfillment Charges
3301-252	JANELLE CRAYS CITIGROUP	58362	\$ 98.55	\$ -	Fulfillment Charges
3301-255	JESSICA PACZKOWSKI JIFFY LUBE	58535	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-254	JESSICA PACZKOWSKI JIFFY LUBE	58534	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-276	JLI MARKETING PROGRAM FUND	57234	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-262	JLI MARKETING PROGRAM FUND	58854	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-306	JLI MARKETING PROGRAM FUND	60138	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-310	KRYSTAL COMPANY	59705	\$ 10,337.65	\$ 10,436.07	Shipped to Texas
3301-309	KRYSTAL COMPANY	59702	\$ 2,964.50	\$ 2,964.50	Shipped to Texas
3301-307	KRYSTAL COMPANY	59554	\$ 190.40	\$ -	Shipped Out of State
3301-308	KRYSTAL COMPANY	59619	\$ 1,111.50	\$ -	Fulfillment Charges
3301-311	KRYSTAL COMPANY	59785	\$ 643.50	\$ -	Fulfillment Charges
3301-312	KRYSTAL COMPANY	59834	\$ 5,516.10	\$ 5,516.10	Shipped to Inventory
3301-277	KYLE WILLIAMS MURPHY USA	56910	\$ 1,024.65	\$ -	Fulfillment Charges
3301-263	KYLE WILLIAMS MURPHY USA	58549	\$ 24,145.96	\$ -	Fulfillment Charges
3301-264	KYLE WILLIAMS MURPHY USA	58675	\$ 1,812.25	\$ -	Fulfillment Charges
3301-265	KYLE WILLIAMS MURPHY USA	58710	\$ 22,192.08	\$ -	Fulfillment Charges
3301-253	LISA P. CARLSON JIFFY LUBE INTERNATIONAL	58536	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-208	MARCUS DUFFEL JIFFY LUBE INTERNATIONAL	53335	\$ -	\$ -	No Value Provided in Auditors Sampling Report
3301-207	MERCURY SIGNS	53326	\$ 590.00	\$ 590.00	
3301-256	OSTLER GROUP	58528	\$ 51.70	\$ -	Fulfillment Charges
3301-257	OSTLER GROUP	58538	\$ 49.08	\$ -	Fulfillment Charges
3301-270	RAED SALAH CITIGROUP	57096	\$ 1,281.63	\$ -	Fulfillment Charges
3301-271	SUSANNE BROOKS CITI CARD	57097	\$ 6,406.53	\$ -	Fulfillment Charges
3301-223	SUSANNE BROOKS CITI CARD	57263	\$ 5,600.30	\$ -	Fulfillment Charges
3301-248	SUSANNE BROOKS CITI CARD	57803	\$ 14.57	\$ -	Shipped Out of State
3301-300	SUSANNE BROOKS CITI CARD	59504	\$ 10,444.86	\$ -	Fulfillment Charges
3301-313	TEMERLIN MCCLAIN	53438	\$ 1,110.29	\$ 1,110.29	Agreed Adjustment 21% Shipped Out of State
3301-201	TEMERLIN MCCLAIN	53436	\$ 10,540.70	\$ 10,540.70	Cannot find backup
3301-202	TEMERLIN MCCLAIN	53437	\$ 876.03	\$ 876.03	Agreed Adjustment 21% Shipped Out of State
Totals			\$ 206,054.12	\$ 85,179.29	
	Amount does not match the Invoice Number amount				

POINTSMITH POINT-OF-PURCHASE MANAGEMENT
 HOUSTON, TX 77041
 Exam: 1000 AMENDED DISALLOWED DEDUCTIONS
 Exam Summary - Projection Under Two Transactions

	Taxable Amount	Sample Base	Projection Factor	Population Base	Amount	Tax Rate	Projected Taxable Amount
Exam 1000	\$206,054.12	\$2,172,989.75	9.4825%	\$17,655,230.63	\$1,674,160.23	State & various local	\$123,684.74
Total for Exam 1000					\$1,674,160.23		\$123,684.74
Adjusted Exam 1000	\$85,179.29	\$2,172,989.75	3.9199%	\$17,655,230.63	\$692,069.54	0.07250	\$50,175.04
Total for Adjusted Exam 1000					\$692,069.54		\$50,175.04

Protest Payment

Protest Payment Recovery Under Two Transaction Position

Protest Payment Attributable to Tax			\$168,181.69
Exam 1000 Tax Assessed	\$ 123,684.74	Exam 1000 Tax Due	\$50,715.04
Exam 3000 Tax Assessed	20,985.63	Exam 3000 Tax Due	20,985.63
Exam 4000 Tax Assessed	486.85	Exam 4000 Tax Due	486.85
Exam 4100 Tax Assessed	23,024.47	Exam 4100 Tax Due	23,024.47
Subtotal	\$168,181.69		\$95,211.99
Net Tax Recovery Under Two Transaction Position (plus P&I)			\$72,969.70

