

In the
Supreme Court of Ohio

A.M. CASTLE & CO.,

Appellee,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO,

Appellant.

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:
:
:
:

Case No. 2015-0551

Appeal from the Ohio Board of Tax Appeals
BTA Case No. 2013-5851

APPENDIX TO THE MERIT BRIEF OF APPELLEE
A.M. CASTLE & CO.

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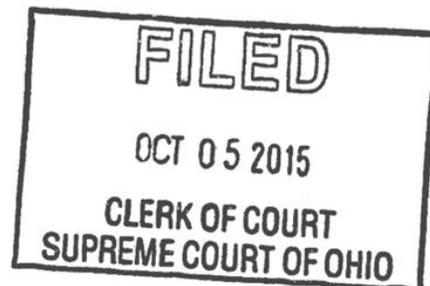


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BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO

- - -

Joseph W. Testa, Tax)
Commissioner of Ohio,)
Appellant,)
vs.)
A.M. Castle & Company,)
Appellee.)

Case No. 2013-5851

**CERTIFIED
COPY
TRANSCRIPT**

Hearing Room B
State Office Tower
30 East Broad Street
24th Floor
Columbus, Ohio 43215
Wednesday, October 15, 2014

Met, pursuant to assignment,
at 9:10 o'clock a.m.

BEFORE:

Carrie C. Young, Attorney-Examiner

- - -

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1 APPEARANCES:

2

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4 Mike DeWine, Esq.

5 Ohio Attorney General

6 By: Melissa Baldwin, Esq.

7 Assistant Attorney General

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1 APPEARANCES: (CONTINUED)

2

3 ALSO PRESENT:

4 Jeffrey Torf, In-House Counsel, A.M. Castle

5 John H. Hebert, A.M. Castle

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P R O C E E D I N G S

- - -

Wednesday, October 15, 2014

Morning Session

- - -

Thereupon, Appellee's Exhibits 1 and 2 were marked for purposes of identification.

- - -

THE EXAMINER: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled A.M. Castle & Company versus Joseph W. Testa, Tax Commissioner of Ohio, BTA Case No. 2013-5851.

This case is being heard in Hearing Room B in the offices of the Board of Tax Appeals, 30 East Broad Street, 24th Floor, on October 15, 2014, at approximately 9:05 a.m. pursuant to assignment before Carrie C. Young, Attorney-Examiner for the Board of Tax Appeals.

The subject case is an appeal from a final determination of the Tax Commissioner relating to a use tax assessment.

At this time, will the counsel please enter an appearance by name, mailing address, and

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1 telephone number?

2 MR. SWATSLER: Todd Swatsler, 325
3 John H. McConnell Boulevard, Columbus 43215.

4 What else do you need? Telephone number.

5 THE EXAMINER: Telephone number.

6 MR. SWATSLER: (614) 281-3912.

7 THE EXAMINER: Thank you.

8 And counsel on behalf of the
9 Commissioner?

10 MS. BALDWIN: I'm Melissa Baldwin. My
11 address is 30 East Broad Street, 25th Floor,
12 Columbus, Ohio. The phone number is
13 (614) 466-4526.

14 THE EXAMINER: Thank you.

15 Mr. Swatsler, at this time do you have
16 an opening statement that you would like to make?

17 MR. SWATSLER: I do, and if you don't
18 mind, I would just like to make some
19 introductions so you know who is here with me.

20 John Allan is seated with me at counsel
21 table. He's my partner in from our Atlanta
22 office. We also have with us John Hebert who is
23 tax manager at A.M. Castle, this gentleman
24 (indicating). Tom Fink is here from DC
25 Transportation, and he's going to be a testifying

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1 witness. Jeffrey Torf is in-house counsel at
2 A.M. Castle. And the last gentleman back there
3 is Ron Knopp. He's director of operations at
4 A.M. Castle. He's also going to testify.

5 THE EXAMINER: Thank you.

6 MR. SWATSLER: The matter before the
7 Board relates to a consumer use tax exemption
8 claimed by A.M. Castle pursuant to a long-term
9 employment services contract.

10 A.M. Castle is a specialty metals and
11 plastics distribution company with headquarters
12 in Oak Brook, Illinois, and offices in various
13 locations, including in Ohio. Based on its
14 activity within the State of Ohio, A.M. Castle
15 files its Ohio sales and use tax returns and
16 timely remits its tax to the state taxes
17 authority.

18 The Department of Taxation conducted a
19 sales and tax use audit at A.M. Castle for 2008
20 and 2009 tax years; and in March 2012, the
21 Department issued a consumer's use tax
22 assessment. That assessment was in the amount of
23 \$357,012, about 278,000 of that was tax, 38,000
24 in interest, 41,000 in penalties approximately.

25 The contested portion of that

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1 assessment, which is from -- in terms of the tax,
2 part of the assessment, about \$270,000, relates
3 to services that were provided by a third-party,
4 DC Transportation, Incorporated, under a contract
5 pursuant to which DC Transportation employees
6 operate vehicles owned or leased by A.M. Castle.

7 The key issue in this appeal is whether
8 the drivers provided to A.M. Castle in connection
9 with A.M. Castle's Ohio operations fall within
10 the exclusion from taxable employment services
11 set forth in Revised Code 5739.01(JJ)(3).

12 In order to qualify for that exclusion,
13 the services must have been provided, first of
14 all, pursuant to a contract effective for a
15 period of at least a year; and, second, on a
16 permanent basis. If those two conditions are
17 met, the driving services are exempt from Ohio
18 sales and use tax.

19 The Commissioner acknowledged in his
20 final determination that the services contract in
21 issue is for a period of at least one year. So
22 the first prong is satisfied, and I don't think
23 that will be an issue today.

24 The Commissioner concluded, however,
25 that the drivers are not assigned on a permanent

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1 basis under the contract that A.M. Castle has
2 with DC Transportation. Thus, the Commissioner's
3 position is that the second prong under
4 5739.01(JJ)(3) is not met and A.M. Castle is not
5 entitled to the sales and use tax exemption.

6 The evidence will conclusively prove
7 that DC Transportation employees that drive for
8 A.M. Castle are, in fact, assigned to A.M. Castle
9 on a permanent basis pursuant to the contract
10 between A.M. Castle and DC Transportation.

11 As I mentioned earlier, you're going the
12 hear from two individuals that will testify on
13 behalf of A.M. Castle; Ron Knopp, who is the
14 director of operations, and was during the audit
15 period director of operations, specifically
16 related to the Cleveland facility that's in
17 issue; and Tom Fink, who is the president and
18 owner of DC Transportation.

19 Their testimony will make it clear that
20 the drivers that DC Transportation provides to
21 A.M. Castle are not seasonal; they're not
22 short-term; they're not temporary; they're not
23 provided to meet short-term workloads; they're
24 not substitute employees in any respect.

25 They are full-time drivers assigned to

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1 A.M. Castle indefinitely and continue to drive
2 for A.M. Castle unless and until A.M. Castle
3 directs DC Transportation otherwise. The
4 contract does not have any specified end dates
5 for the A.M. Castle drivers. Most of those
6 drivers have, in fact, been driving for
7 A.M. Castle for many years.

8 In two controlling cases, the Ohio
9 Supreme Court has interpreted permanent
10 assignment as an assignment that is indefinite
11 without any specified end date. The drivers
12 assigned to A.M. Castle have no specific end date
13 and are removable only upon the request of
14 A.M. Castle.

15 During the entire two-year audit period
16 in issue here, not one driver was removed by
17 A.M. Castle. We think that under any
18 interpretation, DC Transportation's assignment of
19 drivers to A.M. Castle is indefinite. That being
20 so, we think that A.M. Castle is entitled to the
21 exemption provided in Subsection (JJ)(3), Revised
22 Code 5739.01.

23 The Commissioner seems to have focused
24 primarily on the fact that the contract between
25 A.M. Castle and DC Transportation does not

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1 contain the specific phrase, quote, permanent
2 assignment, closed quote, or language like that.

3 The Ohio Supreme Court, however, in two
4 cases has clearly stated that the absence of that
5 language is not dispositive of a permanent
6 assignment claim any more than the presence of
7 the language would automatically mean you're
8 entitled to the exemption.

9 The permanent assignment question must
10 be resolved based on the nature of the contract
11 and the facts and circumstances surrounding the
12 assignment of the employees. Again, we think
13 that the evidence will show that the DC
14 Transportation drivers were clearly assigned to
15 A.M. Castle on a permanent basis.

16 And, indeed, I think this is really the
17 classic case for why the exemption exists. I
18 mean, the exemption contemplates, really, two
19 scenarios. One is are you using people
20 seasonally in the substitute role temporary to
21 meet short-term workload needs or are these
22 essentially people that are permanently working
23 for you.

24 And we think the evidence will clearly
25 show this is the latter. We think it's exactly

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1 why the exemption exists. And we look forward to
2 presenting our evidence.

3 Thank you.

4 THE EXAMINER: Thank you. Miss Baldwin,
5 opening statement?

6 MS. BALDWIN: Very briefly. The
7 Commissioner does not disagree with the issue as
8 presented today. The contracts that we'll be
9 talking about do talk about the one-year
10 carrying-on time period, so that is not in
11 dispute.

12 We're going to be talking about whether
13 or not the workers, the truck drivers, are
14 permanently assigned. The contract does not --
15 the contract that's at issue does not use those
16 words, does not reference any sort of permanent
17 assignment.

18 And the facts and circumstances, the
19 Commissioner contends, say that these folks --
20 the facts and circumstances indicate that these
21 folks have the opportunity to bid on jobs and to
22 do the work with A.M. Castle, but they're not
23 permanently assigned to always be there. These
24 folks are free to go to any other job that they'd
25 like to as well.

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1 As a consequence, the Tax Commissioner
2 contends that A.M. Castle will be unable to meet
3 its burden to demonstrate error in the final
4 determination; and because that determination is
5 reasonable and lawful, the Board should affirm
6 the determination.

7 THE EXAMINER: Thank you.

8 MS. BALDWIN: Thank you.

9 THE EXAMINER: Mr. Swatsler, you may
10 call your first witness.

11 MR. SWATSLER: I don't know what the
12 Board's practices are these days. Is it okay if
13 our witnesses remain in the hearing room or would
14 you like us to separate folks that are going to
15 testify today?

16 MS. BALDWIN: Oh, I don't know that
17 I -- no, I don't have an interest in separating
18 witnesses.

19 MR. SWATSLER: All right. Thank you.

20 MS. BALDWIN: Sorry.

21 MR. SWATSLER: I just wanted to check.
22 Before we got into testimony, I thought we would
23 check.

24 We would like to call Ronald Knopp at
25 this point to the stand.

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1 THE EXAMINER: Mr. Knopp, before you're
2 seated, could you raise your right hand, please?

3 MR. KNOPP: Yes, ma'am.

4 (Witness placed under oath.)

5 THE EXAMINER: Thank you. Please be
6 seated.

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1 RONALD E. KNOPP

2 of lawful age, being first duly placed under oath,
3 as prescribed by law, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. SWATSLER:

7 Q. Could you state your full name, please?

8 A. Ronald Edwin Knopp.

9 Q. You may want to spell that for our court
10 reporter.

11 A. K-n-o-p-p.

12 Q. What is your address?

13 A. 25023 Steeplechase Drive, Plainfield,
14 Illinois 60585.

15 Q. Who do you work for?

16 A. A.M. Castle & Company.

17 Q. How long have you worked for
18 A.M. Castle?

19 A. Since 2007.

20 Q. And what is your position at
21 A.M. Castle?

22 A. I'm currently the vice president of
23 operations for A.M. Castle.

24 Q. Could you tell us a little bit about
25 A.M. Castle's business?

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1 A. Yes. We're a specialty steel house. We
2 have branches all throughout the country. We
3 distribute a bar round product, plate product,
4 and it's specialty cut value-added material to
5 OEMs and first-end users.

6 Q. Do you have facilities in Ohio?

7 A. We do, in Bedford Heights, Ohio.

8 Q. And that's essentially Cleveland?

9 A. Cleveland.

10 Q. So we may call that Cleveland?

11 A. We can call it Cleveland.

12 Q. With all due respect to the folks in
13 Bedford Heights.

14 A. Thank you.

15 Q. And what's at issue here is a contract
16 that A.M. Castle has with DC Transportation. You
17 understand that?

18 A. Yes, sir.

19 Q. And that's with respect to drivers who
20 drive out of the Cleveland facility?

21 A. Yes, sir.

22 Q. Could you tell us a little bit about
23 your educational background, Mr. Knopp?

24 A. I have a mechanical engineering degree
25 from the University of Akron.

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1 Q. And what year did you get your degree?

2 A. In 1993.

3 Q. And what did you do after that?

4 A. Been in through different types of
5 fields. I spent eight years in the automotive
6 industry in a stamping first tier supplier, and I
7 spent ten years prior to joining A.M. Castle with
8 Alcoa, an aerospace division.

9 Q. What was your position with Castle when
10 you joined the company in 2007?

11 A. I joined as an operations manager for
12 the Cleveland facility only.

13 Q. And how long were you in that position?

14 A. Roughly two and a half years.

15 Q. And could you tell us what your -- so
16 two-and-a-half years through?

17 A. Middle of 2009, going on to 2010. And
18 then I accepted a role as director of operations
19 where I took multiple branches, and then assumed
20 the responsibility for all of the branches in
21 2011 for the U.S. And then in 2013, February, I
22 accepted the position of vice president of
23 operations having control of all of the steel
24 branches and plastic divisions.

25 Q. When your position was director of

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1 operations for the Cleveland facility, could you
2 just describe for us what your duties and
3 responsibilities were in that position?

4 A. Running the day-to-day facilities,
5 everything excluding sales or the commercial
6 responsibility to the customer, the USW contract,
7 the hundred-plus employees at Castle that work in
8 the shop, also then working with OSPs or
9 secondary processes like DC Transportation for
10 our transportation or trucking needs.

11 Q. So you work directly with the
12 transportation side of the business?

13 A. Yes, sir.

14 Q. And can you tell us a little bit more
15 about what your current responsibilities are as
16 VP of operations?

17 A. It's an expanded role of what I just
18 described, reaching out to all of our branches
19 throughout the global entity. We have facilities
20 in the Europe and in Asia, also in Mexico and
21 Canada, directing the day-to-day actions and
22 workload of those facilities, getting orders out
23 to customers, ensuring safety compliance issues
24 with the HNS, and also making sure that we're
25 meeting all of the OSHA requirements in all of

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1 the facilities.

2 Q. Are you knowledgeable about the
3 contractual relationship that exists between
4 A.M. Castle and DC Transportation?

5 A. I am.

6 Q. Were part of your duties and
7 responsibilities in 2008 and 2009 to essentially
8 manage that relationship?

9 A. It was.

10 Q. You described generally A.M. Castle's
11 business for us, and I was going to ask you a few
12 more details about that.

13 Could you just describe a few of the
14 products that you would actually sell?

15 A. At very high level. The steel industry
16 is notoriously known for having poor on-time
17 delivery to major consumers like the automotive,
18 Ford, Chevy, and also the Caterpillar and
19 other -- the big, you know, industrial users. So
20 they rely on companies like ours who will buy
21 large quantities of material, hold onto the
22 inventory, and be the middleman between the
23 middles and the OEMs to secure the loads for
24 them.

25 Q. So who would some of your customers be?

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1 A. Caterpillar is one of our largest
2 accounts, McMaster-Carr, Goodrich, UTC. We're
3 pretty abreast across the automotive, the
4 industrial, and the aerospace groups.

5 Q. Okay. Could you describe for us how
6 A.M. Castle gets its products to its customer?

7 A. In this example, what we're talking
8 about here with Cleveland, we are not a trucking
9 expertise company, we are a steel holding, steel
10 processing facility. We use representatives like
11 DC Transportation who have the expertise in the
12 market to secure knowledgeable drivers, get us
13 equipment and trucking and trailers to get our
14 material from our facilities to our customers.

15 Our daily business is we really don't
16 know where our orders are going to come from the
17 next day. We take orders all through the day,
18 process them overnight, and deliver them the next
19 day or the next morning.

20 Q. Okay. So A.M. Castle does not itself
21 directly employ truck drivers?

22 A. We do not.

23 Q. And during the timeframe in issue again,
24 2008, 2009, the truck drivers that A.M. Castle
25 used were provided by DC Transportation?

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1 A. Yes, sir.

2 Q. Do the drivers have relationships with
3 the customers?

4 A. Yes. Most of the drivers with DC
5 Transportation, since my joining of Castle,
6 they're our connection to our customer. They
7 wear our colors; they drive logo trucks. They
8 are the connection and the representation of
9 Castle to our accounts. They're the ones that
10 knock on the doors, deliver the product, and have
11 the relationship with our customers.

12 Q. Do they wear uniforms?

13 A. Yes, they do.

14 Q. What does their uniform look like?

15 A. It's a standard blue and gray, but it
16 does have a blue and orange Castle logo on it.
17 They do wear the blue and white Castle logo'd
18 hardhats, and the DC trucks are orange in color,
19 which is our color, with the blue Castle logo on
20 the side.

21 Q. Do you know -- first of all,
22 does -- does A.M. Castle continued to work with
23 DC Transport today?

24 A. Yes, sir.

25 Q. Do you know how many drivers drive for

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1 A.M. Castle provided by DC Transportation?

2 A. Today?

3 Q. Currently.

4 A. I believe the number is close to 11,
5 sir; it may be 11 or 12.

6 Q. What about the 2008, 2009 timeframe?

7 A. I think the number is very close to that
8 as well.

9 Q. Who determines how many drivers are
10 assigned to A.M. Castle?

11 A. We work with DC Transportation. Again,
12 these drivers that are in question, I mean, some
13 of them have been there for over 30 years. They
14 know our customers better than we know them.
15 Full time, they are part of our company.

16 But what we do then is we dictate based
17 on the business is softening or the activity of
18 the business kind of what routes -- again, we
19 don't know what address or what machine shops or
20 companies they're going to the next day. So as
21 the orders come in, we work with DC
22 Transportation to set up their assignments or
23 region is what we call it where they would go and
24 deliver the product for us.

25 Q. If over the long term,

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1 AMC -- A.M. Castle business softens and it does
2 not have the need for the same full-time
3 workforce, what would happen?

4 A. Again, we don't want to see anybody out
5 of work. There are things that we can do to make
6 sure they're engaged. The contract that we have
7 in place guarantees them eight hours worth of
8 work, almost 40 hours worth of work, as long as
9 they know show up each morning.

10 What we do then is design that workload
11 depending on if the business has softened --
12 typically, the Bedford Heights or Cleveland
13 facility receives -- I see I'm going too fast.
14 She's nodding. I'm sorry.

15 We typically receive about ten trucks
16 per day into the Cleveland facility to replenish
17 our stock from mills. So if our workload softens
18 delivering to customers, we will reuse our
19 drivers in -- the DC Transportation drivers back
20 to the mills to do pick-ups for us versus paying
21 the 4 to \$600 charge the mill charges for
22 delivering product to our facility, so we will
23 keep the DC drivers busy.

24 Q. Okay. So you look to find a way to keep
25 the guys that are driving for your busy?

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1 A. Right.

2 Q. Because you're going to pay them?

3 A. We're going to pay them anyway, but if
4 the workload continues to soften, then we are
5 contractually obligated with the Teamsters then
6 to pull those levers and go through that process
7 of laying off by the junior employee or the least
8 senior employee and going down that path.

9 Q. Let me hand you what we've marked as
10 Exhibit 1. And let me, first of all, just ask
11 you if you've seen that before.

12 A. Yes, I have.

13 Q. Could you tell us what it is?

14 A. It is the contract, agreement with DC
15 Transportation.

16 Q. And that agreement was entered into
17 May 24th, 2000?

18 A. Yes, sir.

19 Q. And it renews annually for one-year
20 periods?

21 A. Yes, sir.

22 Q. And the first paragraph provides that
23 "Lessor shall provide Lessee," and in this
24 instance the Lessor is DC Transportation Services
25 and the Lessee is A.M. Castle?

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1 A. Yes, sir.

2 Q. "... with a sufficient number of drivers
3 to operate the motor vehicles owned or leased by
4 Lessee, as required by Lessee."

5 Do you see that language?

6 A. Yes, sir.

7 Q. Who determines how many drivers are
8 required by A.M. Castle?

9 A. A.M. Castle.

10 Q. Are all of the DC drivers that work for
11 A.M. Castle full time?

12 A. They are full-time employees.

13 Q. Do any of them drive for anyone other
14 than A.M. Castle?

15 A. No, they do not.

16 Q. Are any of them employed on a seasonal
17 basis?

18 A. Absolutely not.

19 Q. Are any of them employed on a temporary
20 basis?

21 A. No.

22 Q. Are any of them employed to simply
23 substitute for somebody who doesn't show up for
24 work?

25 A. No.

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1 Q. Are they employed --

2 (Cell phone ringing.)

3 MR. SWATSLER: I apologize, I meant to
4 turn this off. And now I will turn it off.

5 I never had that happen before. I'm
6 sorry.

7 THE EXAMINER: It's all right.

8 MR. SWATSLER: I'm sorry. Had I asked a
9 question?

10 (Record read back as requested.)

11 BY MR. SWATSLER:

12 Q. Are they employed to meet short-term
13 spikes in your workload?

14 A. (Shakes head.)

15 Q. "No?"

16 A. No.

17 Q. Does A.M. Castle consider the drivers,
18 the DC drivers that work for A.M. Castle, to be
19 permanently assigned to A.M. Castle?

20 A. They are permanent full-time employees.

21 Q. Is there any definite end date for the
22 period for which a driver will be driving for
23 A.M. Castle?

24 A. No, but it's indefinite.

25 Q. And you had mentioned some of these

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1 fellas had been driving for a long time for
2 A.M. Castle?

3 A. Quite a long time, yes, decades.

4 Q. In your time with A.M. Castle, have any
5 of the drivers not been full time?

6 A. No, full time since 2007.

7 Q. Do you believe it's in A.M. Castle's
8 interest that the drivers be assigned to you on a
9 permanent basis?

10 A. Absolutely.

11 Q. And why is that?

12 A. Again, as I mentioned earlier, they are
13 our connection with our customers. We would love
14 to see our trucks go out full every day and have
15 busy work every single day, but we understand
16 that we have other mechanisms or opportunities
17 for savings.

18 So as they're making their routes and
19 stops throughout the day, if they still have
20 hours to use within the day, we will find a way
21 to maximize that potential and to offset delivery
22 costs for mills.

23 Q. Has A.M. Castle ever requested that a
24 driver be assigned to it on anything other than a
25 permanent basis?

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1 A. No, sir.

2 Q. I'm going to hand you what we've marked
3 as Exhibit 2 and ask if you've seen that before?

4 A. Yes, sir.

5 Q. Can you tell us what it is?

6 A. It is the agreement between A.M. Castle,
7 DC Transportation, and the local Teamsters Unit
8 407.

9 Q. You anticipated my next question. So
10 the parties to that agreement include DC
11 Transportation Services, Inc., A.M. Castle, and
12 the Union?

13 A. Yes, sir.

14 Q. And on Page -- I think it's Page 23,
15 yeah, the last page of the document.

16 A. Yes, sir.

17 Q. On the lower right, is that your name
18 and signature?

19 A. Yes, it is. Well, that is my signature.

20 Q. Okay. And you, in fact, signed this
21 contract?

22 A. Yes, I did.

23 Q. And this contract was in effect for at
24 least most of the 2008, 2009 period in issue
25 here?

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- 1 A. Yes, it was.
- 2 Q. And was there CB in place before this
- 3 one --
- 4 A. Yes.
- 5 Q. -- was negotiated?
- 6 A. Yes.
- 7 Q. Was that collective bargaining agreement
- 8 also between A.M. Castle, DC Transportation, and
- 9 the Union?
- 10 A. Yes, sir.
- 11 Q. It is your understanding that
- 12 A.M. Castle is bound by this collective
- 13 bargaining agreement?
- 14 A. We are.
- 15 Q. And is it your understanding that it
- 16 sets forth the terms and conditions of employment
- 17 specific to the DC Transportation drivers that
- 18 are working for A.M. Castle?
- 19 A. It does.
- 20 Q. Are all of the DC Transportation drivers
- 21 that work for AMC full-time employees for
- 22 purposes of this collective bargaining agreement?
- 23 A. Yes, they are.
- 24 Q. Why does A.M. Castle use drivers that
- 25 are employed by DC Transportation rather than

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1 simply employing its own drivers?

2 A. Again, we are a metal service industry.
3 We're not a trucking company. So we do pull on
4 people such as DC and others who have the
5 expertise to secure knowledgeable, safe drivers,
6 able to maintain and keep the equipment that we
7 lease and be able to service those -- those
8 equipment for our daily use.

9 Q. Thank you.

10 Could you tell us a little bit about --
11 are there regulatory requirements relating to how
12 long your drivers can actually drive?

13 A. Yes. Again, the drivers under contract,
14 once they show up for work each day, are
15 guaranteed eight hours, but by law, they're only
16 allowed to be on the road or driving for 11 hours
17 per day max and have a 10-hour rest period
18 between that and their next shift.

19 Q. So you've talked a little bit about this
20 before, but if you have somebody who shows up for
21 work and their route is only a two-hour drive, do
22 they go home or what happens with them?

23 A. No, they do not go home. They will, at
24 a minimum, come back. We will then either have
25 other orders that are ready to be taken that day

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1 that can go out for a same-day delivery. That's
2 a little bit of a pique or interest for our
3 customers to try to oversell them. Typically,
4 deliveries go out the next day, but if somebody
5 is back early, we'll try to over-service our
6 customers. Then we will provide same-day service
7 to those accounts.

8 Next lever we'll pull is to do the
9 material pick-ups at the mills to try to offset
10 the additional cost of the delivery expense from
11 the mills.

12 Lastly, we'll have the cleanest,
13 brightest orange fleet around because they'll be
14 cleaning trucks, sweeping out trucks and making
15 sure they're maintaining the trucks for the
16 next-day deliveries.

17 Q. So is one of the things that gets
18 tracked the number of hours drivers are actually
19 driving?

20 A. Yeah. They need to keep a driver's log
21 with them in their trucks.

22 Q. Okay. But if that driving log reflects
23 that on a particular day a driver drove for two
24 hours, it wouldn't necessarily mean they work for
25 two hours?

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1 A. No. They would be doing work either in
2 the facility again, helping prepare the next day
3 loads, loading the trucks, tarping the trucks, or
4 cleaning the equipment.

5 Q. And is there a reason some drivers might
6 be driving -- have more driving hours than
7 others?

8 A. Absolutely. There are different regions
9 that we service. The Bedford Heights or
10 Cleveland facility has outreaches into Western
11 New York, Pennsylvania, West Virginia, and those
12 drivers will seem higher versus a local city
13 route to a lot of the local manufacturing within
14 five to ten miles of a branch.

15 There will be more actual stops of
16 driving down the road, having a 30-minute unload
17 at the facility, getting back in to drive five
18 more miles to have another 30-minute offload. So
19 it will seem unequal on the driving time.

20 Q. When we talked yesterday, you were
21 describing a bid process that drivers engage in
22 for routes, and I thought that was kind of
23 interesting.

24 Can you describe that a little bit for
25 the Board?

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1 A. Yeah. Again, this is a Teamsters
2 contract, so seniority, just like in most unions,
3 kind of gets to cherry pick the best of the best.

4 As seasoned drivers become weary of
5 where routes are, there is things that go into
6 their mindsets. Do they want to drive up in the
7 snowbelt of Buffalo and deal with the headaches
8 of driving; do they want to do a local route
9 where they're going to have 14 or 15 stops each
10 day to where they have to get off their trucks,
11 unload, pull down tarps, unstrap material; or do
12 they want that nice route where they have maybe
13 three or four stops that has two, three, four,
14 five hours worth of drive time in the balance.

15 So what we work with DC Transportation
16 is each of those regions or accounts are posted,
17 and the most senior person is allowed to bid on
18 each of those routes. And we allow Tom and DC
19 Transportation to make sure those drivers are set
20 up for those routes.

21 Q. So bid doesn't involve -- bid simply
22 involves exercising your seniority to get what
23 the drivers would think are the better runs?

24 A. Right.

25 Q. Involving more drive time?

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1 A. Exactly.

2 Q. Sounds like they would rather be driving
3 than unpacking?

4 A. Certain drivers like the interaction
5 with customers, so do have 10 or 14 stops a day
6 where they can say "Hi" and talk about the game
7 yesterday. Some people like that. Other people
8 like the quiet time of being in a cab driving.

9 So seniority has its privileges. So you
10 get to pick which one you want.

11 Q. And I had asked you a little bit about
12 this before, but you mentioned it again. So
13 these drivers have relationships with your
14 customers?

15 A. Absolutely. They know our customers and
16 our customers know them on a first-name basis
17 more than they know the hundred employees
18 processing the material in the plant and some of
19 our salespeople.

20 Q. Do those relationships go back a ways?

21 A. Yes. Before DC Transportation -- before
22 I joined Castle in 2007, Leaseway was in place
23 prior to 2000, and some of the drivers came over
24 from Leaseway into DC Transportation and have
25 been there since I've joined Castle. So we're

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1 talking decades.

2 MR. SWATSLER: Okay. If I could have
3 just one moment.

4 THE EXAMINER: Sure.

5 BY MR. SWATSLER:

6 Q. With respect to this bidding process you
7 were just describing for us, I don't want there
8 to be any confusion.

9 So that's a bidding process that occurs
10 among the drivers that are driving for
11 A.M. Castle?

12 A. It's a bid process among the full-time
13 drivers at Castle Metals to choose their routes
14 that they want.

15 Q. Does A.M. Castle ever use DC
16 Transportation drivers that aren't among the
17 drivers that are permanently assigned to
18 A.M. Castle?

19 A. No, we do not.

20 Q. And, again, do any of the drivers that
21 are permanently assigned to A.M. Castle ever
22 drive for anybody else?

23 A. Absolutely not.

24 MR. SWATSLER: Thank you. That's all I
25 have.

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1 THE EXAMINER: Thank you.

2 Cross-examination.

3 MS. BALDWIN: Yes. Thank you.

4 - - -

5 CROSS-EXAMINATION

6 BY MS. BALDWIN:

7 Q. Good morning. Thanks for being here.

8 A. Good morning. Thank you.

9 Q. Let's start with what's marked as
10 Exhibit 1, and in the statutory transcript, it's
11 at Page 46. It's the DC Transportation Services
12 Contract.

13 A. Okay.

14 Q. Will you agree that nowhere within this
15 contract it says that the workers are permanently
16 assigned?

17 A. The word permanent is not in that
18 contract.

19 Q. Correct. Yes. On the signature page of
20 that contract, which is -- it says Page 4 on the
21 upper corner, but it's really the third page in,
22 there must have been a cover sheet as well
23 originally, Mr. Fink signed for DC Transportation
24 Services, and on behalf of A.M. Castle, H.C.
25 Winters signed that.

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1 Can you tell us who that is?

2 A. I'm not aware of that name. I
3 apologize. That was seven years prior to me
4 joining Castle.

5 Q. The title is identified as the Vice
6 President of Operations. Is that your current
7 title?

8 A. Yes, ma'am.

9 Q. So if you were signing this contract
10 today, it would be your signature that would go
11 there?

12 A. Yes, ma'am.

13 Q. Is this the current contract?

14 A. Yes, ma'am.

15 Q. So there is no new contract?

16 A. No, ma'am.

17 Q. All right. Have you had the opportunity
18 to revise this contract?

19 A. There has been no need since I've been
20 with Castle in 2007.

21 Q. Okay. All right. Sorry. If it feels
22 scattered, it's because I end up with notes in
23 like three different places.

24 A. That's fine.

25 Q. And I want to make sure I cover all of

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1 my bases, so...

2 Has A.M. Castle ever hired drivers to
3 your knowledge?

4 A. Outside of DC Transportation?

5 Q. Well, before the relationship with DC
6 Transportation, were they ever in-house employees
7 doing the drives?

8 A. No, ma'am.

9 Q. No. And I believe you mentioned
10 Leaseway?

11 A. Leaseway was the --

12 Q. Predecessor perhaps?

13 A. The predecessor to DC in 2000.

14 Q. -ish?

15 A. Yeah. I believe it was early 2000 when
16 they rolled from Leaseway into DC Transportation.

17 Q. Okay. All right. Who actually
18 hires -- let me ask that a different way.

19 Where do the folks from DC
20 Transportation come from who get assigned to your
21 jobs?

22 A. DC Transportation does the hiring and
23 assigning.

24 Q. Okay. And you say there are 11 or 12
25 regular drivers?

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1 A. Yes, ma'am.

2 Q. Is that in just the Ohio area?

3 A. It's the Cleveland facility, DC
4 Transportation.

5 Q. Cleveland facility. So are there folks
6 who drive to other states besides Ohio?

7 A. At a very high level. 60 percent of the
8 workload out of the Cleveland facility is done by
9 DC Transportation because it's close enough.
10 Since Cleveland is designated as a hub facility
11 for Castle Metals, we do feed our smaller
12 districts in Charlotte, Birmingham, New England.
13 Now, we use a common carrier or LTL outside of DC
14 Transportation. And then for the light stuff, we
15 use Fed-Ex, UPS.

16 Q. Okay. Do any of the drivers that come
17 from DC Transportation come from places like
18 Pennsylvania or any of the other surrounding
19 states?

20 A. We do have regions in Pennsylvania and
21 New York, yes.

22 Q. For -- when you use the phrase that
23 they're full-time employees, what do you mean by
24 that?

25 A. The way that my team when I ran the

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1 Cleveland facility, and my team still views it,
2 with the contract that we have, since they --
3 when they show up to work, they're guaranteed
4 eight hours of pay, they're on the hook for 40
5 hours worth of pay for the week, so they are
6 full-time assigned Castle employees. And as I
7 mentioned before, we will use them to do work for
8 Castle.

9 Q. Okay. Thank you.

10 A. Um-hmm.

11 Q. So to restate that, they're full time
12 for you because once they get assigned the job,
13 given the job by DC Transportation to come over
14 to A.M. Castle, the collective bargaining
15 agreement says they're going to be guaranteed a
16 minimum of eight hours a day?

17 A. Yes, ma'am.

18 Q. Is that what you're --

19 A. Yeah.

20 Q. Okay. But you're not actually paying
21 them, it's DC Transportation that's writing the
22 paychecks?

23 A. Yes, ma'am.

24 Q. Cutting the paychecks?

25 A. Yes.

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1 Q. Okay. Which means technically they're
2 the full-time employees of DC Transportation?

3 A. Yes.

4 Q. Okay. All right. On the collective
5 bargaining agreement, you're -- and that's
6 Exhibit 2, it's -- this is in the statutory
7 transcript but it's buried in one of those
8 folders, so it's a link-through. It's referenced
9 on Page 59 of the statutory transcript in the
10 audit remarks, so it's going to be on the disk.

11 Your signature, you pointed it out, it's
12 there. In what capacity are you signing this as?

13 A. This -- what page is my signature? I'm
14 sorry.

15 Q. It's Page 23. It's the last page of
16 that particular exhibit.

17 A. Since that was my signature from 2008, I
18 would have been the operations manager for the
19 Bedford Heights or Cleveland facility.

20 Q. Who is the person above it; do you know?

21 A. Steve Vitt was the local quality manager
22 at the time. He was the one that sat at the
23 bargaining table and negotiated this contract
24 with the Teamsters. I joined three days prior to
25 signing this.

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1 Q. Okay.

2 A. So the contract -- the agreement was
3 reached, but the paperwork and documentation
4 followed up after I joined and signed on my third
5 day.

6 Q. Okay. Just connecting all of the dots.

7 A. No, no, you're fine.

8 Q. This collective bargaining agreement
9 provides provisions for casual and temporary
10 employees; does it not?

11 A. Casual employees, yes.

12 Q. Casual employees, all right. What makes
13 one a casual employee?

14 A. Casual employee was a term used through
15 the -- carried over from the Teamsters as to
16 reflect the junior employee of the full-time
17 employees. So, again, we have a pool of
18 full-time drivers for Castle Metal that are
19 assigned to us.

20 A casual driver is the one who comes in
21 and does the odd jobs at the low seniority
22 position, so he may have to do a couple of
23 different city runs, still have to go to the
24 mills and make some pick-ups, but his benefits,
25 his pay is exactly the same as the remainder of

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1 the senior drivers. He's still guaranteed the
2 eight hours, he's full time, he's 40 hours of
3 work.

4 Q. That's not what it says on Page 17. I'm
5 sorry. You might want to flip to that, because
6 on Page 17 at the bottom paragraph --

7 A. Um-hmm.

8 Q. -- it says, "All casual or temporary
9 drivers will be paid for actual hours worked only
10 on any assigned work day. There shall be no
11 minimum guarantee for casual drivers."

12 A. Again, we -- this language was -- we've
13 never, since I've been with Castle in 2007, had a
14 temporary driver.

15 Q. Okay.

16 A. So the language may be carried many
17 contracts over, which -- it is not the practice
18 at Castle of the temporary drivers.

19 Q. Okay. That said, you agree that's what
20 the contract says?

21 A. Right.

22 Q. Correct.

23 A. The contract uses those words, yes.

24 Q. Okay. All right. If the folks who were
25 bidding for the jobs who are at the bottom of the

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1 seniority pile, so the less-senior members, it
2 means they're not getting the plum jobs, whatever
3 plum is, given individual differences. It also
4 presumably means the more senior drivers are
5 taking the more hours so that the less senior
6 drivers have less to choose from. Is that true?

7 A. No, that's not true. Again, the routes
8 are designed to try to balance the workload
9 throughout, but, again, drivers that choose city
10 routes over interstate routes will have more
11 difficulties or, again, the --

12 Q. Differences?

13 A. -- differences, and, again, it's --

14 Q. Right.

15 A. -- different things for different folks.

16 Q. Can you -- do you know which job was at
17 the bottom of the pile that was given to a
18 driver?

19 A. No.

20 Q. Okay.

21 A. I don't know.

22 Q. All right. And there are no time
23 differences between the jobs in terms of how much
24 of a commitment is required from one?

25 A. No.

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1 Q. If -- are there people who do not get
2 their bids?

3 A. Oh, absolutely not.

4 Q. Absolutely not. Someone has an option
5 to put a bid in, correct?

6 A. If a route -- again, we -- Castle Metals
7 takes a look at where our customer base is by zip
8 codes, and we draw little circles around each of
9 those zip codes to make sure the trucks can get
10 to their regions safely, have enough time to do X
11 number of stops and return within that 11-hour
12 window that I mentioned earlier.

13 As long as those requirements are being
14 met, that's how regions are designed. And then
15 it comes back to when I mentioned earlier where
16 senior drivers then pick which one of those
17 regions they would prefer. And, again, the bid
18 process, from my recollection, happens every 18
19 to 24 months. This isn't a daily bid.

20 Q. Right. I think the contract says twice
21 a year.

22 A. This isn't a come in every day and
23 choose their workload. If somebody decides to
24 leave DC Transportation that was senior, then we
25 rebid and allow the next most senior employee to

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1 choose those regions.

2 Q. So if someone chooses not to put in a
3 bid, what, in December, then they can go choose
4 to work somewhere else as well?

5 A. Not outside of the A.M. Castle, no.

6 Q. Okay. That confuses me. Because then
7 I've chosen not to work with A.M. Castle if I
8 don't put in my bid?

9 A. Again, as directed from us to DC
10 Transportation, we have X number of regions that
11 need to be covered. If drivers do not sign up
12 for a particular region, one will be assigned to
13 them. Again, seniority is only being invoked to
14 have the cherry pick of the job. Again, the pool
15 of these 11 drivers that we have, the 11 drivers
16 will be used.

17 Q. Okay. And that's when the drivers need
18 to call in and see what the assignment would be
19 for any given day?

20 A. Yes.

21 Q. And that's where we kick into the
22 Page 17 provisions again, where the drivers are
23 allowed to come in and then figure out what the
24 day's assignment will be?

25 A. They are required to show up each day.

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1 Predicated on the orders that Castle took the
2 prior day will deem the route or number of stops
3 they're going to have that next day.

4 Q. Okay. So each day every driver has to
5 show up. It's not a call in to find out
6 if -- because the way I'm reading this -- again,
7 this final paragraph on Page 17, "Drivers called
8 to work."

9 Well, okay.

10 A. "Called to work" for us is show up at
11 the plant.

12 Q. Okay. So they get two hours to come
13 in --

14 A. (Nods head.)

15 Q. -- and get situated, I guess. And then
16 if you don't come in, you're not going to get any
17 pay, right? You got to be in the building having
18 been -- you got to be in the building to find out
19 what the work assignment will be?

20 A. That's the way, yes.

21 Q. Correct. If they're put to work,
22 they'll get a minimum of six hours?

23 A. It's not an if. It's when they get put
24 to work.

25 Q. Okay. Again, looking at the contract --

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1 A. Ma'am, I understand what the contract
2 says. I'm telling you from my seven years with
3 Castle --

4 Q. I understand.

5 A. -- it's when they're put to work, not
6 if.

7 Q. But, again, working the actual contract
8 here, if put to work, then there are
9 contingencies put into place.

10 A. I see the word "if" in the contract. In
11 seven years, since 2007, the word if has not
12 been. It's when.

13 Q. Okay. Can you tell me about the
14 uniforms?

15 A. They're just standard, I think through
16 the last four, five, six years. We rent them
17 through like Cintas or a general uniform company.
18 But they do have the Castle Metals logo on them.

19 Q. You're providing them for DC
20 Transportation who provides them to the drivers?

21 A. No, they're an extension of the contract
22 that Castle has with Cintas or whoever the
23 uniform provider is in Cleveland at that time.

24 Q. Okay. So the uniforms then go to the
25 drivers and stay with the drivers?

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1 A. We have a locker room for shared -- for
2 the shared service. They can come in and change
3 and get cleaned up before they go home, so they
4 have their locker they can use and get their
5 uniforms out of our facility.

6 Q. Okay. Now, I need to put together
7 something. So if they go to DC Transportation to
8 get their driving route, then where do they go?
9 Do they go to a warehouse attached to DC
10 Transportation to get the truck and go? How do
11 they get to --

12 A. I don't understand your question.

13 Q. How do they get to this locker room?

14 A. They show up to get their work for the
15 day.

16 Q. Through DC Transportation or at
17 A.M. Castle? Yeah, I guess I'm confused too.

18 A. I don't know what you're asking, I
19 apologize.

20 Q. Because I -- I thought when they were
21 coming in for work, they were going over to DC
22 Transportation to get their job paper and then
23 they'd have to go someplace to go get the truck.

24 A. No, ma'am, they come to our facility.

25 Q. Okay. Thank you. Because -- that

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1 helps. All right.

2 You provided an affidavit -- well, in
3 the statutory transcript at Page 15, there is an
4 affidavit from you, and you probably don't have a
5 copy of the statutory transcript.

6 A. I do not.

7 Q. So I will bring this up to you. This is
8 a record of the proceedings, the whole thing,
9 that were held before the Tax Commissioner.

10 A. Okay.

11 Q. So this should look familiar.

12 A. Yes, ma'am.

13 Q. Okay. In this affidavit, you spoke to
14 the fact that the agreement has been in existence
15 for longer than a year, correct?

16 A. Yes, ma'am.

17 Q. You've not said anything about the fact
18 that the folks who drive are permanently assigned
19 through the contract, correct?

20 MR. SWATSLER: In that affidavit, you're
21 asking?

22 BY MS. BALDWIN:

23 Q. In that affidavit.

24 A. In the affidavit, no.

25 Q. Thank you. We're done with that.

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1 A. Okay.

2 Q. And so are there always only 11 or 12
3 folks who come from DC Transportation to
4 A.M. Castle? Does that number vary?

5 A. It does not vary day to day or week to
6 week. Over the last seven years of the business
7 activity, we have gone to DC and asked for people
8 to either be laid off with recall rights per the
9 CBA; but, again, we've always maintained
10 full-time drivers assigned to Castle.

11 Q. And there are no number of employees
12 that work, say, between 11 and 17 hours a week or
13 drivers that work between 11 and 17 hours a week?

14 A. Could you clarify the word "work"?

15 Q. Driving.

16 A. If you go by drive logs only, and
17 they're doing city routes, their drive time may
18 equate to the numbers you just quoted. They're
19 going to get paid eight hours a day, 40 hours of
20 work, but their drive log -- I want to make sure
21 we're --

22 Q. Right. Right. How about not --

23 MR. SWATSLER: Can I take one of those?

24 MS. BALDWIN: Absolutely, because that's
25 for you. Absolutely.

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1 MR. SWATSLER: I thought it might be.

2 BY MS. BALDWIN:

3 Q. How about not actual driving but under
4 the supervision and control of A.M. Castle?

5 A. Restate the question. I apologize.

6 Q. Are there any folks who come from DC
7 Transportation who are under the supervision and
8 control of A.M. Castle for say 11 to 17 hours a
9 week?

10 A. No, they're always doing routes or doing
11 something with A.M. Castle.

12 Q. Okay. I have one last question.

13 A. Um-hmm.

14 Q. You used an abbreviation early on called
15 OEM?

16 A. Yes.

17 Q. What does that mean?

18 A. It's just the first tier suppliers like
19 a Ford or a Chevy versus the Textrons and people
20 that supply to those first tier -- the main
21 manufacturers.

22 Q. So isn't it an acronym?

23 A. Original equipment manufacturer.

24 Q. There we go. That's all I needed to
25 hear.

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1 MS. BALDWIN: Thank you. I'm done.

2 Thank you.

3 THE WITNESS: Yes, ma'am. Thank you.

4 THE EXAMINER: Thank you. Any redirect?

5 MR. SWATSLER: Yeah, I have a little bit
6 of follow-up.

7

- - -

8

REDIRECT EXAMINATION

9

BY MR. SWATSLER:

10 Q. You were looking, I think, at the -- you
11 were asked some questions about the collective
12 bargaining agreement and that reference in there
13 to casual employees. I don't think it matters
14 for purposes of the case, frankly; but just so
15 the record is clear, in your time with
16 A.M. Castle, have you ever had anyone who you
17 understood to be a casual employee as set forth
18 in the collective bargaining agreement?

19 A. No, absolutely not.

20 Q. So I wanted to clarify a few other
21 things. Where is DC Transportation physically
22 located?

23 A. We deal with Tom from his home office.
24 They are not on site at 26800.

25 Q. That's what I want to get to.

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1 A. They are not in the facility.

2 Q. When these guys show up to work every
3 day, they show up at A.M. Castle to do their job?

4 A. That's where they show up.

5 Q. They don't go to work at DC
6 Transportation and then are sent over to
7 A.M. Castle?

8 A. If we have a disciplinary counsel, we
9 show DC Transportation, or if someone shows up
10 late to work or we have issues with deliveries
11 not being made, we call DC Transportation.

12 Again, as I mentioned earlier, not
13 knowing who our customers are going to be the
14 next day or what the demand will be the next day,
15 we have software, Oracle, that will take customer
16 orders and create routes based on the best ways
17 to efficiently drive and make sure we secure
18 those loads.

19 And when the drivers show up at
20 A.M. Castle the next morning, we have taken those
21 routes and have them positioned by the regions I
22 mentioned earlier for the drivers.

23 Q. So as far as you know, do those guys
24 ever go to a DC Transportation physical facility?

25 A. No, sir.

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1 Q. I'm saying "guys." I think the
2 information I've seen is all men, but if it's
3 not, I apologize for your lady drivers.

4 Could I ask you to take a quick look at
5 Page 14 in that statutory transcript document
6 which is some information that had been provided
7 to the department previously.

8 A. Okay.

9 Q. Have you seen this before?

10 A. I have.

11 Q. So in the column that says, "Average
12 Hours Per Week, 2008."

13 A. Yes.

14 Q. And then there is a column that says,
15 "Average Hours Per Week, 2009."

16 A. Yes.

17 Q. Do you know what that's referring to?

18 A. Those are referring to actual drive
19 times, not work time or pay time.

20 Q. So you've explained to us if somebody
21 only has a couple hours of drive time, you put
22 them to work doing other stuff?

23 A. Agreed.

24 Q. You're going to pay for an eight-hour
25 day, you're going to try to get eight hours of

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1 work out of your drivers?

2 A. Agreed.

3 Q. And you're going pay for a 40-hour week,
4 so you try to get 40 hours a week out of these
5 folks?

6 A. We try to build a relationship with our
7 customer base that when our drivers hit their
8 doors for deliveries, we try to stay within a
9 30-minute window. Again, with snow, Northeast
10 Ohio weather, sometimes roads play havoc.
11 Sometimes we get people who are having a lunch
12 break, you don't get unloaded in a 30-minute
13 window.

14 So when you look at this type of
15 spreadsheet, it reflects on the time behind the
16 actual wheel of the truck, not the time waiting
17 at docks, not the time unloading and loading
18 trucks at the facility or the cleanliness of the
19 truck at the facility.

20 MR. SWATSLER: If I could have one
21 second.

22 BY MR. SWATSLER:

23 Q. So if -- obviously, at some point,
24 A.M. Castle made a decision to outsource the
25 driving function, right?

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1 A. Yes, sir.

2 Q. And so the folks that drive for
3 A.M. Castle are employed by DC Transportation?

4 A. They are.

5 Q. If they work directly for A.M. Castle,
6 would you deal with them any differently?

7 A. I'm sorry. Say that again.

8 Q. If the drivers were directly employed by
9 A.M. Castle, would the way that you handle them,
10 manage them, be significantly different?

11 A. Handle them, manage them, no. There
12 would not be -- I take issue with the show up to
13 work, get paid for eight-hour clause in the
14 contract, but...

15 Q. So you would try to negotiate a better
16 contract?

17 A. I would try to negotiate a better
18 contract. That's all.

19 Q. I think that would probably be a good
20 idea.

21 A. Just the way I am.

22 MR. SWATSLER: Thank you. That's all I
23 have.

24 THE EXAMINER: Thank you, Mr. Knopp.
25 You may step down.

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1 THE WITNESS: What would you like me to
2 do with --

3 THE EXAMINER: Let's just take a quick
4 five-minute break before the next witness. Just
5 leave them up there.

6 (Witness excused.)

7 (Recess taken.)

8 THE EXAMINER: And your next witness.

9 MR. SWATSLER: Thomas Fink.

10 MS. BALDWIN: And I think we're okay
11 with the door open since all of the other stuff
12 has finished, I think.

13 THE EXAMINER: Yeah.

14 MS. BALDWIN: Unless somebody starts
15 yelling up and down the hall.

16 THE EXAMINER: We'll wave at you. Thank
17 you.

18 Would you raise your right hand, please?

19 (Witness placed under oath.)

20 THE EXAMINER: Thank you. Please be
21 seated.

22 - - -

23

24

25

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1 THOMAS M. FINK
2 of lawful age, being first duly placed under oath,
3 as prescribed by law, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. SWATSLER:

7 Q. Good morning.
8 A. Good morning.
9 Q. Could you state your name, please?
10 A. Yes, it's Thomas M. Fink, F-i-n-k.
11 Q. What is your address, Mr. Fink?
12 A. My home address?
13 Q. Yes.
14 A. 10129 Lynn Drive, spelled L-y-n-n, North
15 Royalton, Ohio 44133.
16 Q. Where do you work, Mr. Fink?
17 A. I work at DC Transportation Services.
18 Q. And what is your position?
19 A. I'm the president of the company.
20 Q. And do you also own the company?
21 A. Yes, I do.
22 Q. Were you the president of the company in
23 2009 and -- 2009?
24 A. Yes, I was.
25 Q. Okay. What does DC Transportation do?

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1 A. We are a full-time lease provider for
2 transportation personnel.

3 Q. And do you know about how many employees
4 you have?

5 A. Approximately -- I'm going to say around
6 110 people.

7 Q. And is one of your customers or clients
8 A.M. Castle?

9 A. Yes, they are.

10 Q. When did you join DC Transportation?

11 A. I joined DC in December 1980.

12 Q. 1980?

13 A. Yes, sir.

14 Q. And is DC Transportation a family
15 business?

16 A. Yes, it was.

17 Q. And before you owned it, who owned the
18 business?

19 A. It was my father.

20 Q. Could you tell us a little bit about
21 your educational background?

22 A. I attended George Washington University.
23 I have a degree in science from there. Graduated
24 in 1976. I had to think about it.

25 Q. What did you do after you graduated from

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1 college?

2 A. I was still in the United States Navy at
3 the time.

4 Q. Okay. What did you do in the Navy?

5 A. I was a hospital corpsman.

6 Q. How long were you in the Navy?

7 A. Eight years.

8 Q. And when did you leave the Navy?

9 A. December of 1980.

10 Q. Do you know for how long DC
11 Transportation has been providing drivers for
12 A.M. Castle?

13 A. I believe it was May or June of 2000 is
14 when we first started providing.

15 Q. And so if you heard the prior testimony,
16 you have more than 11 or 12 employees, so you
17 obviously provide drivers for other companies as
18 well?

19 A. Correct.

20 Q. The group of folks that you employ that
21 drive for A.M. Castle, talk about that group for
22 a minute.

23 A. Yes.

24 Q. First of all, do you know about how many
25 people that is?

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1 A. It's right at this current point 11
2 people. It may have been as high as 12 at one
3 time, 12 or 13.

4 Q. So 2008, 2009 timeframe, it was probably
5 11 or 12 people as well?

6 A. Correct. It doesn't fluctuate much.

7 Q. Are those folks that drive for
8 A.M. Castle assigned to A.M. Castle on a
9 permanent basis?

10 A. Yes, sir.

11 Q. Is there any end date for the time that
12 a driver that you employ will be driving for
13 A.M. Castle?

14 A. No. They are long-term, full-time
15 employees subject to the collective bargaining
16 agreement with the union.

17 Q. Am I correct that if over the long term
18 A.M. Castle's business needs won't support the
19 number of drivers they have, they can have a
20 driver removed from their group of drivers?

21 A. That's correct. But we would still have
22 to go through the procedures of the collective
23 bargaining agreement.

24 Q. Do you know during the 2008, 2009
25 timeframe whether any drivers were removed from

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1 the A.M. Castle account?

2 A. I don't believe there were any removed
3 then.

4 Q. Does -- are any of the drivers that DC
5 Transportation employs that drive for A.M. Castle
6 seasonal?

7 A. No.

8 Q. Are they all full time?

9 A. Yes, sir.

10 Q. Do they drive for anybody other than
11 A.M. Castle?

12 A. No, they are permanently assigned to
13 A.M. Castle Metals.

14 Q. Are there drivers that aren't
15 permanently assigned to A.M. Castle that drive
16 for A.M. Castle?

17 A. No.

18 Q. Are there ever times when drivers are
19 put on the A.M. Castle account to meet short-term
20 workload needs at A.M. Castle?

21 A. We may have had a brief situation where
22 I actually used one of my office employees, which
23 he was also paid as full wage at our office, but
24 he would take out a run for Castle Metal to
25 accommodate an illness.

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1 Q. Would that be an exceptional case?

2 A. That would be an exception. I don't
3 believe it happened more than a few times.

4 Q. Over what period of time?

5 A. Since -- well, at least 2007, 2014 era.

6 Q. Are any of the drivers that are assigned
7 to A.M. Castle substitute drivers?

8 A. I don't understand substitute drivers.

9 Q. They only go drive for A.M. Castle when
10 A.M. Castle has a particular need for a
11 substitute because somebody didn't show up for
12 work or something like that?

13 A. Not really a substitute. Like I said,
14 that rare occasion where we've had a person
15 become sick at the last moment, I would send over
16 an office employee to handle it.

17 Q. Are you familiar with the collective
18 bargaining agreement under which drivers work for
19 A.M. Castle?

20 A. Yes, I am.

21 Q. I think there may be a copy of that in
22 front of you as Exhibit 2.

23 A. Yes.

24 Q. And is that your signature on the
25 signature page of that document? I think it's

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1 Page 23. I think it's the last page.

2 A. Yes, it is.

3 Q. And does that set forth the terms and
4 conditions of employment for DC Transportation
5 drivers that drive for A.M. Castle?

6 A. Yes, it does.

7 Q. That's an agreement that was entered
8 into by DC Transportation, A.M. Castle, and the
9 Union?

10 A. Yes.

11 Q. Do you know -- strike that.

12 Let me start over. You were sitting in
13 the room so I think you heard Mr. Knopp testify
14 that his understanding is if a driver shows up
15 for work, they get paid for the day. Is that
16 your understanding as well?

17 A. That's correct.

18 Q. And if they show up for a day, they also
19 get paid for the week?

20 A. Yes.

21 Q. The -- that contract has a reference in
22 it to casual employees, the collective bargaining
23 agreement. Do you recall that?

24 A. Yes.

25 Q. Do you know whether any of the drivers

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1 assigned to A.M. Castle have ever been casual
2 employees?

3 A. No. I don't have casual employees, so I
4 can kind of clarify it with that contract.

5 Q. First of all, let me get your testimony
6 straight. So when you say you don't have casual
7 employees, you don't believe any of the folks
8 that you employ that work for A.M. Castle that
9 work for anyone else are casual employees under
10 that collective bargaining agreement?

11 A. No. The very bottom man on that bid
12 sheet, he actually has a bid, but it's not a
13 casual bid, it's just a bid that would move him
14 from different positions within the company,
15 within A.M. Castle Metal, so he's not really a
16 casual individual, he's still a full-time
17 employee. We'd never use casual employees.

18 Q. Okay. Sorry. I may have asked this
19 before. Do any of the drivers that DC
20 Transportation employs that are assigned to
21 A.M. Castle drive for anybody other than
22 A.M. Castle?

23 A. No.

24 Q. And has that always been the case as far
25 as you understand?

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1 A. Yes, as far as --

2 Q. And that was the case in 2008 and 2009?

3 A. Yes, sir.

4 Q. When these drivers go to work in the
5 morning, where do they go?

6 A. Directly to A.M. Castle Metal's facility
7 in Bedford Heights.

8 MR. SWATSLER: I'm sorry. I just need
9 one second here.

10 BY MR. SWATSLER:

11 Q. Do you recall, Mr. Fink, that at some
12 point we asked you if you could identify every
13 instance where somebody did some driving for
14 A.M. Castle that wasn't part of the group that
15 was permanently assigned?

16 A. Yes.

17 Q. And I'm going to hand you a copy of an
18 affidavit that you signed.

19 MR. SWATSLER: I think, Ms. Baldwin, you
20 have this.

21 MS. BALDWIN: Yeah, this came attached
22 to an e-mail. It's not in here, right?

23 MR. ALLAN: You should have it.

24 MS. BALDWIN: I should have it, yes.
25 It's in here. Okay.

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1 BY MR. SWATSLER:

2 Q. I don't know that we're going to need to
3 mark this, because I really just sort of want to
4 refresh your recollection for the work that you
5 did. Take a look at that for a moment.

6 MS. BALDWIN: If I could remember which
7 e-mail it was attached to.

8 MR. ALLAN: Yeah.

9 MS. BALDWIN: I don't think I have a
10 copy of it down here.

11 MR. ALLAN: You can have that copy.

12 MS. BALDWIN: Okay. Thank you.

13 THE WITNESS: Yes, sir.

14 BY MR. SWATSLER:

15 Q. You've had a chance to look at that?

16 A. Yes.

17 Q. And I thought that might be useful to
18 you to refresh your recollection in terms of
19 running this down, because I believe that we had
20 asked you or somebody at Castle had asked you to
21 figure out if there were any instances where
22 somebody who wasn't part of the permanent
23 assignment was sent out on an A.M. Castle run
24 essentially. Do you recall that?

25 A. Yes.

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1 Q. And could you tell us how many times you
2 were able to determine that occurred over the
3 2008, 2009 timeframe?

4 A. Approximately about -- what do we have,
5 about 15 days and a week.

6 Q. Okay. And do you know how many -- how
7 many of those situations existed?

8 A. Oh, that's listed on here?

9 Q. Yeah, yeah.

10 A. Well, each one of these instances
11 were -- like I mentioned before, Leigh Cromleigh
12 was one of the individuals that worked in my
13 office as a manager. He worked over there for
14 three separate days. The circumstances are
15 generally somebody called in sick at the last
16 minute and I needed to get a person over there.
17 I still consider these individuals full-time
18 individuals with me.

19 Q. Right. But they're not part of the
20 permanent A.M. Castle assignment?

21 A. No, they are not.

22 Q. And there are four of those drivers in
23 particular that on -- it looks like with respect
24 to one of those drivers, there were three
25 occasions; with respect to one of those drivers,

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1 there were six occasions; with respect to one of
2 those drivers, there were two occasions; and with
3 respect to one of those drivers, there was one
4 occasion where they were sent out on an
5 A.M. Castle run?

6 A. Right.

7 Q. Not part of the group of 11 or 12
8 permanently assigned?

9 A. That's correct.

10 Q. In terms of the total amount of driving
11 that DC Transportation drivers did for
12 A.M. Castle, would it be fair to characterize
13 these isolated incidents as de minimus?

14 A. I would say yes.

15 MS. BALDWIN: Thank you.

16 MR. SWATSLER: That's all I have for
17 now. Thank you.

18 Thank you, Mr. Fink.

19 THE EXAMINER: Thank you.

20 Cross-examination.

21 - - -

22 CROSS-EXAMINATION

23 BY MS. BALDWIN:

24 Q. A couple questions.

25 How many clients does DC Transportation

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1 have besides A.M. Castle?

2 A. Currently?

3 Q. Sure.

4 A. I want to say around eight, nine
5 clients.

6 Q. Okay. Are they all other clients that
7 are -- are all of those clients other entities
8 that you provide transportation services for, so
9 you present drivers to them?

10 A. Not necessarily drivers. They may also
11 be dispatchers, billing clerks, route planners.

12 Q. Okay. So some sort of
13 transportation-related as opposed to office help?

14 A. Correct.

15 Q. Okay. Do you provide any of the
16 equipment that these folks need to perform the
17 jobs?

18 A. No, we don't provide the equipment.

19 Q. Okay. And the paychecks that these
20 folks receive all comes from DC Transportation?

21 A. Correct.

22 Q. Do -- and you engage in the hiring of
23 all of the folks that would ultimately go out to
24 these other clients?

25 A. Yes.

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1 Q. Do you provide any benefits?

2 A. Yes.

3 Q. What kind?

4 A. We either have a 401(k) program. We
5 have full health insurance benefits. We also
6 have, under A.M. Castle 's group, the collective
7 bargaining agreement which is subject to the
8 Central States Health, Welfare and Pension
9 Program.

10 Q. So you pay into the accounts for all of
11 those folks?

12 A. Yes, we do.

13 Q. Are there any other entities that you
14 have collective bargaining agreements with?

15 A. No.

16 Q. Just A.M. Castle?

17 A. Yes.

18 Q. All right. What does a driver do if
19 they're out -- so if this person regularly works
20 with A.M. Castle and something happens, let's say
21 2008 happens and the economy tanks, although I
22 don't know really what happened to the steel
23 industry then either. I'm guessing.

24 MR. SWATSLER: I'm sure it wasn't
25 pretty.

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1 MS. BALDWIN: Yeah.

2 BY MS. BALDWIN:

3 Q. And so this person's hours get reduced.
4 What happens to that person? Do their hours just
5 get reduced and they go home and wait?

6 A. No, we've never had that situation
7 occur. It doesn't happen with us.

8 Q. So no one has ever been laid off or had
9 a reduction in hours?

10 A. Well, when you say reduction in hours,
11 they're still getting eight hours worth of pay.
12 They may not get overtime if they're in the
13 management side of dispatchers, things of that
14 nature.

15 As far as the drivers go, all of our
16 drivers have still worked the full minimums under
17 the law.

18 Q. So even, for instance, the 2008 time
19 period when everything was crashing and auto
20 manufacturers were trying to reduce as much of
21 their staff as they could, I know, for example,
22 nobody had any reduction in hours through DC
23 Transportation?

24 A. Not that I'm aware of, ma'am.

25 Q. I'm in the wrong line of business. All

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1 right. I'm wondering if you could elaborate a
2 little on the discussion that you had earlier
3 about the casual employee because I don't think I
4 understood that.

5 You said, and I'm going to paraphrase
6 this terribly, that the low bid person who might
7 fall within that casual employee category moves
8 around within A.M. Castle.

9 A. Well, a casual -- it's not really a
10 casual individual. They're still on the bid
11 sheet, which is -- the bids are posted with truck
12 drivers Local 407 out of Cleveland, so they have
13 the full rights and benefits under the collective
14 bargaining agreement.

15 Like Ron Knopp indicated previously, you
16 have your highest bid man who gets to choose, for
17 whatever reason, his likings, specific runs.

18 Q. Right.

19 A. Now, if you get to the bottom of the
20 man, he may be doing mill runs which are mill
21 pick-ups. There is a cost savings to Castle
22 Metals in that regard. He may have to take a
23 driver that's on vacation, take his run that's
24 out of Cleveland, or he may have to take the run
25 out of Angola, Indiana.

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1 Q. So he's not necessarily getting the runs
2 that he bid for, but he's working?

3 A. No. That is a bid position, but
4 unfortunately, because he's the least senior man,
5 he has to take whatever is assigned to him. To
6 give you another example, if a driver retires on
7 the seniority list --

8 Q. Um-hmm.

9 A. -- that driver would move up on the bid
10 sheet, and then another person would be hired
11 underneath them.

12 Q. Right. Everybody moves up one. That
13 makes sense. But that's not a casual employee
14 within the meaning of the contract, I don't
15 think.

16 A. Which contract are you referring to?

17 Q. The collective bargaining agreement
18 contract, that seems to have a different
19 definition.

20 A. There is a different definition there,
21 and the best way I can explain it is that when we
22 took over this contract, we assumed the
23 collective bargaining agreement, and there is
24 certain language I certainly wouldn't have had in
25 that contract.

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1 Q. No.

2 A. In order to move that language out of
3 the contract, like anybody knows, with a union
4 negotiation, you have to give something to take
5 something away.

6 Q. Right.

7 A. And that's the reason why that language
8 is there. We've never used casuals at Castle --

9 Q. But the contingency is there.

10 A. -- or anywhere else.

11 Q. Thank you. We've seen the affidavit,
12 and do you have a copy of the affidavit probably?
13 No?

14 THE EXAMINER: No.

15 MS. BALDWIN: All right. I guess we'll
16 figure that out at the end.

17 BY MS. BALDWIN:

18 Q. I would like to look at that in
19 conjunction with Page 14 of the statutory
20 transcript which is that -- that one, yes, it has
21 the staple on the upper left (indicating). And
22 Page 14 represents a document that was given to
23 the Tax Commissioner during the initial process
24 of this case.

25 And it identifies about 20 individuals

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1 who would be DC Transportation employees who
2 drive for A.M. Castle; is that correct?

3 A. I did not make up this document.

4 Q. Do the names look familiar to you?

5 A. Some of them do. Others don't.

6 Q. Okay. One of the -- there are some
7 names that show up on the affidavit and on this
8 list. Cromleigh shows up on the list about five
9 up from the bottom. Would that be Leigh
10 Cromleigh who is referenced in your affidavit?

11 A. Yes, ma'am.

12 Q. And it says here in this third column
13 that he worked for eight years and that he's no
14 longer driving for A.M. Castle, correct?

15 A. He was an office manager at my office,
16 and I can't testify to the years. I don't know
17 where that came from.

18 Q. Okay. And I'm wondering if you could
19 tell us about Michael Hoag. He's the first
20 driver listed on this list.

21 A. Again, ma'am, without -- off the top of
22 my head, I can't think of who he is.

23 Q. Okay. With a hundred folks working for
24 you. But on this affidavit, he's listed as the
25 third person.

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1 A. Okay.

2 Q. Okay. And then I would also point out
3 there is a fourth person, Mr. Hopkins, and he's
4 also on this list as -- on this list on Page 14
5 as well down near the bottom of the -- can you
6 give me an estimate of the folks who were driving
7 in 2009 how many are still driving today?

8 A. Of the Castle Metals drivers?

9 Q. Yes.

10 A. I believe they're all still driving.

11 Q. There has been no turnover?

12 A. Ma'am, that's a union account. Drivers
13 rarely want to walk away from a union job.

14 Q. Okay. I'm just looking at that and
15 comparing it to this Page 14 where it just
16 doesn't look quite the same, so...

17 MS. BALDWIN: All right. I think that's
18 all I have. Thank you.

19 THE EXAMINER: Thank you.

20 THE WITNESS: You're welcome.

21 THE EXAMINER: Any redirect?

22 MR. SWATSLER: One second, please.

23 No further questions. Thank you.

24 - - -

25 EXAMINATION

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1 BY THE EXAMINER:

2 Q. Mr. Fink, before you step down, maybe
3 just for some clarification on exactly how DC
4 Transportation works in terms of you've got this
5 group of 10 or 11 drivers that are assigned to
6 A.M. Castle.

7 Do you have drivers that are assigned to
8 other clients of yours?

9 A. Yes, we do.

10 Q. So there are other drivers in your -- on
11 your employee roster?

12 A. Yes, ma'am.

13 Q. Okay. We talked about the situation, I
14 think, where you said maybe a person from your
15 office stepped in on a temporary basis when
16 someone was sick, and I think that's the basis of
17 your affidavit that you went over with counsel.

18 What happens if an employee that's been
19 assigned to A.M. Castle comes to you and just
20 says, "I don't want to work for them any more. I
21 don't like these routes" or they've got some
22 reason for not wanting to be there any more.

23 Is that the end of your relationship
24 with them, they just quit, or do you try to
25 utilize them with another client for another job?

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1 A. We just had a situation like that occur.
2 One of the individuals that was on the lower end
3 of the seniority list decided he was going to go
4 to work for UPS and so he quit. We're currently
5 in the process of trying to find a replacement
6 for that individual.

7 Q. Okay. But if someone comes to you and
8 says, "I know you also have, you know, ABC
9 company over here that you provide drivers for
10 and I want to go work for them," would you
11 entertain that request from that person and would
12 they be permitted to apply for a job, if, of
13 course, there was an opening with that other
14 client?

15 A. I would entertain it, yes. I mean, if
16 we have an employee that has a proven track
17 record, it would be foolish to just throw him to
18 the wayside.

19 Q. Okay. I guess, you know, we're talking
20 about whether these people are permanent
21 employees of A.M. Castle. Your initial intention
22 is that they will be with A.M. Castle until
23 A.M. Castle no longer needs them; is that
24 correct?

25 A. Well, yes, ma'am. They're full-time

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1 employees. And as we mentioned previously, when
2 we took over the contract, many of those
3 individuals were still there at that particular
4 time.

5 The only time any of them have left has
6 generally been because of retirement or some type
7 of gross infraction that they may have been
8 dismissed. But no, we -- our intention was
9 always to keep them at A.M. Castle Metal.

10 Q. I would assume there is a certain amount
11 of knowledge that is gained with experience with
12 a particular company, and it's not necessarily
13 practical to move them between your clients, for
14 example?

15 A. That's correct. There is a learning
16 curve like any job, and it's a little more
17 critical in A.M. Castle's case or transportation,
18 they know the routes, they know the customers.
19 We like to consider the drivers as the front
20 salesman of the company. They get out there and
21 present themselves as A.M. Castle Metal.

22 Q. So for the scenario that I just
23 presented, would you say that that rarely
24 happens, if ever? With regard to an employee, a
25 driver that is currently assigned to A.M. Castle

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1 comes to -- back to DC and says, for whatever
2 reason, they no longer want to be assigned to
3 A.M. Castle, they would like to be assigned to
4 another one of your clients, how often, if ever,
5 would you say something like that happens?

6 A. I would say it would be very rare or
7 unusual. The drivers, again, at A.M. Castle
8 Metal, the only time we ever had any of them
9 leave, either they were called back to Yellow
10 Freight, these are Teamsters, again, they may
11 have gone to work for us when they were on layoff
12 with Yellow Freight, and then if they have 20, 30
13 years with Yellow Freight, certainly they're
14 going to go back to them if they re-call them.

15 But our intention, again, is they stay
16 permanently with Castle. And we really haven't
17 had anybody that had a desire to leave other than
18 what I mentioned, the drivers going back to other
19 jobs.

20 Q. Do you do any training of these drivers
21 or is that left to your client, whoever it may
22 be, whether it be A.M. Castle or another client?

23 A. Normally what we do on a new
24 driver -- first off, we require that the driver
25 has two years of experience. And then a new

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1 driver that would be put over on A.M. Castle
2 Metal, for instance, to replace this gentleman
3 that left, he would go with one of our seasoned
4 drivers on a seniority list and they would go --
5 normally, within about a week's timeframe, the
6 other seasoned driver can get a feel on how they
7 react, how they do their job and things.

8 Now, I don't recall that they've ever
9 said, "No, this man isn't worth keeping." We've
10 always employed them at that point.

11 Q. Okay. And as far as then any further
12 training or follow-up, that's up to A.M. Castle
13 to make sure that this new employee is performing
14 up to the standards that they require?

15 A. Yes, ma'am.

16 Q. Okay.

17 MR. SWATSLER: Would you mind if I ask a
18 quick follow-up?

19 THE EXAMINER: I was going to say if
20 there was any follow-up questions, that's fine.

21 MR. SWATSLER: You have some great
22 questions.

23 - - -

24 FURTHER DIRECT EXAMINATION

25 BY MR. SWATSLER:

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1 Q. I want to go back to one point because
2 Mr. Fink had actually mentioned this. Mrs. Young
3 was asking you questions about whether there has
4 ever been a situation where somebody essentially
5 wanted to ask off of the A.M. Castle account and
6 drive for one of your other clients.

7 Do you recall being asked that?

8 A. I don't recall a situation like that.

9 Q. You don't recall that happening. I
10 think you mentioned earlier that A.M. Castle is
11 the only client for which there is a collective
12 bargaining agreement in place?

13 A. That's correct.

14 Q. What impact, if any, would that have on
15 the likelihood that somebody would ask out of
16 that gig?

17 A. Everybody clamors for a union job, and
18 they are certainly not going to want to walk away
19 from that situation. You've got probably one of
20 the best health, welfare and pension programs
21 available to mankind under the Teamsters.

22 MR. SWATSLER: Thank you. That's all I
23 have. Thanks.

24 THE EXAMINER: Ms. Baldwin, anything
25 further?

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1 MS. BALDWIN: I don't think so.

2 THE EXAMINER: Thank you, Mr. Fink. You
3 may step down.

4 (Witness excused.)

5 THE EXAMINER: Your next witness.

6 MR. SWATSLER: That is our sum total of
7 our presentation at the moment.

8 THE EXAMINER: Okay. All right. And I
9 would assume that you would like to offer
10 Exhibits 1 and 2.

11 MR. SWATSLER: 1 and 2. I guess we
12 can -- I don't know that I have a particular need
13 to put the affidavit in that Mr. Fink used in aid
14 of his testimony. I also don't have a problem
15 with it coming in. I guess if Ms. Baldwin wants
16 it in.

17 MS. BALDWIN: Because we relied on it,
18 it should come in, shouldn't it?

19 THE EXAMINER: I think it was given to
20 him simply to refresh his recollection, but I
21 don't think anyone objects to it being part of
22 that group.

23 If you feel you would like to refer to
24 it, that's absolutely fine. Let's just go ahead
25 and --

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1 MR. SWATSLER: Let's mark it.

2 THE EXAMINER: We'll make copies of it
3 after the fact, but we will call that Exhibit 3.

4 MR. SWATSLER: Great. Thank you.

5 MS. BALDWIN: That's good.

6 MR. SWATSLER: And we have nothing
7 beyond that at this point. Thank you.

8 THE EXAMINER: Okay. And so you're
9 offering Exhibits 1 through 3 into evidence.

10 Any objections?

11 MS. BALDWIN: No objections.

12 THE EXAMINER: Exhibits 1 through 3 will
13 be received.

14 - - -

15 Thereupon, Appellee's Exhibit Nos. 1
16 through 3 were received into evidence.

17 - - -

18 THE EXAMINER: And, Ms. Baldwin,
19 anything on behalf of the Commissioner?

20 MS. BALDWIN: No. I think we've done
21 our deed today.

22 THE EXAMINER: The parties indicated, or
23 at least Mr. Swatsler indicated, that he would
24 like to file a post-hearing brief. Generally, we
25 do those in lieu of any kind of closing

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1 statement.

2 MR. SWATSLER: Sure.

3 THE EXAMINER: Just for time's sake if
4 nothing else. So I will go ahead and assign a
5 briefing schedule. I would suggest to you the
6 Board has cracked down on extensions of these
7 briefing schedules.

8 MR. SWATSLER: Okay.

9 THE EXAMINER: So please keep that in
10 mind and watch your deadlines closely.

11 MR. SWATSLER: Will that just -- I
12 haven't done this for a while over here. Will
13 that key off of when the transcript is available,
14 or what are your normal time frames looking like?

15 THE EXAMINER: Let's go off the record
16 for a moment.

17 (Discussion held off the record.)

18 THE EXAMINER: The briefing schedule in
19 this matter shall be as follows. Initial briefs
20 by both parties would be due on December 10th,
21 and any reply brief would be due January 2nd.

22 There being nothing further, this
23 hearing is concluded.

24 MR. SWATSLER: Thank you.

25 THE EXAMINER: Thank you very much.

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Thereupon, Appellee's Exhibit No. 3 was
marked for purposes of identification.

- - -

(Thereupon, the hearing was concluded at
10:57 a.m. on Wednesday, October 15,
2014.)

- - -

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State of Ohio,)
) SS:
County of Franklin,)

I, Amy L. Miller, Registered Professional Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the proceedings hereinbefore set forth, as reported in stenotype by me and transcribed by me or under my supervision.

Amy L. Miller 

Amy L. Miller, Registered Professional Reporter and Notary Public in and for the State Ohio

My Commission Expires: October 30, 2016



D C Transportation Services, Inc.

AGREEMENT

This Agreement, made and entered into this 24th day of March, 2000, by and between D C Transportation Services, Inc., an Ohio corporation with principal offices at 10129 Lynn Drive, Cleveland, Ohio, 44133, ("Lessor") and A. M. Castle and Company, with principal offices at 26800 Miles Road, Bedford Hts., Ohio, 44146 ("Lessee").
Co. New

The parties agree as follows:

1. Lessor shall provide Lessee with a sufficient number of drivers to operate the motor vehicles owned or leased by Lessee, as required by Lessee.
2. Lessor shall make all proper payroll deductions, including income tax and social security tax deductions, required under federal and state law to be made from the compensation paid to Lessor's drivers for services performed under this Agreement. Lessor will make all payments, including payments for income tax, social security tax, unemployment and disability insurance, to the proper governmental agency or authority required under state and federal laws to be made by Lessor. Lessor will provide such workers' compensation insurance coverage for said drivers as may be required under state laws and pay the premiums therefore.
3. Lessor shall submit invoices weekly, and Lessee shall pay such invoices within seven (7) days of the date of billing. For each driver who performs services under this Agreement, Lessor will be paid as follows:
 - (a) For each driver furnished by Lessor to Lessee, an amount equal to the gross compensation due and payable to each such driver. (see attached schedule "A").
 - (b) Such sums as shall be due and payable by Lessor to or on behalf of each such driver for all federal, state or local taxes, workers' compensation contributions, unemployment compensation contributions and any other amounts including fees and expenses, which are not specified herein but which may be required by operation of law.
 - (c) A service charge equal to the percentage of gross compensation due under subparagraph (a), as specified under Schedule "A".
4. Lessee shall control the maintenance and operation of its vehicles to the extent necessary for compliance with all applicable governmental rules and regulations.

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D C Transportation Services, Inc.

5. Lessee will provide and maintain on all vehicles and equipment operated or used by Lessor's drivers, public liability and property damage insurance with coverage in the amount of \$1,000,000.00 combined single limit. The insurance policy or policies evidencing the foregoing coverage shall be written by a reputable insurance company authorized to transact business in all of the states in which the vehicles and equipment will be used or operated and shall name Lessor as additional insured with respect to liabilities resulting from ownership, custody, maintenance, use, operation or control of the vehicles or equipment by Lessor's drivers. Lessee further agrees to indemnify and hold harmless Lessor from any actual or asserted liability, including the cost of defense, connected with or resulting from the ownership, custody, maintenance, use, operation or control of the vehicles and equipment hereunder, by such drivers or otherwise, which is not covered by the insurance provided by Lessee, or, if covered, is in excess of the policy limits.
6. Lessee agrees to indemnify and hold harmless Lessor for any loss, cost and damages, including reasonable attorney's fees, and/or any payments Lessor may make to or for the benefit of drivers, whether or not for services actually performed, as a result of any action or claim instituted by a governmental agency or any other party, person or entity relative to or on behalf of such drivers.
7. Lessor agrees to indemnify and hold harmless Lessee for any claims for loss, cost and damages which may be brought by a driver or his/her representative, against Lessee which could have been claimed against Lessor under the rules and regulations of the Ohio Bureau of Workers' Compensation and/or The Industrial Commission of Ohio. This paragraph specifically excludes those claims, actions or requests made under Ohio Revised Code and Ohio Administrative Code Sections which relates to Intentional Torts or a Violation of Specific Safety Requirement. The parties further agree that the Lessee shall notify the Lessor immediately of any action, claim or threatened claim under this contract.
8. Lessor shall not be liable to Lessee for any loss of business or any other damage caused by an interruption of the service which Lessor agrees to furnish hereunder, which interruption is due to war, fire, strike, picketing, accidents, civil disturbances, riots, acts of God, or any other cause beyond the reasonable control of Lessor.
9. Lessor will not be liable to Lessee for loss or damage to the vehicle or equipment being operated by drivers under this Agreement or for any other loss or damage to any cargo carried by any such vehicles or equipment by reason of collision, fire, theft, flood, windstorm, explosion or other casualties.
10. Lessee will be responsible for maintaining control, direction, and supervision over such drivers. Such control, direction and supervision shall include, but not be limited to, scheduling and dispatching of the drivers, loading and unloading procedures, and all other matters relating to the direction of employees. Lessor shall remove driver from service under this agreement upon request from lessee in writing.
11. In the event that any driver provided by Lessor shall voluntarily leave the service of Lessor and obtain employment with Lessee or with any person, corporation, partnership, association, or other entity which provides drivers to or for the benefit of Lessee within one calendar year from the initial date of such driver's service with Lessor, Lessee shall be immediately liable to Lessor for liquidated damages in the amount of Four Thousand Dollars (\$4,000.00). Notwithstanding this aforementioned, no damages or any money should be paid by lessee if this Agreement is terminated prior to any driver obtaining such employment.

D C Transportation Services, Inc.

12. Any dispute arising out of the terms of this Agreement shall be resolved under the laws of the State of Ohio.

13. This Agreement shall be effective for one (1) year from March 24, 2000, and shall continue in full force until March 23, 2001, and from year to year thereafter unless terminated on thirty (30) days prior written notice given to the other party.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement as of the date first set forth herein.

D C TRANSPORTATION SERVICES, INC.

By: Thomas M. Fink

Printed Name: Thomas M. Fink

Title: President

Date: 3/24/2000
"Lessor"

A. M. CASTLE AND COMPANY

By: H. C. Winters

Printed Name: H. C. WINTERS

Title: Vice President of Operations

Date: 03/24/00
"Lessee"

P.O. Box 33036 • Cleveland, Ohio 44133 • (440) 237-0900

BTA: 2013-5851_0000003

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D C Transportation Services, Inc.

SCHEDULE "A"

Attached to and constituting a part of the Agreement dated the 24th day of March, 2000, by and between D C Transportation Services, Inc. and A. M. Castle and Company for each driver furnished, Lessee shall pay Lessor charges equal to the sum of the following:

COMPENSATION -	<u>Country (Local)</u>	<u>Union (Road)</u>
Effective: 5/24/2000	\$12.79/hr	\$13.75 to \$16.39/hr \$ 0.31 to \$ 0.35/mi

Overtime rates shall apply after eight (8) hours of work on a daily basis for temporary labor, and after forty (40) hours per week for full-time employees.

Employees who are called and report for work but are not put to work shall receive a minimum of four (4) hours pay at the hourly rate specified in this Schedule. If put to work, such employees shall be guaranteed a minimum of eight (8) hours work or pay at the hourly rate specified in this Schedule, unless employee chooses to waive balance of hours after work completion.

SERVICE CHARGE \$32.50 per week, per man based on a seven (7) day invoice payment.

TAXES	OH	PA	NY	MI
Workmens Comp.	\$9.1000	\$8.4700	\$11.3500	\$10.0400
S.U.T.	.0310	.0590	.2200	.0310
F.U.T.	.0080	.0080	.0080	.0080
F.I.C.A.	.0765	.0765	.0765	.0765

HEALTH INSURANCE Current billing per month, per driver (non-union):

Single	\$157.85
Employee & Spouse	289.37
Employee & Child	289.37
Family	442.44

401k PROGRAM \$10.00 per week per man - Contribution from Castle Metals

HOLIDAYS Eight (8) hours per driver paid at the prevailing hourly rate only during the following holiday weeks of New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day.

VACATIONS Vacations paid at 1/52 of the previous years earnings
 1 year = 1 week, 3 years = 2 weeks, 10 years = 3 weeks

D C Transportation Services, Inc.

TERMS

Regular terms of payment required by D C Transportation Services, Inc., are as follows, unless otherwise specified:

Payment is due within seven (7) days of the billing date

D C TRANSPORTATION SERVICES, INC.

By: *Thomas M. Fink*

Printed Name: Thomas M. Fink

Title: President

Date: 3/24/2000

A. M. CASTLE AND COMPANY

By: *H.C. Winters*

Printed Name: H. C. WINTERS

Title: Vice President of Operations

Date: 03/24/00

D C Transportation Services, Inc.

Costs per Driver Plan

Country (Local)

\$ 12.79/hr

Union (Road)

\$ 13.75 to \$ 16.39/hr

\$ 0.31 to \$ 0.35/mi

	OH	PA	NY	MI
Worker's Compensation	\$9.1000	\$8.4700	\$11.3500	\$10.0400
SUTA	.0310	.0590	.2200	.0310
FUTA	.0080	.0080	.0080	.0080
FICA	.0765	.0765	.0765	.0765

Insurance Costs

Single	\$157.85
Employee & Spouse	289.37
Employee & Child	289.37
Family	442.44

401k Program

\$10.00 per week per man - Contribution from Castle Metals

Service Charge

The Service Charge for 40 drivers will be \$32.50 per week per driver, based upon a weekly, seven (7) day invoice payment.

If, after review, you find these figures favorable, or if you have any questions, please call me at 440-237-0900 so we can discuss any changes needed.

copy

COLLECTIVE BARGAINING AGREEMENT

Between

D C TRANSPORTATION SERVICES, INC.

CASTLE METALS ACCOUNT

at

BEDFORD HEIGHTS, OHIO

and

TEAMSTERS LOCAL UNION NO. 407

Affiliated with the

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Duration:

04/01/2008 through 03/31/2013

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AMC is CO-EMPLOYER

AGREEMENT

THIS AGREEMENT entered into the ____th day of _____, 2008, effective as of April 1, 2008, by and between DC Transportation Services, Inc., AM Castle Metals, Inc., hereinafter referred to as "Employer," for their employees assigned to the Castle Metals account at Bedford Heights, Ohio, and Teamsters Union Local No. 407, an affiliate of the International Brotherhood of Teamsters, hereinafter referred to as the "Union."

OBLIGATION

In consideration of the mutual benefits derived from recognition, one of the other, and in consideration of the promises and agreements made one to the other, as hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 -- COVERAGE

The Employer recognizes the Union as the exclusive bargaining agent with respect to the rates of pay, hours of work, and other terms and conditions of employment specified in this Agreement for the employees presently working in the classification of which wage rates are herein established.

ARTICLE 2 -- SHOP CONDITIONS

Any and all employees covered by this Agreement and within the classification of work as herein provided, shall become and remain members of the Union "in good standing," as defined by law as a condition of continued employment during the life of this Agreement; and that application for membership in the Union shall thereupon be made by all employees covered hereunder on and after the 31st calendar day after the date of this Agreement or after the original date of their employment.

ARTICLE 3 -- DUES CHECK-OFF

The Employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Union, and credit union deductions, by mutual agreement and agrees to remit to said Union all such deductions prior to the end of the month for which the deductions are made.

For purposes of this Article, "present employees" and "employees who are hired hereafter" shall include "casual employees" as defined under Casual Employees. Such "casual employees" will be required to join the Union prior to their employment on or after the 31st day of assignment to the Castle Metal account following their first (1st) day of employment by any Employer signatory to this Agreement.

Where law requires written authorization by the employee, the same is to be furnished in the form required. The Union shall certify to the Employer in writing each month a list of its members working for the Employer who have furnished to the Employer the required authorization, together with an itemized statement of dues, initiation fees, (full or installment) or uniform assessments owed and to be deducted for such month from the pay of such member, and the Employer shall deduct such amount from the first pay check following receipt of statement of certification of the member and remit to the Union in one lump sum. The Employer shall add to the list submitted by the Union the names of all regular employees hired since the last list was submitted and delete the names of employees who are no longer employed. Where an employee who is on check-off is not on the payroll during the week in which deduction is to be made or has no earnings or insufficient earnings during that week or is on leave of absence, the employee must make arrangements with the Union to pay such dues in advance.

The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Union or such organizations as the Union may request if mutually agreed to, except DRIVE deductions which shall be made quarterly. No such authorization shall be recognized if in violation of state or federal law. No deductions shall be made which are prohibited by applicable law.

DRIVE

The Employer agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to DRIVE. DRIVE shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from his/her paycheck on a weekly basis for all weeks worked. The phrase "weeks worked" excludes any week other than a week in which the employee earned a wage. The Employer shall transmit to DRIVE National Headquarters on a monthly basis, in one (1) check, the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's social security number and the amount deducted from that employee's paycheck. The International Brotherhood of Teamsters shall reimburse the Employer annually for the Employer's actual cost for the expenses incurred in administering the weekly payroll deduction plan.

ARTICLE 4 -- RULES AND REGULATIONS

It is recognized that Employer may make rules covering the conduct of its employees. These rules may be amended at any time by the Employer upon giving ten (10) days notice to the Union. In the event of a dispute concerning such amendment to the rules, such dispute will be handled in accordance with the grievance machinery.

ARTICLE 5 -- STRIKES, LIMITATION OF AUTHORITY AND GRIEVANCES

Section A -- No Strike or Lockout

During the term of this Agreement the Employer agrees that it will not authorize any lockout of employees; and the Union agrees that they will not authorize, aid or encourage any slowdown, strike or stoppage of work; provided, however, that the provisions of this Section shall not apply (a) in the event the Employer is delinquent at the end of the monthly period in the payment of Health and Welfare contributions and/or Pension as required and after the proper official of the Local Union shall have given

seventy-two (72) hours written notice to the Employer of such delinquency in such payments, or (b) in the event the Employer refuses to pay an employee in accordance with the basic wage rate set forth, or in accordance with the determination of a grievance hearing. The Union further agrees that in the event of a slowdown, strike, stoppage, or work in violation of this Agreement, the Employer may take disciplinary action against those employees who take part therein. It is specifically understood and agreed that the Employer shall have the sole and complete right of reasonable discipline. Controversies shall be subject to the grievance procedure.

Section B -- Grievance Procedure

All grievances or disputes involving any controversy, complaint, dispute or misunderstanding arising as to the meaning, application or observance of any provisions of the Agreement shall be handled in the manner hereinafter set forth. It is understood that any controversy, complaint, dispute or misunderstanding not relating to the meaning or application or observance of any provisions of this Agreement may also be the subject of a grievance.

- (1) The employee shall submit the matter to his Employer in writing within ten (10) days of the occurrence of the alleged grievance. If it cannot be resolved at this level, then
- (2) The employee shall report the grievance in writing to the Steward or alternate who shall take the matter up with the Employer within ten (10) days. The Steward shall be permitted to investigate and adjust the grievance of any employee within his jurisdiction. Employees shall have the Steward or a representative of the Union present during the discussion of any written grievance with representative of the Company. If it cannot be resolved at this level, then
- (3) The employee or the Steward shall report in writing the grievance to their Union representative, who shall take the matter up with the Employer or the Employer's representative. Likewise, the Employer who may have a grievance, shall take the matter up with the Union.
- (4) If the grievance or dispute is not settled after the completion of Item (3) above, it shall be referred to the Motor Carrier Labor Advisory Committee for determination. The committee shall be comprised of an equal number of Union and Employer representatives and all rules and procedures of the committee shall apply. Where the Motor Carrier Labor Advisory Committee established under this provision by majority vote settles a dispute, such decision shall be final and binding on both parties with no further appeal. If any grievance or dispute cannot be resolved at this level, then it shall be taken to the next step as set forth below.
- (6) If the grievance or dispute is not settled after the completion of Item (5) above, it shall be referred to the Joint Area Council for determination. The committee shall be comprised of an equal number of Union and Employer representatives and all rules and procedures of the committee shall apply. Where the Joint Area Council established under this provision by majority vote settles a dispute, such decision shall be final and binding on both parties with no further appeal. If any grievance or dispute cannot be resolved at this level, then it shall be taken to the next step as set forth below.
- (7) If any grievance or dispute cannot be satisfactorily settled by the above methods, then the grievance shall be submitted to arbitration. A list of arbitrators will be furnished from the Federal Mediation and Conciliation Service to the Union and the Employer. Each shall reply with their

preferred selections no later than three (3) days after receipt of such list. It is agreed that the arbitrator is empowered to hear and decide the deadlocked case even if one of the parties fails to appear at the hearing or to present evidence. The arbitrator shall have the authority to apply the provisions of this Agreement, and to render a decision on any grievance coming before him, but shall not have authority to amend or modify this Agreement, or to establish new terms and conditions under this Agreement. The arbitrator's fee plus his expenses shall be shared equally by the parties. The decision of the arbitrator shall be final and binding upon the parties and employees involved. In the event that the losing party refuses to submit to this jurisdiction, the other party shall have the right to immediately take all legal or economic recourse.

ARTICLE 6 -- DISCHARGE OR SUSPENSION

Section A

The Employer shall not discharge or suspend any employee without just cause. Furthermore, the Employer shall not discharge or suspend any employee without a Union hearing except for "cardinal sin" offenses or the like. Union hearings, as referred to herein, shall take place within three (3) business days of the known offense. Failure to meet in these circumstances, through no fault of the Employer or Union shall not affect the merits of the discharge or suspension.

In all cases involving discharge or suspension of an employee, the Company must immediately notify the employee in writing of his discharge or suspension and the reason thereof. A copy of the notice shall also be mailed to the Union.

In respect to discharge or suspension, the Employer shall give at least one (1) warning notice of the complaint against such employee to the employee in writing, except that no warning notice need be given to an employee before he is discharged if cause of such discharge is such as, but not limited to: proven dishonesty; theft; drunkenness or drinking while on duty; customer abuse; recklessness resulting in a serious accident; use, transport or possession of controlled substances; carrying of unauthorized passengers; failure to report an accident; failure to comply with the Employer's Substance abuse Policy and destruction of company property or equipment.

For less severe offenses the employee shall be given at least one (1) warning letter of the complaint prior to suspension or discharge. A copy of the same shall be sent to the Union. The warning notice as herein provided shall not remain in effect for a period of more than nine (9) months from the date of said warning notice.

Section B -- Pay to Discharged Employee

Any employee discharged shall be paid in full for all wages owed him by the Employer, including earned vacation pay, if any, within one (1) week after all paperwork and/or company property has been turned in, or such lesser period as may be required by law, from the date of discharge.

Section C -- Discharge Grievance

Any employee suspended or discharged, or the Union, may file a grievance concerning such suspension or discharge providing such grievance is filed in writing within ten (10) days from the date of the suspension or discharge, upon certified written notification to employee.

ARTICLE 7 -- LEAVE OF ABSENCE

Section A -- Time Off for Union Activities

The Employer agrees to grant the necessary and reasonable time off, without discrimination or loss of seniority rights (including vacation and holiday eligibility as provided in this Agreement) and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided forty-eight (48) hours written notice is given to the Employer by the Union, specifying the approximate length of time he may be off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

Section B -- Permission for Leave of Absence

Any employee desiring a leave of absence from his employment shall secure written permission from both the Union and the Employer. The maximum leave of absence shall be for thirty (30) days and may be extended for like periods not exceeding ninety (90) days. Permission for extension must be secured from both the Union and the Employer. Failure to comply with this provision shall result in the complete loss of seniority rights for the employee involved. Any employee on leave of absence who accepts other employment shall be deemed to have quit and shall forfeit all rights under this Agreement, unless mutually agreed otherwise.

Section C -- Work Outside the Bargaining Unit

Upon the giving of written notice by the Employer or Union, as the case may be to the other party, an employee may leave a classification of work covered by this Agreement in order to work for the Union or in order to work for the Employer in a classification of work not covered by this Agreement for a period not to exceed ninety (90) days, provided he secures a proper leave of absence. Should the employee return to work in a classification covered by this Agreement prior to the expiration of such ninety (90) day period and provided that he reports, in writing, his availability for employment to both parties within seven (7) days after his employment with the Union or the Employer is terminated, then such employee shall retain the seniority which he had as of the date of his leaving the classification of work covered by this Agreement, otherwise he shall forfeit all seniority rights.

Section D -- Health, Welfare and Pension Payments While on Leave

The employee desiring leave of absence must make suitable arrangements for the continuance of Health and Welfare payments together with payments to Pension Fund, where applicable, at his own expense before the leave may be approved by either the Union or Employer.

Section E -- Family Medical Leave Act

The parties agree to comply with all applicable Federal and State Laws as it pertains to the Family Medical Leave Act.

ARTICLE 8 -- SENIORITY

Seniority rights shall prevail and shall apply only to those persons working under the terms and conditions of this Agreement.

Section A -- Full Time Employees

Seniority is acquired by the employee by reason of his having been employed by the Employer as a probationary employee thirty (30) work days and such seniority shall thereafter accumulate by continuous employment in the service of the Employer at the Castle Metal account. Casuals used for replacement purposes shall not accrue seniority. It is understood that an absence of less than one (1) year due to Employer layoffs, proven illness, and inability to work because of being incapacitated, shall not result in loss of seniority rights. Absence from work for more than one (1) year will result in loss of all seniority rights. Employees will not lose seniority rights if unable to work for two (2) years due to a work related injury. No employee shall lose his seniority rights or credits by reason of being required to perform military duty during the term of this Agreement. Upon his prompt return to employment with the Employer, after being engaged in military duty, such employee shall be restored to his former position with seniority rights unimpaired.

Employees who are members of the National Guard, or any Organized Reserve Component, and who, by reason of such membership, are required to undergo periods of training necessitating their absence from their employment, shall enjoy all the rights of re-employment provided under the Selective Service Act for employees called to active duty, or voluntary enlisting therefore.

In the event of a layoff, an employee so laid off shall be given ten (10) days notice of recall mailed to his last known address. The employee must respond to such notice within three (3) days after receipt thereof and actually report to work in ten (10) days after receipt of notice unless mutually agreed to. In the event the employee fails to comply with the above, he shall lose all seniority rights under this Agreement.

A list of employees, arranged in order of their seniority, shall be posted in a conspicuous place on the job, and any controversy with reference to the list shall be referred to the Union and the Employer for settlement, as to the order of seniority of the employees.

Section B -- Casual Employees

Any employee hired as a casual worker shall not become a seniority employee under this Agreement. The word "casual" as used herein is meant to cover situations such as replacements for absenteeism and vacations.

When the Employer utilizes any combination of casual employees as a supplement to the regular work force for "supplemental work" for a period of forty-five (45) work days in a (ninety) 90 day period, the employer shall be required to add one probationary employee to the seniority list and begin making contributions after thirty (30) more days. This provision shall not apply to "trial runs" for new work up

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to ninety (90) days. The Company shall notify the Union in writing of all "trial runs" as referred to herein. "Casual" employees will receive no Health, Welfare and Pension contributions under this Agreement except in the event that a casual employee (meaning short term employees whose employment is uncertain or irregular and for a limited or temporary purpose) works 1,000 hours or more in a 12 month period, he will be considered a regular employee for the purposes of participation in Central States Pension Fund, and all hours worked by him thereafter will require contributions to Central States Pension Fund in the same manner and amount as required by this contract for regular employees.

ARTICLE 9 -- UNION AND EMPLOYER COOPERATION

The Union, its members, and the Employer agree at all times as fully as it may be within their power to further their mutual interest of the Company, D C Transportation Services, Inc., and the Union, Teamster Local #407. The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and security of employees working under this Agreement are best protected through an efficient and productive operation of the Employer.

Section 1 - In the interest of promoting sound management and customer relations, the Employer, the Union and the Customer agree to hold regular labor management meetings. The appropriate designees, with the authority to resolve issues outside the collective bargaining agreement, from Castle Metals, DC Transportation Services and Truck Drivers Local 407 will attend the meeting.

Section 2 - Labor Management meeting will be scheduled at least five (5) workdays in advance and location mutually agreeable to all parties.

Section 3 - A meeting agenda shall be prepared and distributed to the parties within forty eight (48) hours to the meeting. The Union shall supply Castle Metals and DC Transportation Services with the names of those Union representatives who will be in attendance.

Section 4 - Labor management meetings are not intended to nor shall they result in an alteration or modification of the labor agreement. However, any recommendations and or agreements consistent with the labor agreement reached by the parties shall be reduced to writing and signed by all parties.

ARTICLE 10 -- VACATION

Section A -- Eligibility

Employees covered by this Agreement who during the term hereof have worked sixty percent (60%) or more of the total working days during any twelve (12) month period, shall receive a vacation with pay of one (1) week where they have been employed at least one (1) year and less than two (2) years; a vacation with pay of two (2) weeks where they have been employed at least two (2) years and less than ten (10) years; a vacation with pay of three (3) weeks where they have been employed for ten (10) years and less than fifteen (15) years; a vacation with pay of four (4) weeks where they have been employed for fifteen (15) years and less than twenty (20) years; a vacation with pay of five (5) weeks where they have been employed for twenty (20) years or more. The employee's anniversary date shall be used to compute eligibility. Any employee who has quit, been discharged, or laid off before he has worked his sixty percent (60%) shall be entitled to the vacation pay earned on a pro rata basis if he has worked his first full year.

Section B -- Eligibility Requirements

It is understood that during the first year of employment, the employee must work sixty percent (60%) of the total working days in order to obtain his vacation and must have been employed for the full year. During the second and subsequent years, the employee must have worked sixty percent (60%) of the total working days of the year, but need not be employed for the full year to be eligible for vacation. No more than one (1) vacation will be earned in any twelve (12) month period. Time lost due to on the job injury shall be considered days worked. This shall not apply where an employee has been off due to sickness fifty percent (50%) or more of the total working days during any twelve (12) month period.

Section C -- Vacation Pay and Requests

Vacation pay will be paid at forty (45) hours per week at the straight time city rate of pay.

Vacation requests shall be granted with reasonable notice and at the discretion of the Employer but shall meet with the convenience of the individual employee whenever possible. No more than fifteen percent (15%) of the total number of employees shall be permitted to go on vacation at any one time.

Employee's may request one (1) week of vacation split into one (1) day increments. Employee's must give at least one (1) week advance notice in writing for company approval. All runs must be covered for approval to be granted.

Section D -- Schedule of Vacations

The Employer shall post the vacation schedule for a period of thirty (30) days as soon after January 1st of each year as possible. Each eligible employee shall be requested to specify the vacation period he desires during the posting period. Should any employee fail to select his vacation during the thirty (30) day period above mentioned, such employee will be assigned a time for his vacation by the Employer, such time not to interfere with the vacation of employees who have selected their vacations during the thirty (30) day period mentioned above. Vacation will, so far as possible, be granted at times most desired by employees (longer service employees being given preferences to choice) but the final right to allot vacations and the right to change such allotments are the exclusive rights of the Employer in order to insure its efficient and orderly operation.

ARTICLE 11 -- HOLIDAYS

Section A -- Number of Holidays

The following named holidays or the day observed as such, but not both, shall be paid for at the rate of eight (8) times the regular hourly rate of pay named herein in addition to any moneys earned by the employee on such holidays:

New Year's Pay
Good Friday
Memorial Day
Fourth of July
Labor Day

Thanksgiving Day
Day after Thanksgiving
Day before Christmas
Christmas Day
Floating Holiday

During the life of this contract, any additional named holidays over and above the number of holidays presently paid to the drivers, honored by the account's plant employees, will also be given to the driver's. The same principle shall apply if the account's plant employees lose a named holiday.

In order to qualify for holiday pay, it is provided that the regular employee must work his scheduled workday immediately preceding and following the holiday if said employee is requested to do so and has not exhausted his hours of work, or is unable to work due to proven illness, or unless absence is mutually agreed to. All jobs must be covered.

Section B -- Holidays and Probationary Employees

Employees who are serving their probationary period shall not be entitled to holiday pay for holidays falling within such period.

Section C -- Holidays During Vacation

In the event a holiday falls within an employee's vacation period, he shall be granted an additional day's vacation with pay, unless otherwise mutually agreed. Regular employees are entitled to holiday pay if the holiday falls within the first thirty (30) days of absence due to occupational injury or proven illness.

Section D -- Holidays Before or After Layoff

If any holiday falls within the thirty (30) day period following an employee's layoff due to lack of work, and such employee is also recalled to work during the same thirty (30) day period but did not receive any holiday pay, then in such case, he shall receive an extra day's pay for each holiday, in the week in which he returns to work. Said extra day's pay shall be equivalent to eight (8) hours at the straight-time hourly rate specified in the contract. An employee who is laid off because of lack of work and is not recalled to work within the aforementioned thirty (30) day period is not entitled to the extra pay upon his return. Under no circumstances shall the extra pay referred to herein be construed to be holiday pay, nor shall it be considered for hours worked for weekly overtime.

Section E -- Work on Holidays

Hourly or local rated employees called to work on any of the above holidays shall be paid double their regular hourly rate for all hours worked on the holiday (or the day observed as such) in addition to the eight (8) hours holiday pay.

Section F -- Holiday Pay and Overtime

Holiday pay shall not be considered as hours worked for the purpose of computing overtime.

ARTICLE 12 -- SICK DAYS

Employer will pay up to three (3) sick days per contract year only. If days are taken consecutively, a doctor's excuse must be presented to the employer. Unused sick days will be paid at the end of each

contract year. Sick pay shall be calculated based on eight (8) hours at the prevailing hourly rate. *In the event the State or Federal Government requires additional sick days to be paid to an employee the number of sick days in the collective bargaining agreement will not be in addition to the governmental requirement. Example: if the government requires 7 days of sick time paid, the company will only be required to pay the 7 days not 10 days.*

ARTICLE 13 -- MILITARY CLAUSE

Employees enlisting to enter the military or naval service of the United States, pursuant to the provisions of the Selective Service Act, shall be granted all rights and privileges provided by the Act.

ARTICLE 14 -- UNION ACTIVITIES

Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for his acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor shall there be any discrimination against any employee for Union membership activities. A Union member elected or appointed to serve as a Union official shall be granted a leave of absence during the period of such employment, without discrimination or loss of seniority rights, and without pay.

ARTICLE 15 -- PASSENGERS

No driver shall allow anyone, other than employees of the employer who are on duty, to ride on his truck except by written authorization of the Employer, except in cases of emergency arising out of disabled equipment or an Act of God.

ARTICLE 16 -- MEAL PERIOD

Section A -- Local Drivers' Meal Period

Local drivers and employees shall, except by mutual agreement, take one (1) continuous period for meals of thirty (30) minutes. The meal period referred to herein shall be taken between the fourth (4th) and sixth (6th) hour of the employee's shift. In the event the employee wishes to work during the lunch period he/she must obtain approval from dispatch.

Section B -- Meal Periods Not Paid

Meal periods shall not be compensated time.

Section C -- Breaks

Employees shall be entitled to two ten minute breaks daily. The first not to be taken until after two (2) hours on duty time and the second to be taken between the sixth (6th) and eight (8th) hour on duty time. Breaks are to be taken off house account property.

ARTICLE 20 -- BONDS

Should the Employer require an employee to give bond, cash bond will not be compulsory, and any premium involved shall be paid by the Employer. If the Employer's regular bonding company refuses to bond any employee and the employee is able to secure a bond elsewhere within thirty (30) days from the date the Employer notifies him of such refusal, said employee shall pay the difference in the premium paid by the Employer for other employees in the same classification. Cancellation of a bond after once issued shall be cause for discharge in case of any of the following:

- (1) The employee fails to obtain another bond within thirty (30) days after notice of cancellation.
- (2) Failure of the employee to pay any excess premium thereon; or
- (3) The cancellation is due to a proven fraudulent statement by the employee in obtaining the bond.

ARTICLE 21 -- UNIFORMS, PROTECTIVE CLOTHING AND EQUIPMENT

Section A -- Uniforms

The Employer agrees that if any driver is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished by the Employer.

Section B -- Protective Clothing and Equipment

The Employer or its designate agrees to supply, where needed, proper safety equipment, such as face masks, rubber gloves, aprons, or coat and pants for hauling caustics or like products in substantial quantities.

Section C -- Equipment Issued by the Employer

The employee shall be required to sign and be responsible for any equipment issued by Employer or its designate.

Section D -- Safe Work Practices

The Union agrees that careful observance of safe working practices and Company safety rules is a primary duty of all employees. The Company agrees that there will be uniform enforcement of such rules against employees similarly situated within the bargaining unit, and among said employees, said rules shall be enforced without discrimination.

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ARTICLE 22 -- EMPLOYEE'S BAIL

It is agreed that an employee will be provided with bail by the Employer if accused of any offense in connection with faithful discharge of his duties, and any time consumed in jail or in courts shall be compensated at the regular rate of pay plus his meals, transportation, court costs, etc. Employees violating instructions of the Employer shall not be considered as carrying out the faithful discharge of their duties. The employee shall not violate any federal, state or applicable laws.

ARTICLE 23 -- PROTECTION OF RIGHTS

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action, or permanent replacement, in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket lines including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

ARTICLE 24 -- EXAMINATIONS

Physical, mental or other examinations required by government body or the Employer, including the Substance Abuse Test, shall be promptly complied with by all employees provided, however, the Employer shall pay for all such examinations. An employee who is selected for a random drug or alcohol test shall be paid up to two (2) hours at the applicable straight time hourly rate for time spent at the medical facility.

The Employer reserves the right to select its own medical examiner or physician.

ARTICLE 25 -- TIME SHEETS

The Employer may require the employee to keep various time sheets or trip reports showing the arrival and departure at terminals and intermediate stops, and cause and duration of all delays, time spent loading and unloading, and such other information required by Employer, and same shall be turned in at the end of each trip.

ARTICLE 26 -- MANAGEMENT RIGHTS

It is understood and agreed that all rights, authority and responsibility for the management of the business of the Company shall repose exclusively in the Company and its appointed representatives. The Union and its representatives or members shall not interfere with the exercise of such rights, authority and responsibility.

The Company maintains all its inherent rights including, but not limited to the assignment and direction of the working force, the determination of the number to be employed or retained by the Company, the right to make rules and regulations, the right to hire, suspend, discharge, discipline or reassign employees as operating procedures may require. This Section shall not preclude any inherent rights of the employee as otherwise established in this Agreement.

ARTICLE 27 -- CUSTOMER REFUSAL OF ACCESS TO PREMISES

It is understood by both parties to this Agreement that D C Transportation Services, Inc., employees work in the dedicated service of a customer; utilize equipment that is owned or leased by that customer; and perform their work in whole or in part on the customer's property. It is further understood that the customer has a property right to limit access to its property and equipment. Therefore, in the event that the customer bars a D C Transportation Services, Inc. employee from the customer's equipment and/or property due to gross customer abuse or like offenses, the employee will thereafter be on layoff status under this Agreement. The obligation of D C Transportation Services, Inc. to an employee on layoff status under these circumstances shall be limited to offering the employees available work covered by the Agreements within the same geographic area.

ARTICLE 28 -- SAVING AND SEPARABILITY CLAUSE

If any Article or Section of this Agreement or any riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity the remainder of this Agreement and of any rider thereto, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or enforcement of or compliance with which has been restrained as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations, upon the request of the Union, and/or the Employer, for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. If the parties do not agree on a mutually satisfactory replacement, the matter shall be handled in accordance with the Grievance Procedure.

ARTICLE 29 -- FUNERAL LEAVE

In the event a death occurs in a full-time, regular employee's family, the employee shall be allowed a maximum of three (3) days off to attend the funeral or other bereavement rite. Members of the employee's family means spouse, children or stepchildren, grandchildren, father, mother, brother, sister, mother-in-law, father-in-law, and stepparents.

A regular employee shall be entitled to a maximum of three (3) days off with pay at a straight-time hourly rate not to exceed eight (8) hours per day for each day lost from work provided the days would have been otherwise compensable days.

An employee shall be allowed one (1) day off to attend the funeral or other bereavement rite of a son-in-law, daughter-in-law. Reimbursement shall be the same as provided above. Time off shall not extend beyond the day of the funeral.

ARTICLE 30 -- JURY DUTY

All regular employees called for jury duty will receive the difference between eight (8) hours pay at the applicable hourly wage and actual pay received for jury service for each scheduled workday of jury duty to a maximum of ten (10) days for each contract year. When such employees report for jury service on a scheduled workday, they will not be required to report for work that particular day. Time spent on jury

service will be considered time worked for purposes of employer contributions to Health and Welfare and Pension plans, vacation eligibility and payment, holidays and seniority, in accordance with the applicable provisions of the contract, to a maximum of ten (10) days for each contract year.

ARTICLE 31 -- PAID FOR TIME

The standard guaranteed work week shall be forty (40) hours per week. A standard guaranteed work day shall be eight (8) hours per day. In the event a regular full time employee completes daily work assignments in less than the eight (8) hour per day guarantee and the employer has no other work available, the employee can elect to be removed from duty status by mutual agreement with the employer and accept compensation only for actual hours worked, negating the eight (8) hour guarantee for that particular day only. Except for ten percent (10%) of the active seniority list which will not be entitled to an eight (8) hour per day guarantee or a forty (40) hour per week guarantee.

Should the House Account shut down its normal operation in any given work week, not affording D C Transportation Services, Inc. employees a forty (40) hour working privilege, the weekly guarantee referred to herein shall not apply.

Work shall be scheduled for five (5) consecutive days, Monday through Friday or Tuesday through Saturday.

Any exception to this Section must be mutually agreed to by the parties.

Employee's that break their bid during the week negate the forty (40) guarantee.

Section A -- Work Day and Work Week for City Drivers

All hours worked after eight (8) hours in one day shall be paid at the time and one-half rate.

Section B -- General

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Rates of pay provided for by this Agreement shall be minimums. Time shall be computed from the time that the employee is ordered to report to work and registers in, and until the time he is effectively released from duty. All time lost due to delays as a result of overloads or certificate violations involving federal, state or city regulations, which occur through no fault of the driver, shall be paid for. Such payment for driver's time when not driving shall be at the hourly rate.

Section C -- Call-In Time

Drivers called to work shall be allowed sufficient time, not to exceed two (2) hours, without pay to get to the garage or terminal and shall draw full pay from the time they report and register in, as ordered. Employees who are called and report for work but are not put to work shall receive a minimum of six (6) hours pay at the hourly rate specified in this Agreement. If put to work, such employees shall be guaranteed a minimum of eight (8) hours work or pay equivalent at the hourly rate specified in this Agreement. All casual or temporary drivers will be paid for actual hours worked only on any assigned work day. There shall be no minimum guarantee for casual drivers (employees).

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Section D -- Bids

Bids shall be done twice a year, June and December, to be effective the first full week in July and January. The company shall bid vacancies due to retirement, discharge within two weeks of the vacancy. The employer will be given thirty days to re-bid vacancies for long-term illness or injury.

ARTICLE 32 -- WAGES

If Employer develops mileage runs where there is a multiple stop situation, the driver will give up the first (1st) hour only at the first stop. Every stop thereafter, driver would be paid for all time spent. There will be no additional pay at the end of the trip unless the driver is utilized on work other than his complete road run.

Section E -- Mileage Runs

Drivers will be paid actual time for pre-trip inspection, scaling, tarping, and chaining their trailers, up to three-quarters (3/4) hour. Drivers will be paid the hourly rate after the first *one half (1/2) hour* for waiting time at turn around point. There will be no pay for post-trip inspection and paperwork at the end of the run. Drivers will be paid one-quarter (1/4) hour for drop and hook. The one-quarter (1/4) hour shall be in addition to and not part of the one (1/2) hour free time.

ARTICLE 33 -- JOB SECURITY

During the life of this Agreement, D C Transportation Services, Inc. agrees not to displace any driver except for valid business or economic reasons such as layoff, termination for just cause, or the closing of the House Account facility. However, nothing in this section shall allow a discharge for less than just cause for any attempt not in good faith to dismiss a higher paid driver so as to employ a driver at a lower rate of pay.

The Company further agrees that in the event the House Account contracts with another entity (common carrier or another driver leasing service) or hires its own drivers to perform the duties of the employees covered by this Agreement, the Company will promote and encourage, in writing, the new entity or the House Account to employ the employees covered by this Agreement under the terms and conditions of this Agreement.

Handwritten notes:
House Account
obligation to hire

Section A - Tier 1

For all regular employees hired prior to December 10, 1995:

	<u>City Hourly Rate</u>	<u>Road Hourly Rate</u>	<u>Single Mileage Rate</u>
03/30/2008	19.41	19.16	0.3639
03/29/2009	19.90	19.64	0.3730
04/04/2010	20.40	20.13	0.3823
04/03/2011	20.91	20.63	0.3919
04/01/2012	21.43	21.15	0.4017

Section B - Tier 2

For all regular employees hired after December 10, 1995:

	<u>City Hourly Rate</u>	<u>Road Hourly Rate</u>	<u>Single Mileage Rate</u>
03/30/2008	17.48	17.22	0.3583
03/29/2009	17.92	17.65	0.3673
04/04/2010	18.37	18.09	0.3765
04/03/2011	18.83	18.54	0.3859
04/01/2012	19.30	19.00	0.3955

Section C - New Hires (Other than casuals for ninety days after hire)

	<u>City Hourly Rate</u>	<u>Road Hourly Rate</u>	<u>Single Mileage Rate</u>
03/30/2008	16.71	16.45	0.3506
03/29/2009	17.13	16.86	0.3594
04/04/2010	17.56	17.28	0.3684
04/03/2011	18.00	17.71	0.3776
04/01/2012	18.45	18.15	0.3870

Section D - Casual Rates

	<u>City Hourly Rate</u>	<u>Road Hourly Rate</u>	<u>Single Mileage Rate</u>
03/30/2008	14.61	14.09	0.3241
03/29/2009	14.98	14.44	0.3322
04/04/2010	15.35	14.80	0.3405
04/03/2011	15.73	15.17	0.3490
C 04/01/2012	16.12	15.55	0.3577

ARTICLE 34 -- HEALTH AND WELFARE BENEFITS

Effective March 30, 2008, contributions of two hundred and thirty seven dollars and seventy cents (\$237.70) must be made to the Central States, Southeast and Southwest Areas Health and Welfare Fund, or other applicable fund, for each week in which a regular employee works or is compensated at least two (2) days or tours of duty in the contribution week.

Effective March 29, 2009, the weekly contribution of two hundred and fifty one dollars and seventy cents (\$251.70).

Effective April 4, 2010, the weekly contribution of two hundred and sixty five dollars and seventy cents (\$265.70).

Effective April 3, 2011, the weekly contribution has not been determined. If the increase is above six percent (6%) the Company and the Union have a right to negotiate the Health & Welfare increase.
Effective April 1, 2012, the weekly contribution has not been determined. If the increase is above six percent (6%) the Company and the Union have a right to negotiate the Health & Welfare increase.

By the execution of this Agreement, the Employer authorizes the appropriate Employers' Associations to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreements, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required contributions for a period of four (4) weeks beginning with the first (1st) week after contributions for active employment ceases.

If an employee is injured on the job, the Employer shall continue to pay the required full weekly contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months per injury.

If an employee is granted a leave of absence, the employee shall make suitable arrangements to pay the required contributions into the Health and Welfare Fund during the period of absence.

ARTICLE 35 -- PENSION

Effective March 30, 2008, the Employer shall contribute to the Central States, Southeast and Southwest Areas Pension Fund, the sum of forty one dollars and ninety cents (\$41.90) per day, to a maximum of two hundred nine dollars and ninety cents (\$209.50) per week, for each regular employee covered by this Agreement who has been on the payroll thirty (30) days or more.

Effective March 29, 2009, the daily contribution shall be at the sum of forty five dollars and thirty cents (\$45.30) per day, to a maximum of two hundred twenty six dollars and fifty cents (\$226.50) per week.

Effective April 04, 2010, the daily contribution shall be at the sum of forty eight dollars and ninety cents (\$48.90) per day, to a maximum of two hundred forty four dollars and fifty cents (\$244.50) per week.

Effective April 04, 2011, the daily contribution shall at the sum of fifty two dollars and eighty cents (\$52.80) per day, to a maximum of two hundred sixty four dollars (\$264.00) per week.

Effective April 01, 2012, the daily contribution shall be at the sum of fifty seven dollars (\$57.00) per day, to a maximum of two hundred eighty five dollars (\$285.00) per week.

This Fund shall be the Central States, Southeast and Southwest Areas Pension Fund. There shall be no other pension fund under this Agreement for operations under this Agreement.

By execution of this Agreement, the Employer authorizes the appropriate Employers' Associations to enter into appropriate trust agreements necessary for the administration of such Fund, and to designate the Employer Trustees under such agreement, hereby waiving all notice thereof and ratifying all actions already taken or to be taken by such trustees within the scope of their authority.

If an employee is absent because of illness or off-the-job injury and notifies the Employer of such absence, the Employer shall continue to make the required full weekly contributions for a period of four (4) weeks. Beginning with the first (1st) week after contributions for active employment ceases. If an employee is injured on the job, the Employer shall continue to pay the required full weekly contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months per injury.

If an employee is granted a leave of absence, the employee shall make suitable arrangements to pay the required contributions into the Pension Fund during the period of absence.

ARTICLE 36 -- SUBSTANCE ABUSE

The D C Transportation Services, Inc. Substance Abuse Policy applies to all employees considering to be in "safety critical" positions. "Safety critical" positions are generally defined as, but not limited to: operators of motorized equipment (trucks, autos, forklifts, etc.) and persons maintaining motorized equipment (mechanics, mechanic's helpers, fuelers, etc.) It shall also be grounds for immediate discharge if pursuant to a substance abuse test an employee in a "safety critical" position tests positive.

Section A

It shall also be grounds for immediate discharge if an employee:

- (1) reports to work under the influence of alcohol or controlled substances, or;
- (2) if, while on duty or during working hours is under the influence of alcohol or controlled substances, or;
- (3) uses alcohol or controlled substances in any amount at any time while on duty or on the Company's or customer's premises even if off duty.

Employee conditions defined in (1), (2), or (3) above, may be verified by observation and by testing as provided in this Substance Abuse Policy. Further, the refusal to submit to a substance abuse test shall establish a presumption that the employee has in fact engaged in conduct charged under (1), (2), or (3) above. The employer has the right to obtain a drug test in the event an employee has a lost time on the job injury.

Section B

It shall also be grounds for immediate discharge if an employee:

- (1) possesses or holds for himself or another any alcohol or controlled substances on his person or in the Company truck, locker, lunch box, etc., while either on duty or on Company or customer premises;
- (2) seeks to sell or otherwise transfer, even if not in his possession, any controlled substance while on duty or on Company or customer premises.

Section C

Controlled substances as used in Section A and B above are further defined as all illegal drugs and improperly used prescription medications.

ARTICLE 37 -- NONDISCRIMINATION

The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment because such individual's race, color, religion, sex or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of race, color, religion, sex or national origin. Nothing herein (in seniority or other provisions contained in this Agreement) shall be construed or applied to deny to any employee the employment opportunities set forth above.

Any alleged denial of the aforesaid opportunities in violation of the Article, shall be submitted to the grievance procedure.

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ARTICLE 38 - TERM OF AGREEMENT

This Agreement shall be effective as of April 1, 2008, and shall remain in full force and effect through March 31, 2012, and thereafter shall be extended from year to year, unless written notice of desired changes or modifications or if termination is given by the party desiring the change or modifications of termination to the other party at least sixty (60) days prior to the expiration date.

IN WITNESS WHEREOF, the parties have hereunto set their hands at Cleveland Ohio, the
2nd day of July, 2008

TEAMSTERS UNION LOCAL 407
By: PRESIDENT
Sign: Frank Burell
Print: FRANK BURELL
Date: 6-26-08

DC TRANSPORTATION, INC.
By: President
Sign: Thomas M Fink
Print: Thomas M Fink
Date: 6-26-2008

By: BUSINESS AGENT
Sign: JD Smith
Print: JD Smith
Date: 6/26/08

A.M. CASTLE METALS, INC.
By: Company Representative
Sign: Steve Vitt
Print: STEVE VITT
Date: 7/2/08

TEAMSTERS UNION LOCAL 407
(Castle Metals Union Steward)
By: UNION STEWARD
Sign: Jerry Clark
Print: JERRY CLARK
Date: 7-2-08

[Signature]
Ron Knopp

STATE OF OHIO
DEPARTMENT OF TAXATION

SPD

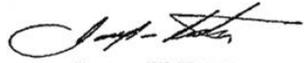
In the matter of the appeal before)
The Board of Tax Appeals filed by:)
)
A. M. Castle and Company)
3400 Wolf Rd.)
Franklin Park, IL. 60131-1319)
)
)
Appellant)
)
)
)
v.)
)
)
Joseph W. Testa)
Tax Commissioner of Ohio)
)
Appellee)
)
Use Tax)

B.T.A. Case No. 2013-5851

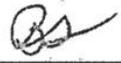
2013 DEC 23 AM 10:47

I hereby certify that the papers hereto attached are a complete transcript of the record of the proceedings before the Tax Commissioner of Ohio, together with all evidence, documentary and otherwise, considered in connection with the matter therein described.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND
CORRECT COPY OF THE ACTION OF THE TAX
COMMISSIONER TAKEN THIS DAY WITH RESPECT
TO THE ABOVE MATTER.


JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa
Joseph W. Testa
Tax Commissioner

Please Initial for Exhibit:


**STATE OF OHIO
DEPARTMENT OF TAXATION**

In the matter of the appeal before)
The Board of Tax Appeals filed by:)
)
A. M. Castle and Company)
3400 Wolf Rd.)
Franklin Park, IL. 60131-1319)
)
)
)
Appellant)
)
)
)
v.)
)
)
)
Joseph W. Testa)
Tax Commissioner of Ohio)
)
Appellee)
)
Use Tax)

B.T.A. Case No. 2013-5851

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JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner



Department of Taxation

Office of the Tax Commissioner
30 E. Broad St., 22nd Floor • Columbus, OH 43215

FINAL DETERMINATION

Date: OCT 28 2013

A. M. Castle and Company
3400 Wolf Rd.
Franklin Park, IL 60131-1319

Re: Assessment No. 8120400244
Use Tax
Account No. 97-101806

The final determination of the Tax Commissioner issued on September 17, 2013 pertaining to this taxpayer is hereby vacated and is replaced by the following:

This is the final determination of the Tax Commissioner on a petition for reassessment pursuant to R.C. 5739.13 and R.C. 5741.14 concerning the following use tax assessment:

	<u>Amount</u>	<u>Penalty</u>	<u>Total</u>
Use Tax	\$277,725.97	\$41,658.58	\$319,384.55
Preassessment Interest	37,727.25	0.00	<u>37,727.25</u>
Total.....			\$357,111.80

The petitioner is a provider of specialty metal products in bar, tube, plate and sheet to metal users. This assessment is a result of an audit of the petitioner's purchases for the period of January 1, 2008 through December 31, 2009. The petitioner filed a timely petition for reassessment and requested remission of the penalty. The objections are addressed in detail below.

A hearing was held in this matter on March 6, 2013 in Columbus, Ohio.

The petitioner contends that charges by DC Transportation Services, Inc. should be removed from the assessment because they are excepted from the definition of "employment services" as defined in R.C. 5739.01(JJ)(3). This section provides that employment service does not include situations where employees are supplied "... to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis." The petitioner provided a copy of its contract in support of its argument.

In the case of *H.R. Options, Inc. v. Wilkins*, 102 Ohio St. 3d 1214, 2004-Ohio-2085, the Ohio Supreme Court directed that the Commissioner when auditing look at both the contract and the facts and circumstances of its application. An auditor must look at the employment service

contract to see if it is consistent with the requirements set forth in R.C. 5739.01(JJ)(3) and the auditor must review the circumstances of the employment assignments to ascertain whether the actual practice under the contract is consistent with the contract's terms. It must be determined whether the particular employees are assigned on an "indefinite" basis, or whether the assignments are as substitutions, for seasonal business, or to meet short term work load needs.

The contract between the petitioner and DC Transportation Services, Inc., executed on March 24, 2000, does provide that it is for a period of one year. However, the contract does not meet the second prong as set out in R.C. 5739.01(JJ)(3). The contract does not specify that the employees are assigned on a permanent basis. The contract provides that "Lessor shall provide Lessee with a sufficient number of drivers to operate the motor vehicles owned or leased by Lessee, as required by Lessee." This language leaves open the drivers that may be provided indicating that they will be provided on an "as required" basis.

The petitioner's representative argues in the memorandum of support for the petition for reassessment that the contract meets both requirements of the exception to taxable employment services as laid out in R.C. 5739.01(JJ)(3). First, the petitioner cites to contract paragraph 13 for the proposition that it meets the one year requirement. The Tax Commissioner does not dispute that the contract meets the first minimum qualification of having a period of at least one year. However, for the second requirement, although the petitioner argues that ". . . the Contract . . . assigns employees to AM Castle on a permanent basis. . . .", the memorandum fails to reference any portion of the contract that supports this contention. Further, a review of the contract provided fails to find any such provision in the document.

To further support its arguments, the petitioner provided an Affidavit of Ronald Knopp, Director of Operations, at A. M. Castle. Mr. Knopp states, and swears to, in the affidavit that pursuant to clause 13 of the contract, the terms of the contract dated March 24th, 2000 continued to automatically renew each year and were in effect each year after 2000, including the years 2008 and 2009 (the audit period). Again, it is noted that the Tax Commissioner does not dispute that the contract meets the requirement of having a term of at least one year. However, it is curious that the affidavit is silent as to the temporary employees' assignments. Nowhere in the affidavit is there any mention of the terms of the employee assignments; the second important requirement for the exception found in R.C. 5739.01(JJ)(3).

Following up the hearing, information was provided in spreadsheet format regarding specific primary and secondary drivers obtained from DC Transportation. However, the information provide on the spreadsheet is only conclusory after the drivers have been assigned to the petitioner. It is not supported by any primary documentation and it does not establish that any driver was assigned on a permanent basis under the contract. The petitioner has the burden of showing error in the assessment. The petitioner has not put forth evidence to prove that any adjustment to the assessment is warranted.

Based upon the foregoing, the objection is denied.

The request for remission of penalty is denied. The petitioner did not have a consumer's use tax account during the audit period and the information provided to the auditor indicates that

OCT 8 2013

the petitioner had a percentage of compliance of only 25%. The request to abate the penalty is denied.

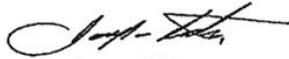
Therefore, it is the order of the Tax Commissioner that the assessment is affirmed as issued.

Current records indicate that no payments have been made on this assessment. However, due to payment processing and posting time lags, payments may have been made that are not reflected in this final determination. **Any unpaid balance bears post-assessment interest as provided by law, which is in addition to the above referenced total.** Payment shall be made payable to Ohio Treasurer Josh Mandel. Payments should be mailed to the Ohio Department of Taxation, Compliance Division, P.O. Box 1090, Columbus, Ohio, 43216-1090.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL

/s/ Joseph W. Testa


JOSEPH W. TESTA
TAX COMMISSIONER

Joseph W. Testa
Tax Commissioner

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Received by (Please Print Clearly) <i>AG</i> B. Date of Delivery <i>11-12-13</i></p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">AM Castle & Company 3400 Wolf Rd Franklin Park IL 60131-1319</p> <p style="text-align: center;">No. 8120400244 - OCC/tk</p> <p style="text-align: right; font-size: 2em;">17</p>	<p>C. Signature <i>AG</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>2. Article Number (Copy from service label)</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>71 8091 72356000209701</p>	

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

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A-123



FINAL DETERMINATION

Date: SEP 17 2013

A. M. Castle and Company
3400 Wolf Rd.
Franklin Park, IL 60131-1319

Re: Assessment No. 8120400244
Use Tax
Account No. 97-101806

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Total.....			\$367,111.80

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SEP 17 2013

whether the particular employees are assigned on an "indefinite" basis, or whether the assignments are as substitutions, for seasonal business, or to meet short term work load needs.

The contract between the petitioner and DC Transportation Services, Inc., executed on March 24, 2000, does provide that it is for a period of one year. However, the contract does not meet the second prong as set out in R.C. 5739.01(JJ)(3). The contract does not specify that the employees are assigned on a permanent basis. The contract provides that "Lessor shall provide Lessee with a sufficient number of drivers to operate the motor vehicles owned or leased by Lessee, as required by Lessee." This language leaves open the drivers that may be provided indicating that they will be provided on an "as required" basis.

The petitioner's representative argues in the memorandum of support for the petition for reassessment that the contract meets both requirements of the exception to taxable employment services as laid out in R.C. 5739.01(JJ)(3). First, the petitioner cites to contract paragraph 13 for the proposition that it meets the one year requirement. The Tax Commissioner does not dispute that the contract meets the first minimum qualification of having a period of at least one year. However, for the second requirement, although the petitioner argues that ". . . the Contract . . . assigns employees to AM Castle on a permanent basis. . .", the memorandum fails to reference any portion of the contract that supports this contention. Further, a review of the contract provided fails to find any such provision in the document.

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Following up the hearing, information was provided in spreadsheet format regarding specific primary and secondary drivers obtained from DC Transportation. However, the information provide on the spreadsheet is only conclusory after the drivers have been assigned to the petitioner. It is not supported by any primary documentation and it does not establish that any driver was assigned on a permanent basis under the contract. The petitioner has the burden of showing error in the assessment. The petitioner has not put forth evidence to prove that any adjustment to the assessment is warranted.

Based upon the foregoing, the objection is denied.

The request for remission of penalty is denied. The petitioner did not have a consumer's use tax account during the audit period and the information provided to the auditor indicates that the petitioner had a percentage of compliance of only 25%. The request to abate the penalty is denied.

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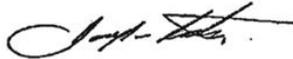
SEP 17 2013

Therefore, it is the order of the Tax Commissioner that the assessment is affirmed as issued.

Current records indicate that no payments have been made on this assessment. However, due to payment processing and posting time lags, payments may have been made that are not reflected in this final determination. Any unpaid balance bears post-assessment interest as provided by law, which is in addition to the above referenced total. Payment shall be made payable to Ohio Treasurer Josh Mandel. Payments should be mailed to the Ohio Department of Taxation, Compliance Division, P.O. Box 1090, Columbus, Ohio, 43216-1090.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

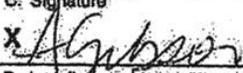
I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL



JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A: Received by (Please Print Clearly)	B: Date of Delivery 9-30-13
1. Article Addressed to: <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> AM Castle & Company 3400 Wolf Rd Franklin Park IL 60131 </div> No: 8120400244 - OCC/AK	C: Signature  <div style="float: right;"> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee </div>	
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Copy from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
71 8091 72356 000209060		
PS Form 3811, July 1999	Domestic Return Receipt	102595-99-M-1789

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14:31:33 Tuesday, August 20, 2013

08/20/13 14:30 OH DEPT OF TAX DOCUMENT DETAIL STEHL R208 DGR2P44

FEIN : 36-0879160/000 NAME : A M CASTLE AND COMPANY
ACCOUNT TYPE : CONU ACCOUNT ID : 97101806
ACCOUNT PERIOD : 12/31/2009 - 12/31/2009 FORM : 2009 LBKDT-CONU
LINK TRANS ID : IN-DATE : 02/16/2012
TRANS ID : 1270006744000 BATCH ID : 01270006744
XFER REF ID :

LINE	LINE ITEM	ORIGINAL VALUE	SUMMARY VALUE	COR
T2	CASE ID	432,038,483	432,038,483	
T3	CASE TYPE	A	A	
1	AUDBEGINDT	01/01/2008	01/01/2008	
2	AUDENDDT	12/31/2009	12/31/2009	
3	SLTAX	0.00	0.00	
4	USETAX	277,725.97	277,725.97	
5	TOTAL TAX	277,725.97	277,725.97	
6	MDG AUDFEE	0.00	0.00	
7	TXCOLNTREM	0.00	0.00	

5053 NOTES EXIST
01-HELP 03-END 06-SUSPEND 08-NEXT 09-CANCEL 13-PERDTL 14-NOTE
17-TRANLST 18-TRANEFF 20-PRINT 21-DOWNLOA
NEXT FUNCTION : DATA :

00009



A. M. Castle & Co.

[OUR BUSINESSES](#)

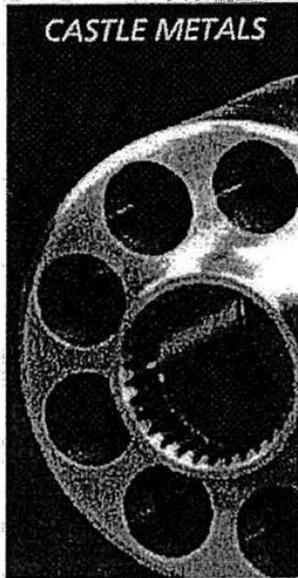
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Specialty Products, Specialty Services, Customized Supply Chain Solutions

From global commerce to local customers, we go beyond traditional metal service centers by not only providing quality materials, but eliminating costs and supply chain obstacles. In today's busy market, your company's production might be impacted by late deliveries, price fluctuations, and material inconsistency. Let us address these frustration factors and work with you to add efficiency.

We are positioned to meet unique requirements in aerospace, oil and gas, heavy equipment, and other industries.



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A. M. Castle & Co.(CAS) Current Price: !

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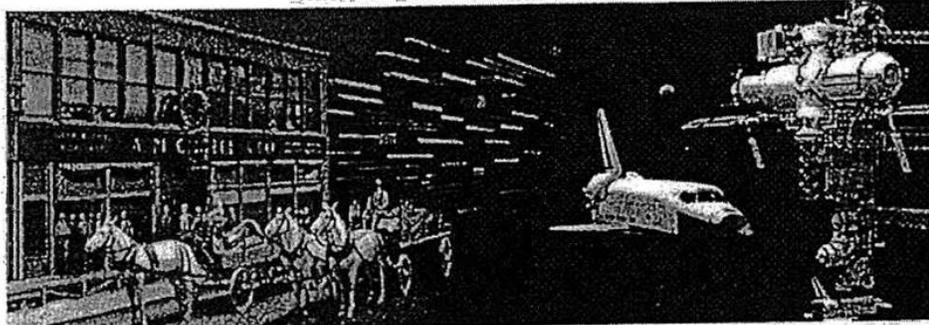
Metals

- A. M. Castle & Co. home
- Castle Metals
- Castle Metals Plate
- Castle Metals Aerospace
- Castle Metals Oil & Gas
- Castle Metals UK

Plastics

- Total Plastics, Inc.

Contact Us



About Us

A. M. Castle & Co. (NYSE:CAS) is the foremost provider of specialty products, services, and supply chain solutions. We are recognized as a leading distributor of carbon, alloy, stainless steel, nickel alloys, aluminum, titanium, cast iron, brass, copper, and plastic, as well as a global resource for complex supply chain solutions.

Operating in more than 55 locations throughout North America, Europe and Asia, we work with international OEMs to better serve their multi-location production requirements and delivery needs. We also leverage our long-standing metals experience and focus on processing and other value-added services to better meet the unique requirements of industries such as aerospace, defense, oil and gas, power generation and heavy equipment.

By expanding our capabilities and services, A. M. Castle is growing to serve the more complex requirements of customers who are outsourcing non-core functions. Our highly regarded H-A Industries, a state-of-the-art bar processing facility, provides an extensive range of thermal treating and finishing services. In addition, we offer a comprehensive range of (high value added) processing services for plate, sheet, tubing, and bar products from many of the locations in our North American network.

Today, A. M. Castle is continuing to expand globally. Since acquiring full ownership of Castle de Mexico in early 2004, we have seen this organization grow rapidly. With the acquisition of Transtar Metals in 2006, we have further extended our global footprint with two locations in Europe, along with a strong network of agents throughout Asia; more than a third of Castle Metals Aerospace's customers are located outside North America.

To accommodate this accelerated growth in products, services and customer support, we are continuing to expand and strengthen our infrastructure. This work includes key efforts in an organization-wide ERP (Enterprise Resource Planning) system, as well as re-engineering in specific facilities.

More importantly, A. M. Castle continues to focus on developing the strongest service team in our industry. We are committed to developing our team to ensure that we have the right people, with the capabilities and experience needed, to provide our customers with best-in-class service and support.

Lau, Edward

From: John M Allan <jmallan@JonesDay.com>
Sent: Monday, June 24, 2013 12:16 PM
To: Lau, Edward
Cc: Eric N Reynolds
Subject: AM Castle & Co. - consumer use tax assessment number 8120400244
Attachments: Ohio Tax Audit - AM Castle Ohio Drivers Summary.xls

Mr. Lau- Please see below. Thanks! John Allan

John M. Allan
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-3053

jmallan@jonesday.com
404-581-8012 (Direct Dial)
404-581-8330 (Fax)
678-429-0114 (Cell)
404-355-4592 (Home)

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

— Forwarded by John M Allan/JonesDay on 06/24/2013 12:13 PM —

From: John M Allan/JonesDay
To: edward_lau@tax.state.oh.us
Cc: Eric N Reynolds/JonesDay@JONESDAY
Date: 05/30/2013 05:11 PM
Subject: AM Castle & Co. - consumer use tax assessment number 8120400244

Mr. Lau

Pursuant to the above captioned matter, we are supplying information related to the drivers wholau provided services to AM Castle during the 2008-2009 audit period. The first tab is titled "Summary - Drivers" and provides information on the primary drivers that performed services for AM Castle in connection with the DC Transportation contract. The second tab is titled "Summary - Other Drivers" and provides information on secondary drivers. Each tab provides the following information:

- Name
- Start date
- Years Worked (as of the end of the 2008-2009 audit period)
- End Date (if no longer driving for AM Castle)
- Total 2008 Hours
- Average Hours Per Week During 2008
- Total 2009 Hours
- Average Hours Per Week During 2009

After you have had a chance to review this information, can we schedule a call to discuss? Thanks! John.

John M. Allan
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, Georgia 30309-3053

jmallan@jonesday.com
404-581-8012 (Direct Dial)
404-581-8330 (Fax)
678-429-0114 (Cell)
404-355-4592 (Home)

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=====
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
=====

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This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.
=====

Driver	Start Date	Yrs. (as of end of audit period)	End Date (If No Longer Driving For AM Castle)	Total Hours 2008	Average Hours Per Week 2008	Total Hours 2009	Average Hours Per Week 2009
Hoag	7/19/06	3	2/18/2009	1853	36	26	1
Finney	7/28/05	4	S	112	2	-	-
Sunderland	5/29/00	9	3/20/2009	2839	55	403	8
Temple	2/17/06	3	4/22/2009	1720	33	402	8
Jordan	11/1/05	4	10/29/2009	2073	40	306	6
Nickel	5/29/00	8	11/7/2008	1860	36	-	-
Kristensen	5/26/06	2	9/25/2008	795	15	-	-
Evans	7/25/01	7	11/8/2008	656	13	-	-
Caldwell	5/29/00	8	9/26/2008	1238	24	-	-
Foman	5/5/03	6	10/29/2009	2740	53	1259	24
Loeffler	1/2/01	8	S	2491	48	916	18
Annis	11/20/03	6	2/23/2013	730	14	374	7
Jordan	11/1/05	4	10/29/2009	584	11	587	11
Sevc	10/1/07	2	S	1971	38	-	-
Hopkins	4/9/07	2	10/29/2009	11	0	-	-
Cromliegh	5/29/00	8	7/10/2008	41	1	-	-
Dunn	6/1/07	1	8/15/2008	565	11	-	-
Soto	6/1/08	1	4/23/2009	1258	24	778	15
Kruder	9/28/08	1	4/23/2009	179	3	219	4
Freel	10/22/08	1	3/19/2009	272	5	122	2

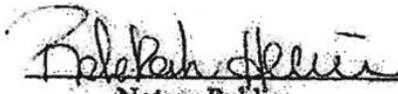
2.5
9

S = still driving for AM Castle as of January 2013

FURTHER AFFIANT SAYETH NOT.


RONALD KNOPP

Sworn to and subscribed before
me this 22 day of February, 2013.


Notary Public



My commission expires: 7/18/2016

[AFFIX NOTARIAL SEAL OR STAMP]



Office of Chief Counsel
30 E. Broad St., 23rd Floor
Columbus, OH 43215
(614) 466-6750 Fax (614) 466-7979
www.state.oh.us/tax/

HEARING NOTICE

January 31, 2013

A M Castle and Company
3400 Wolf Rd.
Franklin Park, IL 60131-1319

REPRESENTATIVE OF RECORD:

John M. Allan
Jones Day
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053

Tax Type: Sales Tax
Assessment No. 8120400244

The hearing on your disputed sale tax assessment has been scheduled for March 6, 2013 at 2:30 P.M. The hearing will be held at the Rhodes State Office Tower, 30 East Broad St., 23rd Floor, Columbus, Ohio 43215.

You or your representative should be prepared to submit all information and evidence to the hearing examiner at the time of hearing. In addition, please be prepared to submit a comprehensive list of all objections and legal arguments, if not already set forth in the petition for reassessment.

If you or your representative do not appear at the hearing, the matter will be decided based on the information in the possession of the Tax Commissioner and the final determination issued.

Sincerely,

Edward H. Lau, Attorney
Office of Chief Counsel
614-466-6750

00017

35 Monday, May 14, 2012

05/14/12 07:39 OH DEPT OF TAX CASE DETAIL ITZCAM1 R625 DGR6M37

REL ID : 36-0879160/000 NAME : A M CASTLE AND COMPANY
CASE ID : 432038483 A CASE TYPE : F AUDIT
CASE SOURCE : CREATION DATE : 02/16/2012
TOTAL FOR CASE : 357,111.80
EFF ACCT PD (BEG) : 12/31/2009 TO 12/31/2009 CORP OFFR: N AUD SEL SCORE:
END ACCT PD (BEG) : TO NUM OF ITEMS: 1
ASMT SERIAL NUM : 8120400244
PRIORITY : 100 IMMEDIATE ACTION : 275 ASSIGN TO AGENT
SUBJECT : 205 APPEAL ACTION DATE : 05/14/2012
STATUS : 035 ASSESSMENT STATUS DATE : 02/23/2012
NOTICE ID :
EMPLOYEE : 99999999 UNASSIGNED
ORGANIZATION : 35 LEGAL DIVISION PROJECTED HRS :
DATE ASSIGNED : 05/14/2012 PRIORITY DATE : 05/15/2012
EST. COMPLETION DATE : DELIVERY DATE : 05/10/2012
LAST CONDITION : 005351 MANUAL COND DATE : 05/14/2012
SOURCE OF INFO : 110 LAST UPDATE BY : ITZCAM1
UPDATE REASON : 403 TP CORRES UPDATE DATE /TIME : 05/14/12 07:39
5053 NOTES EXIST
01-HELP 03-END 06-SUSPEND 07-BEFORE 09-CANCEL 11-ITEMS 14-NOTE,
16-AUDRES 17-EMPLIST 19-TIME 21-HISTLST 22-XREF 23-ACTIONS
NEXT FUNCTION DATA :

00018



7193 2971 4920 0915 9840

NOTICE OF ASSESSMENT

Compliance Division
P. O. Box 1090
Columbus, OH 43216-1090
Phone: 1-888-297-7150
Fax: 1-614-387-1847
TTY/TDD: 1-800-750-0750
tax.ohio.gov

March 7, 2012

8277261120301 ITAS

A M CASTLE AND COMPANY
3400 WOLF RD
FRANKLIN PARK, IL 60131-1319

Audit Type: FA
Case Type: 3

Pursuant to Section(s) 5703.261, 5739.12, 5739.13, 5739.132, 5739.133, 5739.15, 5739.33, 5741.11, 5741.12, 5741.13, 5741.14 of the Ohio Revised Code, The Tax Commissioner Hereby Certifies the Following:

CONSUMER'S USE TAX				ASSESSMENT #: 8120400244	
CASE TYPE: 3 (*) Refer to Definitions				ACCOUNT #: 97101806	
PERIOD ASSESSED: 01/01/08 through 12/31/09				CASE #: 432038483A	
TAX	INTEREST	PENALTY	ADDITIONAL CHARGE	ADDITIONAL CHARGE PENALTY	
\$277,725.97	\$37,727.25	\$41,658.58	\$0.00	\$0.00	
TOTAL ASSESSMENT DUE:				\$357,111.80	

I HEREBY CERTIFY THE FOLLOWING TO BE A TRUE AND CORRECT COPY OF THE ACTION OF THE TAX COMMISSIONER TAKEN THIS DAY WITH RESPECT TO THE ABOVE MATTER.

TAX COMMISSIONER, STATE OF OHIO

ASAT0095

Notice to taxpayers in Bankruptcy: This assessment is a notice of tax deficiency permissible pursuant to 11USC 362(b) (9).

MAKE CHECK PAYABLE TO - TREASURER OF STATE
RETURN THIS PORTION WITH YOUR REMITTANCE AND/OR CORRESPONDENCE PERTAINING TO THIS MATTER

A M CASTLE AND COMPANY
Account #: 97101806
Assessment #: 8120400244
Notice #: 8277261120301

CONSUMER'S USE TAX 410
ASSESSMENT PAYMENT COPY

Amount Owed: \$357,111.80

Enter Amount Paid: _____

*****State Use Only*****

Payment Code: PMT ITAS

Payment Date: _____

OTC #: _____

Case #: 432038483A

OHIO DEPARTMENT OF TAXATION
P.O. BOX 1090
COLUMBUS, OH 43216-1090

03541097101806420080101200912319998277261120301000000000000357111800

00019

GENERAL INFORMATION

You have sixty days from the date shown on the enclosed tax assessment to pay the assessment in full without additional interest. The Tax Department does not arrange for installment payments; however, you may make partial payments anytime and they will be credited against the amount you owe. Sixty days from the date you receive this assessment, the assessment becomes final and is sent to the Attorney General's Collection Enforcement Section. That office may obtain a lien and/or contract with a private attorney and/or collection agency to enforce collection of this assessment. The Attorney General's Collection Enforcement Section can agree to a one-year payment plan, under certain conditions. Unpaid amounts will bear interest at the rate prescribed by Ohio Revised Code 5703.47 from the day the Tax Commissioner issues the assessment until paid.

IF YOU DISAGREE WITH THE ASSESSMENT

You have sixty days from the date you receive this assessment to file a petition for reassessment at: Ohio Department of Taxation, Compliance Division, P.O. Box 1090, Columbus, OH 43216-1090. Your petition must be in writing and signed by you or your authorized agent.

We will schedule a hearing only if you request a hearing with your timely filed petition. If you send the petition by certified mail or other delivery service authorized by Ohio Revised Code 5730.056, the postmark date is considered as the date filed. However, if you send the petition by regular mail, the date the State receives the petition is the date filed. The Ohio Revised Code requires the dismissal of petitions which do not meet statutory requirements.

PAYMENT REQUIREMENTS

Sales/Use tax, no payment is required.

Employer Withholding/School District Employer Withholding assessments issued on or after October 16, 2009

Generally, no payment is required. However, the amount assessed must be paid no later than the last day the petition may be filed, if:

1. A return was filed showing no tax liability, but the reported amount was not based on the computations required by law.
2. No return was filed, except if the person had no nexus or if a properly completed return would result in a liability of one dollar or less.
3. The Tax Commissioner determined that the filed return was false, fraudulent or frivolous.

Employer Withholding/School District Employer Withholding assessments issued prior to October 16, 2009 and all Corporation Franchise assessments

The amount assessed must be paid no later than the last day the petition may be filed, if:

1. Your sole objection is the assessed penalty or interest, full payment of the assessment including interest, but not penalty, is required.
2. Prior to the date the assessment was issued you failed to file the annual return or any amended returns required by law for the given tax period, you must pay the entire assessment including interest, but not penalty.
3. Prior to the date the assessment was issued you filed the annual report and all amended reports required by law, but you did not pay the entire tax shown due on the reports you filed, you must pay that portion of the assessment representing the unpaid balance shown on the report(s).
4. **CORPORATE NEXUS** - (This applies to Corporation Franchise tax assessments only) The corporation assessed does not dispute that it is a taxpayer but claims the protection of Section 101 of Public Law 86-272, 73 Stat. 555 15 U.S.C.A. 381, as amended, the corporation must pay with the petition only the "Net Worth" portion of the tax along with the related litter tax (Ohio Revised Code Sections 5733.06(C), 5733.065(C)(2), and 5733.066(C)). You must also pay any related interest and penalty. If the corporation assessed disputes that it is a taxpayer, no payment is required.

NOTE: If none of the conditions outlined in 1 - 4 apply, no payment is required.

RESPONSIBLE PARTY INFORMATION

Your petition for reassessment must contain an explanation as to why you are not liable. The only issue you can raise is whether or not you are a responsible person for this debt.

A NOTE ABOUT INTEREST

Interest accrues at the rate prescribed by Ohio Revised Code 5703.47 on any unpaid amount of the assessment, which is determined to be correct from the date of the assessment to the date of payment. Any overpaid amount will be refunded with interest at the same rate.

CASE TYPE DEFINITIONS

1. **DQ** Delinquency assessment issued for failure to file a return.
2. **NR** Nonremittance assessment issued for failure to timely pay reported tax and/or the return contained an error.
3. **FA** Field Audit assessment generated based on a field audit.
4. **OA** Office Audit assessment generated based on an in-house office audit.
5. **BC** Bad Check
6. **RP** Responsible Party assessment generated as a result of a taxpayer's responsible party status to a trust tax.
7. **JEP** Jeopardy assessment.
8. **DSC** Discovery assessment/estimated liability.
9. **ENF** Assessment issued as a result of an enforcement action.
10. **UTA** Use tax amnesty assessment issued as a result of failure to pay reported liability.

For additional information refer to the sections of the Ohio Revised Code listed at the top of your assessment notice.

**MEMORANDUM IN SUPPORT OF PETITION FOR
REASSESSMENT
Filed On Behalf Of**

A.M. CASTLE & CO.

BACKGROUND

On March 7, 2012, the Ohio Department of Taxation (the "Department") issued to A.M. Castle & Co. ("AM Castle") Consumer's Use Tax Assessment No. 8120400244 (the "Assessment").¹ The Assessment relates to the 2008 and 2009 tax years (the "Assessment Period") and states that AM Castle is liable for an aggregate amount of \$357,111.80, comprising \$277,725.97 in tax, \$37,727.25 in interest and \$41,658.58 in penalty.

Pursuant to R.C. § 5733.11, AM Castle is filing with the Tax Commissioner of Ohio a Petition for Reassessment. The Petition is being filed on or before May 6, 2012 by means of certified mail delivery.

The Assessment is based, in part, on erroneous adjustments to AM Castle's Consumer Use Tax liability related to the provision of employment services to AM Castle by an unrelated third party. The adjustments are detailed in a February 16, 2012 letter from Rachna Reniguntala, Ohio Department of Taxation Auditor Agent, to John Herbert, Tax Manager, AM Castle and Company (the "Audit Report").² AM Castle disputes the following assessments related to employment services: 1) \$ 192,909.94 of tax liability; 2) \$26,095.12 of interest; and \$28,936.50 of assessed penalties. AM Castle

¹ A copy of the Assessment is attached hereto as Exhibit 1.

² A copy of the Audit Report is attached hereto as Exhibit 2.

also respectfully requests abatement of \$12,722.08 in additional penalties related to tax assessments that it does not dispute, as the underpayment of tax was due to a reasonable cause and was not the result of willful neglect.

FACTS

Pursuant to a March 24th, 2000 contract (the "Contract") between DC Transportation Services, Inc. ("DC Transportation") and AM Castle, DC Transportation provides drivers to operate motor vehicles owned or leased by AM Castle.³ The Contract contains an "evergreen renewal" provision and has automatically renewed every year since⁴ its inception and was in effect during the entirety of the Assessment Period. Further, employees are assigned to AM Castle on a permanent basis and DC Transportation will only "remove [a] driver from service under this agreement upon request from [AM Castle] in writing."⁵ The turnover rate of drivers assigned to AM Castle is extremely low, with the average tenure exceeding eight years.

OHIO LAW

With certain exceptions, employment services are generally taxable under Ohio sale and use tax law.⁶ Excluded from the definition of taxable employment services, however, is the provision of "personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each

³ A copy of the contract is attached hereto as Exhibit 3.

⁴ Contract ¶ 13 ("This agreement . . . shall continue in full force . . . from year to year . . . unless terminated on thirty (30) days prior written notice given to the other party.")

⁵ *Id.* ¶ 10.

⁶ OHIO REV. CODE. ANN. § 5739.01(B)(3)(k)-(l).

employee covered under the contract is assigned to the purchaser **on a permanent basis.**⁷

ANALYSIS

Because the Contract 1) covers a period of at least one year and 2) assigns employees to AM Castle on a permanent basis, the employment services provided pursuant to the Contract are not subject to the consumer's use tax. All tax, penalty and interest assessed in relation to the employment services provided under the Contract should thus be abated.

AM Castle also believes that a 15% penalty of \$12,722.08 was assessed pursuant to OHIO REV. CODE. ANN. § 5739.133(A)(3) on purported use tax liability related to asset purchases and other expenses (excluding leased help). It respectfully requests that these remaining penalties be abated pursuant to the Ohio Tax Commissioner's authority to grant "remission of any penalty provided for under this [sales and use tax] section."⁸ The underpayment of tax was due to a reasonable cause and was not the result of willful neglect.

⁷ *Id.* § 5739.01(JJ)(3) (emphasis added).

⁸ *Id.* § 5739.133(c).

Authorized Representatives

AM Castle is being represented in this matter by the following attorneys:⁹

John M. Allan
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053
(404) 581-8012
(404) 581-8330 (fax)
jmallan@jonesday.com

Eric N. Reynolds
JONES DAY
1420 Peachtree Street, N.E.
Suite 800
Atlanta, GA 30309-3053
(404) 581-8669
(404) 581-8330 (fax)
ereynolds@jonesday.com

Please send all correspondence relating to this matter to the above referenced attorneys at the addresses set forth above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Allan", with a long horizontal line extending to the right.

⁹ An executed Declaration of Tax Representative is attached hereto as Exhibit 4.



Department of
Taxation

Audit Division
Out-of-State Region
1011 E. Touhy
Suite 345
Des Plaines, IL 60018
<http://tax.ohio.gov/>

February 16, 2012

John Hebert
Tax Manager
AM Castle and Company
3400 N Wolf Rd
Franklin Park, IL 60131

Re: Sales and Use Tax Audit period 01/01/2008 through 12/31/2009

Dear Mr. Hebert:

Final review and verification of the sales and use tax audit has been completed and the proposed audit results have been approved. The audit results and the Summary for Recommending Assessment are enclosed. The audit liability noted on the Summary for Recommending Assessment includes tax, interest and penalty. The tax is based on the purchases of tangible personal property and/or services for which no exception or exemption has been established. The following information was examined during this audit:

- Asset purchases for the entire audit period
- Expense transactions during a sample period of 01/01/2009 - 03/31/2009 (excluding leased help)
- Transactions 07/01/2009 - 12/31/2009 from the "Leased Help" accounts

Expenses were audited in accordance with the sample agreement signed by AM Castle on 5/12/2010.

Tangible personal property asset purchases determined to be taxable include: cranes and forklifts (including lease buybacks), saw parts, used yard dogs, and various other products.

Tangible personal property expenses include: cell phone bills, supplies, cleaning services, labor on cranes, and several other miscellaneous items.

The Ohio Revised Code (O.R.C.) 5739.01(YY) states:

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741 of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

Many of these purchases may qualify for the manufacturing exemption under 5739.011, however, no additional information regarding the nature/use of the items purchased has been provided for our review.

In addition, purchases made under the "Leased Help" account are included within our proposal. "Leased Help" transactions were to be reviewed on a comprehensive basis, however, transaction details were only provided for a six

Audit Results Notification
Letter C - Liability Due - No Overpayments
02/04

00025

month period. As a result, the information given was projected to reflect the entire audit period by multiplying the amount reviewed by four for the two years in the audit period.

Upon examination of your lease contract with DC Transportation Services, Inc., it was determined that the services provided by DC Transportation Services, Inc. fit within the definition of Employment Service as defined under 5739.01(JJ), and are considered taxable. According to O.R.C. 5739.01(JJ):

"Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so provided or supplied receive their wages, salary, or other compensation from the provider or supplier of the employment service or from a third party that provided or supplied the personnel to the provider or supplier. "Employment service" does not include:

- (1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.
- (2) Medical and health care services.
- (3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.
- (4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.
- (5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.

Please note this information does not constitute a formal notice of assessment. No appeal should be made as a result of receipt of this information. The Ohio Department of Taxation's Assessment and Billing Division will send you the formal notice of assessment by certified mail. Included with the formal notice of assessment will be information on how to appeal the assessment (petition for reassessment).

If you have any additional questions concerning the audit results, please contact me.

Sincerely,



Rachna Reniguntala
Tax Auditor Agent
Phone (847) 390-7579
Fax (847) 390-8073
rachna_reniguntala@tax.state.oh.us

Summary for Recommending Assessment: Sales and Use Tax

Name: AM Castle and Company
DBA: Castle Metals
Legal Address: 3400 N Wolf Rd
Franklin Park, IL 60131
Mailing Address: 3400 N Wolf Rd
Franklin Park, IL 60131
Taxpayer: John Hebert
Rep.: Tax Manager

Printed: 02/15/2012 1:54:49PM
Case ID: 432038483
License or Account No: 97101806
Audit Code:
County: 18 (CUYAHOGA)

Period Covered: 01/01/2008 Through 12/31/2009

SCHEDULE A - SALES TAX

Table with 2 columns: Description and Amount. Rows include Sales Tax Due on Sales, Sales Tax Due on Purchases, Total Sales Tax Due, Penalty, and Total Sales Tax and Penalty.

SCHEDULE B - USE TAX

Table with 2 columns: Description and Amount. Rows include Use Tax Due on Sales, Use Tax Due on Purchases, Total Use Tax Due, Penalty, and Total Use Tax and Penalty.

SCHEDULE C - PREASSESSMENT INTEREST (AS OF 02/24/2012)

Table with 2 columns: Description and Amount. Rows include Preassessment Interest, Penalty (Not Applicable), and Total Preassessment Interest and Penalty.

SCHEDULE D - ADDITIONAL CHARGES AND MISCELLANEOUS ADJUSTMENTS

Table with 2 columns: Description and Amount. Rows include Additional Charges and Miscellaneous Adjustments, Penalty, and Total Additional Charges and Miscellaneous Adjustments.

Summary table with 2 columns: Description and Amount. Rows include Total Recommended Assessment, Post Assessment Credit, and Remaining Unpaid Liability.

THE FOLLOWING MUST BE COMPLETED ON ALL FIELD AUDITS:

I HAVE EXAMINED THIS AUDIT REPORT, AND THE PROCEDURE AND COMPUTATIONS USED THEREIN HAVE BEEN EXPLAINED TO ME BY THE AUDITOR.

Rachna Reniguntala (SP3601)
NAME AND NUMBER OF AUDITOR

THIS STATEMENT DOES NOT CONSTITUTE AN ADMISSION OF ANY TAX LIABILITY OR A WAIVER OF TAXPAYER'S RIGHTS TO CONTEST ANY ASSESSMENT WHICH MAY BE BASED ON THIS REPORT.

Signed: VENDOR OR TAXPAYER

Approved By: AUDIT MANAGER

Sheet: _____

Ohio | Department of
Taxation

Legal entity: AM Castle and Company
 Auditor: Rachna Reniguntala (SP3601)
 Audit Period: 01/01/2008 through 12/31/2009
 Main Account No: 97101806
 Assignment No: 432038483
 Printed: 2/16/2012 9:37:30AM

Account No: 109 (Expenses) & N/A (C)	
Sample/Test	Balance Amount
01/2009	468,670.29
Sample/Test Total:	468,670.29
Audit/Download	Balance Amount
01/2008	262,436.87
02/2008	245,505.46
03/2008	262,436.87
04/2008	253,971.16
05/2008	262,436.87
06/2008	253,971.16
07/2008	262,436.87
08/2008	262,436.87
09/2008	253,971.16
10/2008	262,436.87
11/2008	253,971.16
12/2008	262,436.87
01/2009	262,436.87
02/2009	237,039.75
03/2009	262,436.87
04/2009	253,971.16
05/2009	262,436.87
06/2009	253,971.16
07/2009	262,436.87
08/2009	262,436.87
09/2009	253,971.16
10/2009	262,436.87
11/2009	253,971.16
12/2009	262,436.87
Audit/Download Total:	6,188,430.67

Ohio Department of
Taxation

Legal entity: AM Castle and Company
 Auditor: Rachna Reniguntala (SP3601)
 Audit Period: 01/01/2008 through 12/31/2009
 Main Account No: 97101806
 Assignment No: 432038483
 Printed: 2/16/2012 9:37:30AM

Account No: 200 (Leased Help) & N/A ()	
Sample/Test	Balance Amount
06/2009	663,842.57
Sample/Test Totals:	663,842.57
Audit/Download	Balance Amount
01/2008	112,608.04
02/2008	105,343.00
03/2008	112,608.04
04/2008	108,975.52
05/2008	112,608.04
06/2008	108,975.52
07/2008	112,608.04
08/2008	112,608.04
09/2008	108,975.52
10/2008	112,608.04
11/2008	108,975.52
12/2008	112,608.04
01/2009	112,608.04
02/2009	101,710.49
03/2009	112,608.04
04/2009	108,975.52
05/2009	112,608.04
06/2009	108,975.52
07/2009	112,608.04
08/2009	112,608.04
09/2009	108,975.52
10/2009	112,608.04
11/2009	108,975.52
12/2009	112,608.04
Audit/Download Total:	2,655,370.21
Grand Total for Sample/Test:	1,132,512.86
Grand Total for Audit/Download:	8,843,800.88



Legal Entity: AM Castle and Company
 Auditor: Rachna Ranjitsingh (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: ASSETS

Math Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:12:57AM

ID	Account Level 1	Name	Transaction Date	Co.	Transaction Invoice #	Description	Calculation Rate (7% Excise Tax)	Tax Due
8541602	300		02/01/2008	09		GANTRY, WREST FOR SN & SS	57,270.00	2,610.63
8541605	300		08/01/2008	18		TECHNOLOGY MAGNET	62,513.85	4,844.83
8541607	300		09/01/2008	09		GANTRY CRANE	20,579.08	1,286.33
8541608	300		09/01/2008	09		SIDELoader	18,688.38	1,168.02
8541609	300		09/08/2008	09		STOReloader	21,374.92	1,323.43
8541618	300		12/01/2008	09		CRANE	43,981.61	2,748.85
8541619	300		12/01/2008	09		RACKS - CHROME BAR - DAY 2H	5,044.88	507.81
8541620	300		12/01/2008	09		RACKS	97,341.28	6,083.83
8541622	300		12/01/2008	09		ORDER FILLING STATION	36,955.05	2,321.57
8541625	300		12/01/2008	09		ERGONOMIC LOADING TABLES	243,860.00	15,241.25
8541628	300		12/01/2008	09		SIGNODE PNEUMATIC COMBO TOOL	45,780.00	2,861.25
8541629	300		12/01/2008	18		FORKLIFTS	6,205.00	387.81
8541630	300		12/01/2008	18		FORKLIFTS	0.00	0.00
8541642	300		12/31/2009	09		DO ALL RT TABLE	18,200.00	0.00
8541643	300		12/31/2009	09		ORDER FILLING STATION ADDITIONS	11,146.00	1,137.50
MEASURE Totals:							682,369.08	44,204.54

Ohio

Legal Entity: AM Castle and Company
Auditor: Rachna Reniguntaia (SP3602)
Audit Period: 01/01/2008 to 12/31/2009
Measure: Expenses

Main Account No: 97101806
Assignment No: 432038483
Printed: 02/16/2012 7:01:55AM

Account No: 100 & 1/A

Possession County: 09 Use County: Additional Use Only: N

ID:	Name:	Transaction Date:	Transaction Invoice #:	Description:	Calculation Base:
5846525	ABRASIVE PRODUCTS, LLC	04/24/2008		no tx pd, steel shot, scrap charge by the pd	0.00 Y
5846535	ALPINE VALLEY WATER CO., INC.	01/07/2009		drinking water- 1.00 Butler	28.15 Y
5846542	AQUA PURE TECHNOLOGIES, INC.	02/03/2009		no tax pd, cru soft, soft solar crystals	0.00 Y
5846556	BGR INC.	02/13/2009		print ple b1	22.78
5846579	CRANE 1 SERVICES	12/30/2008		no tax pd, fixed radio on crane	551.30
5846580	CRANE 1 SERVICES	12/31/2008		no tax pd, joy stick controller	482.87
5846583	DAVIELS CLEANING	01/02/2009		Cleaning	1,600.00
5846584	DAVIELS CLEANING	03/01/2009		Cleaning	1,600.00
5846601	FEDERAL WAGE & LABOR LAW	02/04/2009			0.00 Y
5846604	GRAND NORTHERN PRODUCTS	02/09/2009		no tx pd, steel shot super sack, steel surcharge, pallet	0.00 Y
5846612	HACKER WOOD PRODUCTS, INC	12/10/2008		pallet H.W. 4 way	963.00
5846613	HACKER WOOD PRODUCTS, INC	01/13/2009		no tax pd, H.W. 4 way	725.00
5846621	INGERSOLL-RAND CO.	02/10/2009		air filter, service charges	385.90 Y
5846672	PROFESSIONAL MOTOR SERVICES	01/09/2009		no tax pd, Leeson motor	438.00
5846674	KUMPRE CONSOLIDATED	01/18/2009		no tax pd, fuel surcharge, rto cost, 30 yd temp hauling load	0.00 Y
5846710	WHEELABRATOR	02/20/2009		no tx pd, machine inspection, service repair	5,080.00
5846714	YALE INDUSTRIAL TRUCKS	02/16/2009		parts, labor on a forklift, tried to go through as a warranty but	0.00 Y
5846713	YALE INDUSTRIAL TRUCKS	02/27/2009		no tx pd, repair of battery/obis/terms	0.00 Y
County/Additional Use Total:					11,877.00

ID:	Name:	Transaction Date:	Transaction Invoice #:	Description:	Calculation Base:
5846578	ACME SPIRALLY WOUND PAPER	02/17/2009		merca ends	0.00 Y



Legal Entity: AM Castle and Company
 Auditor: Rachna Raniguntala (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Expenses

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No: 100 & N/A

Possession County: JB Use County: Additional (see only) # Transaction Date Invoice # Description: Calculation Base:

ID:	Item:	Transaction Date:	Invoice #:	Description:	Calculation Base:
5846529	ADVANCE DOOR CO.	02/23/2009		Serviced, adjusted, lubed door # 14	2,047.00
5846537	AMADA CUTTING TECHNOLOGIES	01/30/2009		Tax paid on freight - DU bushing manufacturing	61.77 Y
5846538	ANDERSON & ASSOCIATES, INC.	01/19/2009		Master cylinder, spacer	0.00 Y
5846554	BAKER VEHICLE SYSTEMS	02/23/2009		Tax not paid on freight of \$4.94	7.63 Y
5846558	CAPACITY OF TEXAS	03/20/2009		track rear door	158.91
5846561	CHICAGO OFFICE TECHNOLOG GROUP	03/09/2009		Fax cover, Orca	655.00
5846563	CINTAS CORPORATION #012	01/15/2009		No tax shown - centralized A/R	407.88
5846573	COMMERCIAL ELECTRIC	01/19/2009		volt breaker	0.00 Y
5846572	COMMERCIAL ELECTRIC	02/12/2009		Disassemble, clean, inspect, rewind stator with class H insulation	0.00 Y
5846574	COMMERCIAL GROUP LIFT, PROD.	01/30/2009		TECHMAX-500-3, Magnet lifter	1,100.00
5846575	COMMERCIAL GROUP LIFT, PROD.	02/23/2009		Magnetic lifter	2,035.00
5846576	CONRAD KACSIS INST.	01/19/2009		Annealing fee - won't go to high fire, labor	0.00 Y
5846577	CONRAD KACSIS INST.	01/26/2009		Supplies	325.65
5846578	COOK BONDING & NEG.	02/12/2009		refining safety shoes	0.00 Y
5846585	DC TRANSPORTATION	01/12/2009		Total for 34363.09, \$650 is for service fees	0.00 Y
5846586	DC TRANSPORTATION	01/12/2009		Total invoice for 31946.21, amount is service fees of 617.50	0.00 Y
5846587	DEMOCRAT AND CHRONICLE	01/14/2009		Still need	0.00 Y
5846588	DIAGRAM OF NORTHERN OHIO	02/11/2009		Markers, grey white and yellow	\$29.00
5846594	ENGLISH PARK ON WENHLE, LLC	01/05/2009		Still need	0.00 Y
5846595	ENGLISH PARK ON WENHLE, LLC	02/02/2009		Still need	0.00 Y
5846598	EXPERT CRANE	03/26/2009		Labor on crane	1,493.75
5846606	GRAY INDUSTRIAL SUPPLY	02/26/2009		TMS and A/Bs (VT)	3,303.65
5846614	HARRINGTON ELECTRIC CO.	02/26/2009		Electrical contractors	0.00 Y



Legal entity: AM Castle and Company
 Auditor: Rachna Raniguntala (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Expenses

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No: 100 & N/A

ID#	Name	Transaction DATE	Additional Use Only: N	Transaction Invoice #	Description	Calculation Base
5846625	ITV/REITWOOD-SIDWOOD	02/23/2009			Reofl Crates and wood end plugs	0.00 Y
5846626	JORGENSEN CONVEYORS, INC	01/30/2009			Prepaid freight	0.00 Y
5846633	VERIZON WIRELESS, INC	02/12/2009			anti-bacterial foam, time released BLE	0.00 Y
5846634	L & M TOOL	01/26/2009			L525" x 25"	0.00 Y
5846635	L & M TOOL	01/26/2009			Tough coat acrylic paint	0.00 Y
5846636	LASER TECH SYSTEMS, INC.	01/30/2009			Leamark and board repair	0.00 Y
5846642	LINTON SAFETY SHOE CO.	01/19/2009			Safety shoes	170.50
5846641	LEHIGH SAFETY SHOE CO.	01/26/2009			Safety shoes	0.00 Y
5846649	MAURITZON INCORPORATED	01/26/2009			Industrial materials	0.00 Y
5846655	MG SYSTEMS & WELDING, INC.	01/19/2009			Sentry service billing	10,740.00
5846668	NORTH SHORE STRAPPING	02/23/2009			Dispenser horizontal floor	191.00
5846671	PETROLANCE LLC	02/23/2009			Used coolant	0.00 Y
5846678	SHRILL ENERGY NORTH AMERICA	01/26/2009			Tax paid on 26554 STOP pool, not on stop pool of 22846.41	0.00 Y
5846686	TENANT SALES AND SERVICES	01/19/2009			Sales/service co.	269.89 Y
5846703	US SAFETY GEAR	03/09/2009			Safety gear	0.00 Y
5846706	VERIZON	01/15/2009			No tax shown - cell phone bill	0.00 Y
5846707	VERIZON	02/15/2009			Cell phone - cannot see if tax was charged	0.00 Y
5846711	WHITTING CORPORATION	02/16/2009			Parts ordered	3,200.00
5846732	WHITTING CORPORATION	02/16/2009			Parts ordered	3,352.56
County/Additional Use Total:						30,107.17
Account No 100 & N/A Totals:						41,984.17



Legal Entity: AM Castle and Company
 Auditor: Rachna Ranigunta (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Expenses

Main Account No: 97101806
 Assignment No: 432036483
 Printed: 02/16/2012 7:01:55AM

Measure Total:

	41,984.17
--	-----------

Sheet:



Legal entity: AM Castle and Company
 Auditor: Rachna Reniguntala (SP2601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Leased Help

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

ID	Name	Possession County	Use County	Additional Use Desc	Transaction Date	Transaction Invoice #	Description	Calculation Basis
5846012	DC TRANSPORTATION				06/11/2009	2119075	LEASED/TEMP HELP	10,381.57
5846017	DC TRANSPORTATION				06/23/2009	2119075	LEASED/TEMP HELP BENE	7,534.99
5846018	DC TRANSPORTATION				06/11/2009	2219079	LEASED/TEMP HELP	9,435.59
5846019	DC TRANSPORTATION				06/11/2009	2219079	LEASED/TEMP HELP BENE	7,215.88
5846020	DC TRANSPORTATION				06/11/2009	2319084	LEASED/TEMP HELP	11,707.13
5846021	DC TRANSPORTATION				06/11/2009	2319084	LEASED/TEMP HELP BENE	8,356.00
5846022	DC TRANSPORTATION				06/25/2009	2419092	LEASED/TEMP HELP	10,799.07
5846023	DC TRANSPORTATION				06/25/2009	2419092	LEASED/TEMP HELP BENE	7,533.57
5846024	DC TRANSPORTATION				06/25/2009	2519097	LEASED/TEMP HELP	10,450.26
5846025	DC TRANSPORTATION				06/25/2009	2519097	LEASED/TEMP HELP BENE	7,453.50
5846026	DC TRANSPORTATION				07/06/2009	2619101	LEASED/TEMP HELP	10,359.96
5846027	DC TRANSPORTATION				07/06/2009	2619101	LEASED/TEMP HELP BENE	7,509.94
5846028	DC TRANSPORTATION				07/06/2009	2719106	LEASED/TEMP HELP	9,630.71
5846029	DC TRANSPORTATION				07/06/2009	2719106	LEASED/TEMP HELP BENE	7,277.85
5846030	DC TRANSPORTATION				07/21/2009	2819108	LEASED/TEMP HELP	11,913.56
5846031	DC TRANSPORTATION				07/21/2009	2819108	LEASED/TEMP HELP BENE	4,932.95
5846032	DC TRANSPORTATION				07/21/2009	2819108	LEASED/TEMP HELP	2,968.45
5846033	DC TRANSPORTATION				07/30/2009	2919112	LEASED/TEMP HELP	8,968.52
5846034	DC TRANSPORTATION				07/30/2009	2919112	LEASED/TEMP HELP BENE	6,642.61
5846035	DC TRANSPORTATION				07/30/2009	3019115	LEASED/TEMP HELP	9,840.10
5846036	DC TRANSPORTATION				07/30/2009	3019115	LEASED/TEMP HELP BENE	2,308.08
5846037	DC TRANSPORTATION				07/30/2009	3019115	LEASED/TEMP HELP	6,753.10
5846038	DC TRANSPORTATION				07/30/2009	3019115	LEASED/TEMP HELP BENE	1,126.37



Legal Entity: AM Castle and Company
 Auditor: Rachna Renfigunzala (SP3603)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Leased Help

Main Account No: 97201806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No:	Consolidation Query:	Use Country:	Additional Use Only:	Transaction Date:	Transaction Invoice #:	Description:	Calculation Base:
5846039	DC TRANSPORTATION			08/12/2009	3119118	LEASED/THP HELP BENE	9,100.06
5846040	DC TRANSPORTATION			08/12/2009	3119118	LEASED/THP HELP BENE	6,608.15
5846041	DC TRANSPORTATION			08/12/2009	3119121	LEASED/THP HELP	9,867.88
5846042	DC TRANSPORTATION			08/12/2009	3119121	LEASED/THP HELP BENE	6,811.75
5846043	DC TRANSPORTATION			08/19/2009	3319124	LEASED/THP HELP	9,755.09
5846044	DC TRANSPORTATION			08/19/2009	3319124	LEASED/THP HELP BENE	7,324.72
5846045	DC TRANSPORTATION			08/26/2009	3419127	LEASED/THP HELP	10,559.74
5846046	DC TRANSPORTATION			08/26/2009	3419127	LEASED/THP HELP BENE	7,357.65
5846047	DC TRANSPORTATION			08/31/2009	3519130	LEASED/THP HELP	12,996.96
5846048	DC TRANSPORTATION			08/31/2009	3519130	LEASED/THP HELP BENE	8,226.86
5846049	DC TRANSPORTATION			09/14/2009	3619133	LEASED/THP HELP	9,554.10
5846050	DC TRANSPORTATION			09/14/2009	3619133	LEASED/THP HELP BENE	7,167.19
5846051	DC TRANSPORTATION			09/24/2009	3719135	LEASED/THP HELP	10,145.38
5846052	DC TRANSPORTATION			09/24/2009	3719135	LEASED/THP HELP BENE	7,319.33
5846053	DC TRANSPORTATION			09/29/2009	3819138	LEASED/THP HELP	10,576.32
5846054	DC TRANSPORTATION			09/29/2009	3819138	LEASED/THP HELP BENE	7,509.38
5846055	DC TRANSPORTATION			10/05/2009	3919141	LEASED/THP HELP	11,100.19
5846056	DC TRANSPORTATION			10/05/2009	3919141	LEASED/THP HELP BENE	7,638.20
5846057	DC TRANSPORTATION			10/05/2009	4019144	LEASED/THP HELP	11,403.70
5846058	DC TRANSPORTATION			10/05/2009	4019144	LEASED/THP HELP BENE	7,665.86
5846059	DC TRANSPORTATION			10/13/2009	4119147	LEASED/THP HELP	10,460.63
5846060	DC TRANSPORTATION			10/13/2009	4119147	LEASED/THP HELP BENE	6,796.88
5846061	DC TRANSPORTATION			10/13/2009	4119146	LEASED/THP HELP	390.00



Legal Entity: AM Castle and Company
 Auditor: Rachna Keniguntala (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Leased Help

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No: 200 & N/A
 Possession Country: US
 Use Country:
 Additions: Use Only: N
 Transaction Invoice #:
 Date:
 Description:
 Calculation Base:

ID	Name	Transaction Date	Transaction Invoice #	Description	Calculation Base
5846062	DC TRANSPORTATION	10/13/2009	4139246	LEASED/TMP HELP BENE	70.01
5846063	DC TRANSPORTATION	10/21/2009	4219150	LEASED/TMP HELP	10,511.10
5846064	DC TRANSPORTATION	10/21/2009	4219150	LEASED/TMP HELP BENE	6,988.27
5846065	DC TRANSPORTATION	10/21/2009	4239256	LEASED/TMP HELP	480.00
5846066	DC TRANSPORTATION	10/21/2009	4239256	LEASED/TMP HELP BENE	86.16
5846067	DC TRANSPORTATION	11/05/2009	4319153	LEASED/TMP HELP	10,582.34
5846068	DC TRANSPORTATION	11/05/2009	4319153	LEASED/TMP HELP BENE	7,161.65
5846069	DC TRANSPORTATION	11/05/2009	4339266	LEASED/TMP HELP	480.00
5846070	DC TRANSPORTATION	11/05/2009	4339266	LEASED/TMP HELP BENE	86.16
5846071	DC TRANSPORTATION	11/06/2009	4419156	LEASED/TMP HELP	11,445.17
5846072	DC TRANSPORTATION	11/06/2009	4419156	LEASED/TMP HELP BENE	7,320.35
5846073	DC TRANSPORTATION	11/06/2009	4439278	LEASED/TMP HELP	720.00
5846074	DC TRANSPORTATION	11/06/2009	4439278	LEASED/TMP HELP BENE	129.24
5846075	DC TRANSPORTATION	11/09/2009	4519159	LEASED/TMP HELP	11,796.54
5846076	DC TRANSPORTATION	11/09/2009	4519159	LEASED/TMP HELP BENE	7,798.73
5846077	DC TRANSPORTATION	11/09/2009	4539285	LEASED/TMP HELP	384.00
5846078	DC TRANSPORTATION	11/09/2009	4539285	LEASED/TMP HELP BENE	68.93
5846079	DC TRANSPORTATION	11/24/2009	4619162	LEASED/TMP HELP	7,444.69
5846080	DC TRANSPORTATION	11/24/2009	4619162	LEASED/TMP HELP BENE	5,287.02
5846081	DC TRANSPORTATION	11/24/2009	4639298	LEASED/TMP HELP	480.00
5846082	DC TRANSPORTATION	11/24/2009	4639298	LEASED/TMP HELP BENE	86.16
5846083	DC TRANSPORTATION	11/24/2009	4719165	LEASED/TMP HELP	13,464.84
5846084	DC TRANSPORTATION	11/24/2009	4719165	LEASED/TMP HELP BENE	7,878.48



Legal entity: AM Castle and Company
 Auditor: Rachna Reniguntala (SP36012)
 Audit period: 01/01/2008 to 12/31/2009
 Measure: Leased Help

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No: 200 & N/A
 Possession County: IS
 Use County:
 Additional Use Only: N
 Sheet: 1

ID#	Name	Transaction Date	Transaction Invoice #	Description	Calculation Base
5846085	DC TRANSPORTATION	11/24/2009	4799311	LEASED/TEMP HELP	598.86
5846011	DC TRANSPORTATION	11/30/2009	839315	LEASED/TEMP HELP BENE	86.18
5846016	DC TRANSPORTATION	11/30/2009	839315	LEASED/TEMP HELP	490.00
5846086	DC TRANSPORTATION	12/30/2009	4819169	LEASED/TEMP HELP	11,431.14
5846087	DC TRANSPORTATION	11/30/2009	4819169	LEASED/TEMP HELP BENE	7,824.14
5846088	DC TRANSPORTATION	12/14/2009	4919173	LEASED/TEMP HELP	11,929.43
5846089	DC TRANSPORTATION	12/14/2009	4919173	LEASED/TEMP HELP BENE	8,055.69
5846090	DC TRANSPORTATION	12/14/2009	4939325	LEASED/TEMP HELP	288.00
5846091	DC TRANSPORTATION	12/14/2009	4939325	LEASED/TEMP HELP BENE	51.70
5846092	DC TRANSPORTATION	12/14/2009	5019176	LEASED/TEMP HELP	12,916.17
5846093	DC TRANSPORTATION	12/14/2009	5019176	LEASED/TEMP HELP BENE	8,216.29
5846094	DC TRANSPORTATION	12/14/2009	5039341	LEASED/TEMP HELP	480.00
5846095	DC TRANSPORTATION	12/14/2009	5039341	LEASED/TEMP HELP BENE	86.16
5846096	DC TRANSPORTATION	12/23/2009	5119181	LEASED/TEMP HELP	13,957.82
5846097	DC TRANSPORTATION	12/23/2009	5119181	LEASED/TEMP HELP BENE	9,130.58
5846098	DC TRANSPORTATION	12/23/2009	5139345	LEASED/TEMP HELP	480.00
5846099	DC TRANSPORTATION	12/23/2009	5139345	LEASED/TEMP HELP BENE	86.16
5846100	DC TRANSPORTATION	12/30/2009	5219184	LEASED/TEMP HELP	14,242.66
5846101	DC TRANSPORTATION	12/30/2009	5219184	LEASED/TEMP HELP BENE	8,796.52
5846102	DC TRANSPORTATION	12/30/2009	5239352	LEASED/TEMP HELP	450.00
5846103	DC TRANSPORTATION	12/30/2009	5239352	LEASED/TEMP HELP BENE	80.78
5846104	DC TRANSPORTATION	12/31/2009	5319189	LEASED/TEMP HELP	12,561.71
5846105	DC TRANSPORTATION	12/31/2009	5319189	LEASED/TEMP HELP BENE	8,215.89

Sample Transactions Detail Report by Measure: Purchases



Legal Entity: AM Castle and Company
 Auditor: Rachna Kenguntala (SP3601)
 Audit Period: 01/01/2008 to 12/31/2009
 Measure: Leased Help

Main Account No: 97101806
 Assignant No: 432038483
 Printed: 02/16/2012 7:01:55AM

Account No: 200 & N/A
 Possession County: JB
 Use County: N
 Additional Use Only: N
 Sheet: 2

ID	Name	Transaction Date	Transaction Invoice #	Description	Calculation Base
5846106	DC TRANSPORTATION	12/31/2009	5339369	LEASED/TEMP HELP	288.00
5846107	DC TRANSPORTATION	12/31/2009	5339369	LEASED/TEMP HELP	51.70
5846013	NATIONAL INDUSTRIAL LBR.	11/25/2009	082705-60	LEASED/TEMP HELP	194.00
5846014	TSI INDUSTRIES	06/17/2009	MT-1354	LEASED/TEMP HELP	455.00
5846015	TSI INDUSTRIES	07/21/2009	MT-1361	LEASED/TEMP HELP	455.00
5846108	TSI INDUSTRIES	08/19/2009	MT-1358	LEASED/TEMP HELP	455.00
5846109	TSI INDUSTRIES	09/29/2009	MT-1375	LEASED/TEMP HELP	455.00
5846110	TSI INDUSTRIES	10/21/2009	MT-1382	LEASED/TEMP HELP	455.00
5846111	TSI INDUSTRIES	12/07/2009	MT-1389	LEASED/TEMP HELP	455.00
5846113	TSI INDUSTRIES	12/28/2009	MT-1396	LEASED/TEMP HELP	455.00
County/Additional use Total:					622,290.29
Account no 200 & N/A Total:					622,290.29
Measure Total:					622,290.29

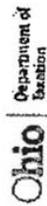


Legal Entity: AM Castle and Company
 Auditor: Rachna Ranganatha (SP3801)
 Audit Period: 01/01/2008 through 12/31/2009

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 02/16/2012 6:59:49AM

County	Permissive Tax	Additional Permissive Tax	Transit Tax	State Tax	County Total
09 (BUTLER)	5,899.37	0.00	0.00	43,762.09	49,661.46
28 (CUYAHOGA)	29,492.09	7,373.15	29,492.09	162,307.18	228,564.51
State Total:	35,391.46	7,373.15	29,492.09	205,469.27	
State Grand Total:					277,725.97

Sheet



Legal entity: AM Castle and Company
 Auditors: Rachna Renguntala (SP3601)
 Audit period: 01/01/2008 through 12/31/2009
 Calculated thru date: 02/24/2012

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 2/16/2012 9:37:37AM

Measure	Assets	Period	Date Due	Sales Tax Due	Use Tax Due	Net Tax Due	Interest Factor	Interest Due
02/2008		03/24/2008		3,610.63		3,610.63	0.196348	708.27
08/2008		09/23/2008		4,844.83		4,844.83	0.156148	756.51
09/2008		10/23/2008		3,777.58		3,777.58	0.149590	565.09
12/2008		01/23/2009		30,137.37		30,137.37	0.131158	3,958.78
12/2009		02/25/2010		2,834.13		2,834.13	0.081766	149.97
		Factory Assets Yearly:						6,138.57
Measure	Expenses	Period	Date Due	Sales Tax Due	Use Tax Due	Net Tax Due	Interest Factor	Interest Due
01/2008		02/25/2008		1,722.24		1,722.24	0.202288	348.35
02/2008		03/24/2008		1,611.13		1,611.13	0.196348	316.02
03/2008		04/23/2008		1,722.24		1,722.24	0.189590	326.52
04/2008		05/23/2008		1,666.68		1,666.68	0.183033	305.06
05/2008		06/23/2008		1,722.24		1,722.24	0.176237	303.56
06/2008		07/23/2008		1,666.68		1,666.68	0.169599	287.83
07/2008		08/23/2008		1,722.24		1,722.24	0.162486	279.84
08/2008		09/23/2008		1,722.24		1,722.24	0.156148	268.92
09/2008		10/23/2008		1,666.68		1,666.68	0.149590	249.32
10/2008		11/24/2008		1,722.24		1,722.24	0.142596	245.56
11/2008		12/23/2008		1,666.68		1,666.68	0.136237	227.10
12/2008		01/23/2009		1,722.24		1,722.24	0.131358	226.23
01/2009		02/23/2009		1,555.37		1,555.37	0.127111	218.92
02/2009		03/23/2009		1,722.24		1,722.24	0.123275	191.76
03/2009		04/23/2009		1,666.68		1,666.68	0.119029	205.00
04/2009		05/26/2009		1,666.68		1,666.68	0.114508	190.85
05/2009		06/23/2009		1,722.24		1,722.24	0.110673	190.61
06/2009		07/23/2009		1,666.68		1,666.68	0.106561	177.51
07/2009		08/24/2009		1,722.24		1,722.24	0.102179	175.98
08/2009		09/23/2009		1,666.68		1,666.68	0.098070	168.90
09/2009		10/23/2009		1,666.68		1,666.68	0.093960	156.60

Preassessment Interest Report



Legal Entity: AM Castle and Company
 Auditor: Rachna Reniguntala (SP3601)
 Audit Period: 02/02/2008 through 12/31/2009
 Calculate Thru Date: 02/24/2012

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 2/16/2012 9:37:37AM

Expense Period	Costs Due	Sales Tax Due	Use Tax Due	Mit. Tax Due	Interest Factor	Interest Due
10/2009	11/23/2009		1,722.24		0.089714	154.51
11/2009	12/23/2009		1,666.68		0.085604	142.67
12/2009	01/23/2010		1,722.24		0.081768	140.82
Monthly Expense Total:						5,493.56

Sheet:



Legal entity: AM Castle and Company
 Auditor: Rachna Remiguntala (SP5603)
 Audit period: 01/01/2008 through 12/31/2009
 Calculate Thru Date: 02/24/2012

Main Account No: 97101806
 Assignment No: 432038483
 Printed: 2/16/2012 9:37:37AM

Period	Leased Help	Rate Due	Sales Tax Due	Less Tax Due	Interest Factor	Interest Due
01/2008	02/25/2008	8,180.86		8,180.86	0.202268	1,654.73
02/2008	03/24/2008	7,653.06		7,653.06	0.196143	1,501.13
03/2008	04/23/2008	8,180.86		8,180.86	0.189590	1,551.01
04/2008	05/23/2008	7,916.96		7,916.96	0.183033	1,449.06
05/2008	06/23/2008	8,180.86		8,180.86	0.176257	1,441.93
06/2008	07/23/2008	7,916.96		7,916.96	0.169699	1,343.50
07/2008	08/23/2008	8,180.86		8,180.86	0.162486	1,329.28
08/2008	09/23/2008	8,180.86		8,180.86	0.156143	1,277.42
09/2008	10/23/2008	7,916.96		7,916.96	0.149590	1,184.30
10/2008	11/24/2008	8,180.86		8,180.86	0.142595	1,166.56
11/2008	12/23/2008	7,916.96		7,916.96	0.136257	1,078.74
01/2009	01/23/2009	8,180.86		8,180.86	0.127111	1,074.62
02/2009	02/23/2009	8,180.86		8,180.86	0.123275	1,039.88
03/2009	03/23/2009	7,916.96		7,916.96	0.119029	973.76
04/2009	04/23/2009	8,180.86		8,180.86	0.114508	906.56
05/2009	05/25/2009	7,916.96		7,916.96	0.110673	905.40
06/2009	06/23/2009	8,180.86		8,180.86	0.106563	843.66
07/2009	07/23/2009	7,916.96		7,916.96	0.102179	835.91
08/2009	08/24/2009	8,180.86		8,180.86	0.098070	802.50
09/2009	09/23/2009	7,916.96		7,916.96	0.093960	743.88
10/2009	10/23/2009	8,180.86		8,180.86	0.089714	733.54
11/2009	12/23/2009	7,916.96		7,916.96	0.085604	677.72
12/2009	01/25/2010	8,180.86		8,180.86	0.081766	666.93
Less: Lease Help Total:						26,085.12



Legal Entity: AM Castle and Company
 Auditor: Rachna Remiguntala (SP2602)
 Audit Period: 01/01/2008 through 12/31/2009
 Calculated thru date: 02/24/2012

Main Account No: 97101806
 Assignment No: 432036483
 Printdate: 2/16/2012 9:37:37AM

Period	Date Dim	Sales Tax Due	Use Tax Due	Interest Factor	Interest Due
01/2008	02/25/2008	9,903.10		0.202268	2003.08
02/2008	03/24/2008	12,874.81		0.196148	2525.37
03/2008	04/23/2008	9,903.10		0.189590	1877.53
04/2008	05/23/2008	9,583.64		0.183033	1754.12
05/2008	06/23/2008	9,903.10		0.176257	1745.49
06/2008	07/23/2008	9,583.64		0.169699	1626.33
07/2008	08/25/2008	9,903.10		0.162486	1609.17
08/2008	09/23/2008	14,747.93		0.156148	2302.85
09/2008	10/23/2008	9,903.10		0.149590	1998.71
10/2008	11/24/2008	13,961.22		0.142596	1412.14
11/2008	12/23/2008	9,583.64		0.136257	1305.84
12/2008	01/23/2009	40,040.47		0.131358	5259.63
01/2009	02/23/2009	9,903.10		0.127111	1258.89
02/2009	03/23/2009	8,944.73		0.113275	1102.66
03/2009	04/23/2009	9,903.10		0.110829	1178.76
04/2009	05/26/2009	9,583.64		0.114508	1097.41
05/2009	06/23/2009	9,903.10		0.110673	1096.01
06/2009	07/23/2009	9,583.64		0.106563	1021.27
07/2009	08/24/2009	9,903.10		0.102179	1011.89
08/2009	09/23/2009	9,903.10		0.098070	971.20
09/2009	10/23/2009	9,583.64		0.093960	900.48
10/2009	11/23/2009	9,903.10		0.089714	888.45
11/2009	12/23/2009	9,583.64		0.085604	820.39
12/2009	01/25/2010	11,737.23		0.081768	959.72
Measure Grand Total:					37,727.25



Legal entity: AM Castle and Company
 Auditor: Rachna Remiguntala (SP3603)
 Audit period: 01/01/2008 through 12/31/2009
 Calculated thru date: 02/24/2012

Main Account No: 97101806
 Assignment No: 432038463
 Printed: 2/16/2012 9:37:37AM

Sheet:

Check Number	date received	Payment	Interest factor	Interest offset
Payment Total:				
			0.00	
Total Interest Paid:				37,721.25



D C Transportation Services, Inc.

AGREEMENT

This Agreement, made and entered into this 24th day of March, 2000, by and between D C Transportation Services, Inc., an Ohio corporation with principal offices at 10129 Lynn Drive, Cleveland, Ohio, 44133, ("Lessor") and A. M. Castle and Company, with principal offices at 26800 Miles Road, Bedford Hts., Ohio, 44146 ("Lessee").
Co. Affil

The parties agree as follows:

1. Lessor shall provide Lessee with a sufficient number of drivers to operate the motor vehicles owned or leased by Lessee, as required by Lessee.
2. Lessor shall make all proper payroll deductions, including income tax and social security tax deductions, required under federal and state law to be made from the compensation paid to Lessor's drivers for services performed under this Agreement. Lessor will make all payments, including payments for income tax, social security tax, unemployment and disability insurance, to the proper governmental agency or authority required under state and federal laws to be made by Lessor. Lessor will provide such workers' compensation insurance coverage for said drivers as may be required under state laws and pay the premiums therefore.
3. Lessor shall submit invoices weekly, and Lessee shall pay such invoices within seven (7) days of the date of billing. For each driver who performs services under this Agreement, Lessor will be paid as follows:
 - (a) For each driver furnished by Lessor to Lessee, an amount equal to the gross compensation due and payable to each such driver. (see attached schedule "A").
 - (b) Such sums as shall be due and payable by Lessor to or on behalf of each such driver for all federal, state or local taxes, workers' compensation contributions, unemployment compensation contributions and any other amounts including fees and expenses, which are not specified herein but which may be required by operation of law.
 - (c) A service charge equal to the percentage of gross compensation due under subparagraph (a), as specified under Schedule "A".
4. Lessee shall control the maintenance and operation of its vehicles to the extent necessary for compliance with all applicable governmental rules and regulations.

D C Transportation Services, Inc.

5. Lessee will provide and maintain on all vehicles and equipment operated or used by Lessor's drivers, public liability and property damage insurance with coverage in the amount of \$1,000,000.00 combined single limit. The insurance policy or policies evidencing the foregoing coverage shall be written by a reputable insurance company authorized to transact business in all of the states in which the vehicles and equipment will be used or operated and shall name Lessor as additional insured with respect to liabilities resulting from ownership, custody, maintenance, use, operation or control of the vehicles or equipment by Lessor's drivers. Lessee further agrees to indemnify and hold harmless Lessor from any actual or asserted liability, including the cost of defense, connected with or resulting from the ownership, custody, maintenance, use, operation or control of the vehicles and equipment hereunder, by such drivers or otherwise, which is not covered by the insurance provided by Lessee, or, if covered, is in excess of the policy limits.

6. Lessee agrees to indemnify and hold harmless Lessor for any loss, cost and damages, including reasonable attorney's fees, and/or any payments Lessor may make to or for the benefit of drivers, whether or not for services actually performed, as a result of any action or claim instituted by a governmental agency or any other party, person or entity relative to or on behalf of such drivers.

7. Lessor agrees to indemnify and hold harmless Lessee for any claims for loss, cost and damages which may be brought by a driver or his/her representative, against Lessee which could have been claimed against Lessor under the rules and regulations of the Ohio Bureau of Workers' Compensation and/or The Industrial Commission of Ohio. This paragraph specifically excludes these claims, actions or requests made under Ohio Revised Code and Ohio Administrative Code Sections which relates to Intentional Torts or a Violation of Specific Safety Requirement. The parties further agree that the Lessee shall notify the Lessor immediately of any action, claim or threatened claim under this contract.

8. Lessor shall not be liable to Lessee for any loss of business or any other damage caused by an interruption of the service which Lessor agrees to furnish hereunder, which interruption is due to war, fire, strike, picketing, accidents, civil disturbances, riots, acts of God, or any other cause beyond the reasonable control of Lessor.

9. Lessor will not be liable to Lessee for loss or damage to the vehicle or equipment being operated by drivers under this Agreement or for any other loss or damage to any cargo carried by any such vehicles or equipment by reason of collision, fire, theft, flood, windstorm, explosion or other casualties.

10. Lessee will be responsible for maintaining control, direction, and supervision over such drivers. Such control, direction and supervision shall include, but not be limited to, scheduling and dispatching of the drivers, loading and unloading procedures, and all other matters relating to the direction of employees. Lessor shall remove driver from service under this agreement upon request from lessee in writing.

11. In the event that any driver provided by Lessor shall voluntarily leave the service of Lessor and obtain employment with Lessee or with any person, corporation, partnership, association, or other entity which provides drivers to or for the benefit of Lessee within one calendar year from the initial date of such driver's service with Lessor, Lessee shall be immediately liable to Lessor for liquidated damages in the amount of Four Thousand Dollars (\$4,000.00). Notwithstanding this aforementioned, no damages or any money should be paid by lessee if this Agreement is terminated prior to any driver obtaining such employment.

D C Transportation Services, Inc.

12. Any dispute arising out of the terms of this Agreement shall be resolved under the laws of the State of Ohio.

13. This Agreement shall be effective for one (1) year from March 24, 2000, and shall continue in full force until March 23, 2001, and ~~from year to year~~ thereafter unless terminated on thirty (30) days prior written notice given to the other party.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement as of the date first set forth herein.

D C TRANSPORTATION SERVICES, INC.

A. M. CASTLE AND COMPANY

By: *Thomas M. Fink*

By: *H. C. Winters*

Printed Name: Thomas M. Fink

Printed Name: H. C. WINTERS

Title: President

Title: Vice President of Operations

Date: 3/24/2000
"Lessor"

Date: 03/24/00
"Lessee"

D C Transportation Services, Inc.

SCHEDULE "A"

Attached to and constituting a part of the Agreement dated the 24th day of March, 2000, by and between D C Transportation Services, Inc. and A. M. Castle and Company for each driver furnished, Lessee shall pay Lessor charges equal to the sum of the following:

COMPENSATION -	<u>Country (Local)</u>	<u>Union (Road)</u>
Effective: 5/24/2000	\$12.79/hr	\$13.75 to \$16.39/hr \$ 0.31 to \$ 0.35/mi

Overtime rates shall apply after eight (8) hours of work on a daily basis for temporary labor, and after forty (40) hours per week for full-time employees.

Employees who are called and report for work but are not put to work shall receive a minimum of four (4) hours pay at the hourly rate specified in this Schedule. If put to work, such employees shall be guaranteed a minimum of eight (8) hours work or pay at the hourly rate specified in this Schedule, unless employee chooses to waive balance of hours after work completion.

SERVICE CHARGE \$32.50 per week, per man based on a seven (7) day invoice payment.

TAXES	OH	PA	NY	MI
Workmens Comp.	\$9.1000	\$8.4700	\$11.3500	\$10.0400
S.U.T.	.0310	.0590	.2200	.0310
F.U.T.	.0080	.0080	.0080	.0080
F.I.C.A.	.0765	.0765	.0765	.0765

HEALTH INSURANCE Current billing per month, per driver (non-union):

Single	\$157.85
Employee & Spouse	289.37
Employee & Child	289.37
Family	442.44

401k PROGRAM \$10.00 per week per man - Contribution from Castle Metals

HOLIDAYS Eight (8) hours per driver paid at the prevailing hourly rate only during the following holiday weeks of New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day.

VACATIONS Vacations paid at 1/52 of the previous years earnings
 1 year = 1 week, 3 years = 2 weeks, 10 years = 3 weeks

D C Transportation Services, Inc.

TERMS

Regular terms of payment required by D C Transportation Services, Inc., are as follows, unless otherwise specified:

Payment is due within seven (7) days of the billing date

D C TRANSPORTATION SERVICES, INC.

By: *Thomas M. Fink*

Printed Name: Thomas M. Fink

Title: President

Date: 3/24/2000

A. M. CASTLE AND COMPANY

By: *H.C. Winters*

Printed Name: H.C. WINTERS

Title: Vice President of Operations

Date: 03/29/00

D C Transportation Services, Inc.

Costs per Driver Plan

Country (Local)

\$ 12.79/hr

Union (Road)

\$ 13.75 to \$ 16.39/hr
\$ 0.31 to \$ 0.35/mi

	OH	PA	NY	MI
Worker's Compensation	\$9.1000	\$8.4700	\$11.3500	\$10.0400
SUTA	.0310	.0590	.2200	.0310
FUTA	.0080	.0080	.0080	.0080
FICA	.0765	.0765	.0765	.0765

Insurance Costs

Single	\$157.85
Employee & Spouse	289.37
Employee & Child	289.37
Family	442.44

401k Program

\$10.00 per week per man - Contribution from Castle Metals

Service Charge

The Service Charge for 40 drivers will be \$32.50 per week per driver, based upon a weekly, seven (7) day invoice payment.

If, after review, you find these figures favorable, or if you have any questions, please call me at 440-237-0900 so we can discuss any changes needed.

P.O. Box 33036 • Cleveland, Ohio 44133 • (440) 237-0900

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A-170



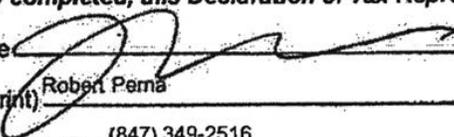
Department of
Taxation
P.O. Box 1090
Columbus, OH 43216-1090

TBOR 1
Rev. 8/10

Declaration of Tax Representative

Taxpayer's name A. M. Castle & Co.
 Business name AM Castle
 Address 1420 Kensington Road, Suite 220
 City Oak Brook State IL ZIP code 60523
 FEIN or Social Security number 36-0879160
(Only use Social Security number if requesting individual income tax representative or if business does not have a FEIN.)

Representative Information	
Representative's name and firm	<u>John Allan & Eric Reynolds; Jones Day</u>
Address	<u>1420 Peachtree Street, N.E. Suite 800</u>
City	<u>Atlanta</u> State <u>GA</u> ZIP code <u>30309</u>
Telephone number	<u>(404) 581-8012</u> Fax number <u>(404) 581-8330</u>
E-mail address	<u>jmallan@jonesday.com</u>

Authorized Signature	The taxpayer identified above authorizes the representative identified above to represent the taxpayer before the Department of Taxation. This authorization includes the authority to view and receive copies of returns, reports or other documents filed by the taxpayer or prepared by the Department of Taxation concerning the business, property or transactions of the taxpayer, request alternative methods of taxation, present evidence or legal arguments to any employee of the Department of Taxation, raise objections to audit findings or assessments, file petitions or applications and waive statutes of limitation. This authorization does not authorize the tax representative to sign any form or declaration where the Ohio Revised Code specifically requires that the form or declaration be signed by the taxpayer. The taxpayer understands that the acts of the authorized representative may increase or decrease the taxpayer's tax liabilities and legal rights. The taxpayer must indicate all restrictions, if any, to this authorization in the space below.
<p>I certify, under penalties of perjury, that I am the taxpayer or that I am a corporate officer, LLC member, general partner, guardian, tax manager or similar employee authorized to act on tax matters, executor, receiver, administrator or trustee on behalf of the taxpayer and that I have the authority to execute this form on behalf of the taxpayer. If this form is not properly completed, this Declaration of Tax Representative will not be processed.</p>	
Signature	<u></u> Date <u>4-27-12</u>
Name (print)	<u>Robert Perna</u> Title <u>Vice President, General Counsel & Secretary</u>
Telephone number	<u>(847) 349-2516</u> Fax number <u>(847) 241-8208</u>

Restrictions to this Declaration	The following restrictions are placed on this Declaration of Tax Representative:

Expiration Date	This declaration is valid until _____, If no expiration date is given, this declaration will expire one year after the date that it is signed.

Send this declaration to: Ohio Department of Taxation, Compliance Division - TBOR 1, P.O. Box 1090, Columbus, OH 43216-1090, or fax to (614) 387-1847. (Use same address to revoke declaration.)

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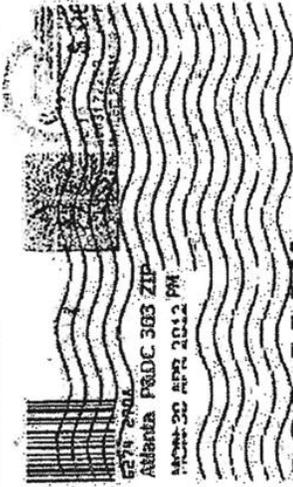
CERTIFIED MAIL



John Albani
Jones Day
1420 Peachtree St. N.E., Suite 800
Atlanta, GA 30308
US



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Atlanta P&DC 303 ZIP
NOV 20 4PM 2013 PM



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OHIO DEPT. OF TAXATION

Ohio Department of Taxation
Post Office Box 1090
Columbus, OH 43216-1090
US

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State of Ohio
Department of Taxation
AM Castle and Company
AUDIT REMARKS

Tax Form SUT REM
Rev. (8-09)

TAXPAYER INFORMATION

Name	AM Castle and Company
Address	3400 N Wolf Rd Franklin Park, IL 60131 97101806
Account #	N/A
Assignment #	432038483
FEIN/SSN	36-0879160
Charter #	

Taxpayer Contact

Name	John Hebert
Title	Tax Manager
Phone #/Fax #	(847) 349-2525
Email	jhebert@amcastle.com

Audit Period: 01/01/2008 through 12/31/2009	Audit Type: SUT
---	-----------------

AUDITOR INFORMATION

Auditor(s) name

Name	Rachna Reniguntala

BUSINESS OVERVIEW

Business Activity Description: The following information was retrieved on the company website www.amcastle.com:

Castle Metals is a leading provider of specialty products, services, and supply chain solutions to targeted industries worldwide.

Since 1890, Castle Metals has been supplying specialty products in bar, tube, plate and sheet to metal users worldwide. Our extensive product offerings include alloy, stainless, nickel, aluminum, titanium, carbon, cast iron and red metals.

Castle Metals continues to be focused on specialty processing to help customers reduce their overall costs. Our in-house processing capabilities range from close tolerance cold sawing and lathe cutting to turning, grinding, heat treating, and plasma and laser cutting. Custom fabrication, such as machined or assembly-ready parts, chrome plating, welding, trepanning, boring and honing are also available.

Castle Metals has a well developed complement of supply chain solutions designed to support the varied strategic needs of our customers. These solutions range from support of single site organizations to complex multiple site global manufacturing networks. Our customers rely on us to establish customized programs and eliminate inefficiencies throughout the supply chain. Dependable on-time performance and real-time information driven by a strategic vision of continuous improvement – these are the corner stones of our commitment to our business partners.

Our specialty metals, services and solutions are supported through our global network of over forty locations throughout North America, Europe and Asia.

Facilities in Ohio/Plant Tours: There are two locations in Ohio. One is in Bedford Heights and Oliver Steele is in Fairfield.

Locations Outside Ohio: There are over forty locations located in North America, Europe, and Asia. In the U.S. facilities are located in IL, AL, AZ, CA, IN, KS, MA, MN, MO, NC, OH, OK, PA, TX, WA, and WI. Outside of the U.S., there are locations in Canada, Mexico, Manitoba, and Saskatchewan.

Corporate structure & recent changes: The company relocated it's corporate headquarters from Franklin Park, IL to Oak Brook, IL in May of 2011.

AUDIT HISTORY

Prior Audit Period(s): Current audit is first sales/use tax audit done on AM Castle.

Issues: N/A

Appeals: N/A

Resolutions: N/A

Settlement Agreements: N/A

Cooperation from Taxpayer: N/A

OTHER TAX TYPE ACTIVITY

Corporate Franchise/Income: 0032-6624 – inactive as of 12/31/2009

Employer Withholding: 5132-6624 - current

Pass-through Entity: N/A

Personal Property/Dealer in Intangibles: N/A

Commercial Activity Tax: 9521-7765 – quarterly filer up to date

Use Tax Accounts or Vendor's Licenses: 97-101806 – inactive as of 06/30/2005

AUDIT SCOPE

Reason for Audit Taxpayer cancelled Consumer's Use account as of June 30, 2005.

Pre-Audit Analysis Reviewed taxpayer website, tax return history in ITAS, prior Corporate Franchise Audit

Issues Pursued All

AUDIT FINDINGS/TAXPAYER POSITIONS

Records reviewed during the Audit: Asset invoices, expense invoices, leased help invoices, leased driver contract, leased driver agreement

Audit Procedures/Basis for Assessment Taxpayer cancelled registration in ITAS for consumer use account as of 6/30/05.

On 01/04/2010, I contacted taxpayer to inform them of sales/use tax audit and to schedule field visit date. After speaking with Mr. John Hebert, tax manager, fieldwork to begin the week of 3/08/10. The Audit Commencement letter (ACL) was sent on 01/05/2010 See Folder (09) Communications\ACL Letter AM Castle.doc. On 02/19/2010, I received an email from Mr. Hebert requesting a postponement in start of field work. We mutually agreed to set the field work start date to 05/10/2010.

On 03/25/2010, I received chart of accounts See Folder (06) TP Returns & Exhibits\A. M Castle Chart of Accounts.xls and copy of Form 851 filed with tax return that was requested in the ACL. Two subsidiaries (Total Plastics and Oliver Steele) have operations in Ohio. A listing of all asset acquisitions for the audit period was received on 03/26/2010 See Folder (06) TP Returns & Exhibits\AM Asset Acquisitions - (2006 - 2009) listing.xls. After reviewing the chart of accounts, I selected the ones that I determined to be relevant to use tax. I sent Mr. Hebert a list of my selection on 04/19/2010 See Folder (06) TP Returns & Exhibits\Chart of Accounts Requested.xls. The following day, I received a message from Mr. Hebert inquiring about the scope of the accounts requested for review. I returned his call and informed him that all transaction detail for the accounts selected for the entire audit period need to be provided prior to or on the first day of fieldwork.

On 04/26/2010, I received the trial balances for 2008 and 2009 for the two Ohio locations (Cleveland and Tristate). Mr. Hebert suggested selecting a quarter in 2009 as a sample due to the fact that the accounting systems were changed twice during the audit period. I informed him that it was possible if he could provide the account totals for each year under audit so that we could base the error factors on those totals to reflect the entire audit period See Folder (06) TP Returns & Exhibits\Ohio Location Trial Balances 2008.xls and Folder (06) TP Returns & Exhibits\Ohio Location Trial Balances 2009.xls. He stated that they could retrieve the account totals for all years under audit.

On 04/29/2010, I sent Mr. Hebert an email requesting the schematics of both OH plants and the average number of expense transactions that occur in a single month. On 05/03/2010, he replied that there was an average of 500 expense transactions a month, many of which could be on a single invoice.

My manager Dale Petrie and I arrived on 05/10/2010 for the first day of field work. Mr. Hebert provided all the transaction detail for the audit period for the accounts previously selected. After reviewing the expense transactions, it was determined that selecting a quarter would be representative of the population. The first quarter of 2009 was chosen. Also, during the expense review, the account "Leased/Temp Help" was selected to be reviewed on a comprehensive basis.

After Mr. Hebert agreed to the sample method, I drafted a letter of agreement and presented it to Mr. Hebert See folder (13) Agreements\AM Purchase Letter of Agreement.pdf. He signed and returned it.

On 05/11/2010, I received fixed asset listing for July to December 2005 (Mr. Hebert previously sent the asset listing for 2006-2009). The following day, I sent Mr. Hebert "Penalty Worksheet" for his review. On 05/14/2010, I provided Mr. Hebert with a list of invoices that we were not able to locate. He provided as many as he was able to obtain at that time. Subsequently, on 05/18/2010, I sent Mr. Hebert a quick summary of what was determined to be taxable based on the information reviewed. Also requested missing invoices and contracts for drivers for DC Transportation. After no response was received I contacted Mr. Hebert via email on 05/26/2010 regarding the missing invoices and contracts that were requested. The following day, Mr. Hebert sent one of the invoices and stated that he was still looking for the others as well as the contracts. On 07/09/2010, Mr. Hebert said he was waiting on "Trucking Operations" for the driver contracts. Since no response was received, on 08/04/2010, I sent Mr. Hebert another email requesting the missing information again. On 09/12/2010 I sent Mr. Hebert another email stating I had not heard from him in about two months. Requested invoices still needed. Informed him to send the information by 9/17/2010 otherwise I would have to base the assessment off of invoices reviewed thus far.

On 09/27/2010, I received response from Mr. Hebert asking for the list of missing invoices. He also sent the contract for DC Transportation See folder (06) TP Returns & Exhibits\DC TRANSPORTATION AGREEMENT.pdf. On 09/29/2010, I sent Mr. Hebert the list of invoices still needed. I did not receive any more information from Mr. Hebert so I sent Mr. Hebert the preliminary proposal See folder (09) Communications\Preliminary Proposal Package 1-06-11.pdf which was received by him on 01/10/2011 See folder (09) Communications\Receipt Confirmation Preliminary Proposal.pdf. Following his receipt of the proposal, on 01/20/2011 Mr. Hebert responded via email stating he was confused reading the audit results. I replied back to Mr. Hebert explaining the results.

On 02/04/11, I received an email from Mr. Hebert asking if the drivers under the DC Transportation contract could be considered resale since they bill their customers the cost of paying the drivers. He also asked why DC Transportation, being an Ohio vendor, did not charge tax. Lastly, Mr. Hebert said that AM Castle pays the benefits and pension for the drivers, so could they be considered employees of AM Castle and just the service charges be taxable and not the salaries. I replied to his inquiries on 02/08/2011 stating that to qualify for the resale exemptions, the service would have had to be sold in the same form. In addition, I informed him that although DC Transportation should have charged tax, the liability is that of AM Castle's. Lastly, I stated that the pension and benefits paid are all part of the price, therefore, they are also taxable.

I called Mr. Hebert on 03/07/2011 and spoke to him regarding his review of the workpapers. He stated that the drivers were essentially employees of AM Castle, some for over 30 years, and he would send more information. I told him that once I receive it, I will review it with my manager, Dale Petrie, and get back to him. After receiving the information, I reviewed it and had Dale also review it and it was determined that the transactions were taxable (they were considered an employment service), so I informed Mr. Hebert of that.

On 04/15/2011, I had a conference call with Mr. Hebert and my manager, Dale Petrie. At that time, Dale informed Mr. Hebert that the leasing of drivers would be considered an employment service making the purchases taxable to AM Castle. After the conference, I sent Mr. Hebert an email containing the statute involving employment services. Mr. Hebert also sent me the union contract for the drivers to see if it would have an effect on the taxability of the purchases See folder (06) TP Returns & Exhibits\DC TRANSPORTATION Union Contract.pdf. After reading through it, my manager determined that the purchases would still be taxable.

Mr. Hebert stated that he had additional documents for me to review at their corporate office, which was relocated to Oak Brook, IL. A field work date was set to begin in May. Prior to field work, Ohio was beginning to implement the Use Tax Amnesty program. Due to this, our manager informed us to put off any work on audits until additional information regarding amnesty is provided. As a result, I called Mr. Hebert and told him that I would have to cancel the date set for field work and that I would get back to him once the pending legislation is completed.

In October of 2011, I phoned Mr. Hebert to tell him about the amnesty program and how it would affect AM Castle. Since they were not registered, the new audit period would be 01/01/2008 – 12/31/2009 (we decided it was best to complete the audit through the original end date and schedule another audit to bring them to current). I sent him the Amnesty forms and application on 10/03/2011 See folder (09) Communications\AM Castle Amnesty Cover Letter.pdf. A couple of weeks later I left Mr. Hebert a voicemail inquiring about the amnesty forms that were sent. I did not receive a response.

Ofast Measures: Sample for expenses and employment services and comprehensive for assets.

Tangible personal property asset purchases determined to be taxable include: cranes and forklifts (including lease buybacks), saw parts, used yard dogs, and various other products.

Tangible personal property expenses include: cell phone bills, supplies, cleaning services, labor on cranes, and several other miscellaneous items.

The Ohio Revised Code (O.R.C.) 5739.01(Y) states:

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741 of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

Many of these purchases may qualify for the manufacturing exemption under 5739.011, however, no additional information regarding the nature/use of the items purchased has been provided for our review.

In addition, purchases made under the "Leased Help" account are included within our proposal. "Leased Help" transactions were to be reviewed on a comprehensive basis, however, transaction details were only provided for a 6 month period. As a result, the information given was projected to reflect the entire audit period by multiplying the average monthly purchase total by 24 (the total number of months in the audit period).

Upon examination of your lease contract with DC Transportation Services, Inc., it was determined that the services provided by DC Transportation Services, Inc. fit within the definition of Employment Service as defined under 5739.01(JJ), and are considered taxable. According to O.R.C. 5739.01(JJ):

"Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so provided or supplied receive their wages, salary, or other compensation from the provider or supplier of the employment service or from a third party that provided or supplied the personnel to the provider or supplier. "Employment service" does not include:

- (1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.
- (2) Medical and health care services.
- (3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.
- (4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.
- (5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.

PENALTY JUSTIFICATION

Section #1 Criteria: 5% penalty imposed for non-compliance

Section #2 Criteria 15% penalty imposed for audit compliance under 50%*

Total Tax Paid	\$92,834.07
Audit Liability	\$277,725.97
Total Tax (total tax paid + audit liability)	\$370,560.04
Audit Compliance (total tax/total liability)	25.05%

* Penalty for purchase audits cannot exceed 15%. As a result, although the penalty percentage total for section 1 and section 2 is 20%, only 15% was imposed See folder (05) Penalty Worksheet\Am Castle Penalty Calculation Report (Amnesty).pdf.

SUMMARY

Taxpayer Contested Issues: Taxpayer does not agree with the taxing of drivers employed by an employment agency stating that AM Castle pays for all benefits and some drivers have worked for AM Castle for several years.

End Result (Balance due/Refund) \$277,725.97 audit liability + \$41,658.58 penalty + applicable interest

Taxpayer Review: Due to the lack of response, I proceeded with the audit as planned (within the guidelines of Amnesty). I sent Mr. Hebert the preliminary proposal on 12/30/2011 and gave him thirty days to agree or provide additional information. Prior to the expiration of the 30 days, I left Mr. Hebert a message regarding the preliminary proposal. Since I did not receive a response, I sent him the final audit results notification letter on 02/15/2012 See folder (09) Communications\AM Castle ARN.doc.

Ohio Department of Taxation
AUDIT REMARKS

Tax Form SUT REM
Rev. (4-09)

Audit Payments Received

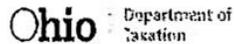
Responsible Party: N/A

February 15, 2012

AM Castle and Company

AR-80062 of 8

A-181



Summary for Recommending Assessment: Sales and Use Tax

Name: AM Castle and Company

Printed: 02/15/2012 1:54:49PM

DBA: Castle Metals

Case ID: 432038483

Legal Address: 3400 N Wolf Rd

License or Account No: 97101806

Franklin Park, IL 60131

Audit Code:

Mailing Address: 3400 N Wolf Rd

Franklin Park, IL 60131

County: 18 (CUYAHOGA)

Taxpayer John Hebert
Rep.: Tax Manager

Period Covered: 01/01/2008 Through 12/31/2009

SCHEDULE A - SALES TAX

1. Sales Tax Due on Sales (Sheet No.)	0.00
2. Sales Tax Due on Purchases (Sheet No.)	0.00
3. Total Sales Tax Due (Total of Lines 1 & 2)	0.00
4. Penalty (Sheet No.)	0.00
5. Total Sales Tax and Penalty (Sum of Lines 3 & 4)	0.00

SCHEDULE B - USE TAX

6. Use Tax Due on Sales (Sheet No.)	0.00
7. Use Tax Due on Purchases (Sheet No.)	277,725.97
8. Total Use Tax Due (Total of Lines 6 & 7)	277,725.97
9. Penalty (Sheet No.)	41,658.58
10. Total Use Tax and Penalty (Sum of Lines 8 & 9)	319,384.55

SCHEDULE C - PREASSESSMENT INTEREST (AS OF 02/24/2012)

11. Preassessment Interest (Sheet No.)	37,727.25
12. Penalty (Not Applicable)	0.00
13. Total Preassessment Interest and Penalty (Sum of Lines 11 & 12)	37,727.25

SCHEDULE D - ADDITIONAL CHARGES AND MISCELLANEOUS ADJUSTMENTS

14. Additional Charges and Miscellaneous Adjustments (Sheet No.)	0.00
15. Penalty (Sheet No.)	0.00
16. Total Additional Charges and Miscellaneous Adjustments (Sheet No.)	0.00

17. TOTAL RECOMMENDED ASSESSMENT (Sum of Lines 5, 10, 13 & 16)	357,111.80
18. Post Assessment Credit	0.00
19. REMAINING UNPAID LIABILITY	357,111.80

THE FOLLOWING MUST BE COMPLETED ON ALL FIELD AUDITS:

I HAVE EXAMINED THIS AUDIT REPORT, AND THE PROCEDURE AND COMPUTATIONS USED THEREIN HAVE BEEN EXPLAINED TO ME BY THE AUDITOR.

Rachna ReniguntaIa (SP3601)
NAME AND NUMBER OF AUDITOR

THIS STATEMENT DOES NOT CONSTITUTE AN ADMISSION OF ANY TAX LIABILITY OR A WAIVER OF TAXPAYER'S RIGHTS TO CONTEST ANY ASSESSMENT WHICH MAY BE BASED ON THIS REPORT.

Signed: _____
VENDOR OR TAXPAYERApproved By: _____
AUDIT MANAGERSheet: _____
00063



IMPOSITION OF PENALTY WORKSHEET

Rev. 7/08 (effective for audits completed after 4/15/2005)

This worksheet is used to determine whether a penalty should be imposed and, if so, the penalty rate when a tax liability is assessed on a field or desk audit. Please note: this worksheet may not apply to audits or assessments that are part of an automated billing and assessment process (including compliance assessment programs). In addition, this penalty worksheet does not apply to real property tax, personal property tax or public utility personal property tax penalties. Separate instructions address the imposition or remission of additional charges for late filing/tax payment of these taxes.

The tax agent/auditor is to check all boxes that apply. The tax agent/auditor must follow the definitions of the terms to determine which boxes need to be checked. This worksheet only addresses the imposition of penalty for a taxpayer failing to pay the correct amount of tax. It does not address all penalties such as fraud penalties. The imposition of the other types of penalties should only be made under the guidelines of the tax administrator in charge of the assessed tax. While the tax agent/auditor must closely follow this worksheet, special circumstances may exist that must be documented in writing to justify a deviation from the penalty indicated by this worksheet.

Section #1 Penalty Criteria	Check	Penalty (Enter "x" in the Check column)
Non-remittance of Trust Tax or Willful Non-Collection of Tax (Sales, Withholding, Pass Through Entity)	<input type="checkbox"/>	50.00%
Non-compliance	<input type="checkbox"/>	5.00%
Related Member Addback (2 x Interest) (Franchise)	<input type="checkbox"/>	\$
Automatic Penalty Imposition	<input type="checkbox"/>	0.00%
Total Section #1 Penalty		

See Related Member Penalty Worksheet Tab (Franchise tax only)

Section #2 Penalty Criteria	Check (Enter "1" in the Check column)	Audit Compliance Percentage Calculation	
Tax Compliance Issues	<input type="checkbox"/>	Tax Accrued	Tax Paid at Source
Tax Audit Compliance under 90%	<input type="checkbox"/>	0	0
Tax Audit Compliance under 80%	<input type="checkbox"/>	0	0
Tax Audit Compliance under 70%	<input type="checkbox"/>		
Tax Audit Compliance under 60%	<input type="checkbox"/>		
Tax Audit Compliance under 50%	<input type="checkbox"/>		
Poor Prior Audit Compliance Improvement	<input type="checkbox"/>	No Legal Dispute + Legal Dispute Tax Owed	
Records not made Available during Audit	<input type="checkbox"/>	Stat Sample Offset <input type="checkbox"/> Enter "x" if a direct payment permit audit	
Unsatisfactory Audit Responsiveness	<input type="checkbox"/>	Enter the number of years in the audit period	
Other:	<input type="checkbox"/>	Total Paid	Total Refund
Other:	<input type="checkbox"/>	Tax Accrued	Tax Paid at Source
Total Section #2 Checkmarks	0		
Total Section #2 Penalty			

0 to 2 Checkmarks = No Penalty 3 Checkmarks = 5% Penalty 4 Checkmarks = 10% Penalty 5 or more Checkmarks = 15% Penalty

Penalty Summary	
Section #1 Penalty	0.00%
Section #2 Penalty	0.00%
Purchase ¹	0.00%
Sales ²	0.00%
Franchise	0.00%
Withholding	0.00%
Pass Through	0.00%
Total Penalty	

¹The total penalty for purchase audits cannot exceed 15%.

²The total penalty for sales audits cannot exceed 50%.



Audit Division
Out Of State Regional Office
1011 East Touhy Avenue, Suite 345
Des Plaines, Illinois 60018
www.state.oh.us/tax

May 10, 2010

Mr. John Hebert
AM Castle Company
3400 N. Wolf Rd.
Franklin Park, IL

LETTER OF AGREEMENT
AM Castle Company
Expense Purchases

Due to the present sales and use tax audit of *Am Castle Company*, FEIN 36-0879160, by the Ohio Department of Taxation, both parties agree to the audit technique of sampling and to the following procedures for determining if any liability exists on expense purchases made by or for the Ohio operations of the taxpayer *Am Castle Company* during the audit period of July 1, 2005 through December 31, 2009.

Fixed asset additions and those transactions accounted for within accounts 50901 and 52801 will be reviewed on a comprehensive basis and are not subject to the terms of this agreement.

1. Based on the representative sample period of January 1, 2009 through March 31, 2009, the Ohio Department of Taxation will project an error percentage to the audit period of July 1, 2005 through December 31, 2009.
2. Expense purchases accounted for within the sample period will be reviewed to determine if the appropriate tax was paid to the vendor. Purchases determined to be subject to the tax where no tax was paid will be listed by individual expense account. In the event that the taxpayer fails to account for a transaction during the same period invoiced, the transaction will be considered as if the invoice was dated within the sample period. However, the actual invoice date will be used in order to facilitate proper documentation.
3. The total amount of purchases for each individual expense account with listings in the sample period will be divided by the respective expense accounts total amount of purchases during the sample period yielding a margin of error for each expense account with listings in the sample period.

00065

A-184

4. The margin of error percentages for the sample period will be applied to the total amount of purchases for each respective account within the audit period to arrive at the total amount of purchases on which additional tax is due for the audit period.
5. The appropriate sales and use tax rates will be applied to the total amount of expense account purchases projected to arrive at the sales and use tax liability for the audit period.
6. The percentages arrived at for the sample period margin of error as well as any other percentages used in arriving at the audit liability are for use in this audit only.

This agreement does not constitute an admission of any tax liability nor a waiver of the taxpayers rights to contest any assessment.

Am Castle

Date

Rachna Reniguntala
Ohio Department of Taxation

Date

OHIO BOARD OF TAX APPEALS

A.M. Castle & Co.,	:	
	:	
Appellant,	:	
	:	
v.	:	Case No. 2013-5851
	:	
Joseph W. Testa,	:	
Tax Commissioner of Ohio,	:	
	:	
Appellee.	:	

State of Ohio :
County of Cuyahoga :

AFFIDAVIT OF THOMAS M. FINK

PERSONALLY APPEARED before the undersigned attesting officer duly authorized to administer oaths came Thomas M. Fink who, after being duly sworn, testified as follows:

1.

My name is Thomas M. Fink, and I am more than 21 years old and am competent to give this affidavit. I am President of D.C. Transportation Services, Inc. ("D.C. Transportation") and authorized to provide this affidavit.

2.

The facts stated in this affidavit are based on information obtained from personal knowledge and records maintained in the ordinary course of D.C. Transportation's business.

3.

D.C. Transportation provides drivers and transportation services to companies with which it contracts.

4.

D.C. Transportation only contracts for long-term, full-time drivers; it does not hire temporary drivers. D.C. Transportation assigns drivers to particular customer accounts on a permanent basis.

5.

On occasion, a full-time driver who has been permanently assigned by D.C. Transportation to a particular customer account will be shifted for a short period of time to another customer's account as an accommodation to substitute for another permanent driver who is out on vacation or short-term leave.

6.

D.C. Transportation entered into an agreement with A.M. Castle & Co. ("A.M. Castle") dated March 24th, 2000 (the "Agreement"), a copy of which is attached hereto as Exhibit A.

7.

Pursuant to the Agreement, D.C. Transportation drivers are assigned to provide driving services to A.M. Castle.

8.

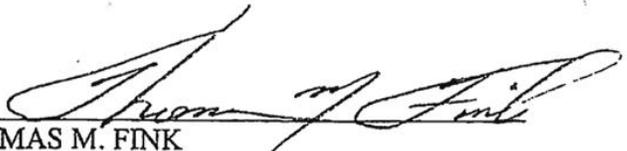
With the following exceptions with respect to the 2008 and 2009 years, drivers are assigned to the A.M. Castle account on a permanent basis, for an indefinite period of time, without a specified end date, and not solely as a substitute for a current employee who is on leave or for the purpose of meeting a seasonal or short-term workload need:

<u>Name</u>	<u>Substitute Service Rendered During Week Ended</u>	<u>Length of Substitute Service</u>
a. Leigh T. Cromleigh (full-time for DC Transportation)	05/31/2008 06/14/2008 07/12/2008	1 day 1 day 1 day
b. Claszill Finney (full-time for another account)	03/22/2008 04/19/2008 06/21/2008 07/05/2008 07/12/2008 07/26/2008	2 days 1 day 2 days 2 days 1 week 1 day
c. Michael A. Hoag (full-time for another account)	02/07/2009 02/21/2009	1 day 2 days
d. Donald Lee Hopkins (full-time for another account)	05/03/2008	1 day

9.

Drivers assigned to A.M. Castle are removed only upon the written request of A.M. Castle subject to prescribed union procedures. During the 2008 and 2009 years, no driver assigned to A.M. Castle was removed pursuant to such written request.

FURTHER AFFIANT SAYETH NOT.


THOMAS M. FINK

Sworn to and subscribed before
me this 18th day of September, 2014.

Ronald L. Kahn
Notary Public

RONALD L. KAHN, Atty.
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.

My commission expires:

[AFFIX NOTARIAL SEAL OR STAMP]

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent by regular U.S. mail this 5th day of October, 2015, to upon the following:

Michael DeWine (0009181)
Ohio Attorney General

Melissa W. Baldwin (0066681)*

**Counsel of Record*

Daniel W. Fausey (0079928)

Assistant Attorneys General

30 East Broad Street, 25th Floor

Columbus, OH 43215

(614) 466-4526 (Direct)

(614) 466-5968 (Office)

(866)487-3731 (Fax)

melissa.baldwin@ohioattorneygeneral.gov

*Counsel for Appellant Joseph W. Testa,
Tax Commissioner of Ohio*



Todd S. Swatsler (0010172)

