

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RONALD BENDERSON & SUSAN JUSTINGER,)	
)	
Petitioners,)	
)	
v.)	No. 14-TT-127
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ANSWER

1. Petitioners are a married couple who are residents of the State of New York. Petitioners' tax return filing address is 570 Delaware Avenue, Buffalo, New York 14202.

ANSWER: Department admits the factual allegations in paragraph 1.

2. Petitioners are represented by Fred O. Marcus, David Hughes and Jennifer Zimmerman of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or fmarcus@hmbllaw.com, at 312-606-3212 or dhughes@hmbllaw.com, and at 312-606-3247 or jzimmerman@hmbllaw.com, respectively.

ANSWER: The information contained in Paragraph 2 is required by Independent Tax Tribunal Regulation ("Rule") 310(a)(1)(A) (86 Ill. Adm. Code § 5000.310), is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: Department admits the factual allegations in paragraph 3.

NOTICES

4. On May 13, 2014, the Department issued a Notice of Claim Denial to Petitioners for the 2011 tax year denying a refund in the amount of \$47,469 ("Notice #1"). On May 19,

2014, the Department issued a Notice of Claim Denial to Petitioners for the 2012 tax year denying a refund in the amount of \$62,688 ("Notice #2"). Notice #1 and Notice #2 will sometimes be referred to herein as the "Notices" and the Notices are attached hereto as Exhibit A. The 2011 tax year and 2012 tax year will sometimes be referred to herein as the "Years at Issue."

ANSWER: The Notices of Claim Denial speak for themselves. To the extent an answer is required, Department admits the factual allegations in paragraph 4.

JURISDICTION

5. Petitioners bring this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: Department admits the factual allegations in paragraph 5.

6. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because the Petitioners timely filed this petition within 60 days of the Notices.

ANSWER: Department admits the Tribunal has jurisdiction over the Notices of Claim Denial issued to Taxpayer/Petitioners on May 13, 2014 and May 19, 2014 for the tax years 2011 and 2012, respectively. Department denies that this Tribunal has jurisdiction over all of Taxpayer's claims alleged in the petition. Department denies the remaining factual allegations in paragraph 6.

BACKGROUND

7. Ronald Benderson is a 17.93% shareholder of Benderson Properties, Inc., formerly known as Benderson Development Company, a Subchapter S corporation ("Benderson Development").

ANSWER: Upon information and belief, the Department admits the factual allegations in paragraph 7.

8. Ronald Benderson is the grantor of the Benderson 1995 Trust which is a 30.44% shareholder in Benderson Development.

ANSWER: Upon information and belief, the Department admits the factual allegations in paragraph 8.

9. Ronald Benderson is also the grantor of the Benderson 93-3 Trust which is a 50% shareholder in Delta Sonic Car Wash, Inc., a Subchapter S Corporation ("Delta Sonic").

ANSWER: Upon information and belief, the Department admits the factual allegations in paragraph 9.

10. For the 2000 through 2003 tax years, Delta Sonic filed separate Illinois income tax returns with the Department ("Delta Sonic's Returns").

ANSWER: Department admits the factual allegations in paragraph 10.

11. The Department audited Delta Sonic's Returns and determined that Delta Sonic is engaged in a unitary business with Benderson Development and therefore, the entities were required to file combined Illinois corporate income tax returns for the 2000 through 2003 tax years.

ANSWER: Department admits the factual allegations in paragraph 11.

12. In 2009, Delta Sonic timely filed a Protest and Request for Hearing with the Department's Office of Administrative Hearings arguing, among other things, that Delta Sonic and Benderson Development are not related through "common ownership", which is a requirement for a unitary business provided by Illinois Income Tax Act ("Act") Section 1501(a)(27) ("Unitary Case").

ANSWER: Department admits the factual allegations in paragraph 12.

13. The docket number assigned by the Office of Administrative Hearings to the Unitary Case is 10-IT-0229.

ANSWER: Department admits the factual allegations in paragraph 13.

14. The parties in the Unitary Case have agreed that if Delta Sonic and Benderson Development are not related through "common ownership," then Delta Sonic was not required to file its returns on a unitary combined basis with Benderson Development for the 2000 through 2003 tax years.

ANSWER: Department admits the factual allegations in paragraph 14.

15. The parties in the Unitary Case submitted cross motions for summary judgment as to the issue of whether Delta Sonic and Henderson Development are related through "common ownership" to the Administrative Law Judge for consideration, but a decision has not been issued yet.

ANSWER: Department admits the factual allegations in paragraph 15.

ILLINOIS RETURNS AND NOTICES

16. Pursuant to its position in the Unitary Case, the Department has assessed the Petitioners additional Illinois income tax, interest and penalty for the 2000 through 2003 tax years as Ronald Benderson, either individually or as grantor of several trusts, owns shareholder interests in both Delta Sonic and Benderson Development.

ANSWER: Department admits the Department issued a Notice of Deficiency to Ronald Benderson on October 13, 2006 for individual income tax, penalty and interest for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003 as a result of the Department's audit determination of Delta Sonic Car Wash Systems, Inc. for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003. Department denies the remaining factual allegations in paragraph 16.

17. Petitioners had an overpayment of \$12,250 from the 2010 tax year which

Petitioners' sought to apply toward its tax liability for the 2011 tax year.

ANSWER: Department admits Petitioners/Taxpayer reported \$12,250 of credit carry forward on Line 37 of Form IL-1040 and Form IL-1040-X for tax year ending December 31, 2010. Department applied \$40,934.00 of tax overpayment for the tax year ending December 31, 2010, as an offset for income tax underpayment for tax year ending 2001, rather than applying \$12,250 of overpayment as a credit carry forward to 2011 income tax. Department denies the remaining factual allegations in paragraph 17. Department affirmatively states that Section 909(a) allows Department to make such an offset and that Petitioners/Taxpayer is prohibited from challenging the Department's offset of Taxpayer's 2010 Illinois Income tax overpayment in the above captioned action because Taxpayer's 2010 income tax assessment is final and because this action concerns tax years 2011 and 2012. Petitioners' reported \$20,750 of Estimated Payments on Line 26 of Petitioners' 2011 Form IL-1040. Taxpayer made estimated payments in the amount of \$8,500 for 2011 income tax. Department gave Taxpayer credit for \$8,500 of estimated payments in determining Taxpayer's 2011 individual income tax. See Notice of Claim Denial, p. 3, line 27.

18. On October 15, 2012, Petitioners filed an IL-1040 Individual Income Tax Return for the 2011 tax year claiming a refund in the amount of \$47,469 ("2011 Original Return") as the result of an overpayment.

ANSWER: Department admits that on October 16, 2012, Petitioners filed an IL-1040 Individual Income Tax Return for the 2011 tax year reporting a tax overpayment in the amount of \$47,469. Department denies the remaining factual allegations in paragraph 18.

19. On December 6, 2012, the Department issued a Return Correction Notice to Petitioners, a copy of which is attached as Exhibit B, in which it reduced the amount of

overpayment applied to 2011 tax year from the 2010 tax year, as the 2010 overpayment was used to offset unpaid liabilities for the 2001 tax year.

ANSWER: The Notice speaks for itself. To the extent an answer is required, Department admits that Department applied \$12,250 of tax overpayment from 2010 as an offset for income tax underpayment for tax year ending 2001.

20. On December 6, 2012, the Department also issued a Notice of Overpayment Adjustment to Petitioners, a copy of which is attached as Exhibit C, indicating that the remaining overpayment of \$34,896 for the 2011 tax year was applied to unpaid liabilities for the 2001 and 2002 tax years.

ANSWER: The Notice speaks for itself. To the extent an answer is required, Department admits the factual allegations in paragraph 20.

21. On or about January 28, 2013, Petitioners filed an IL-1040-X Amended Individual Income Tax Return for the 2011 tax year claiming a protective refund in the amount of \$47,469 ("2011 Amended Return"). A copy of the first three pages of 2011 Amended Return is attached hereto as Exhibit D.

ANSWER: Department admits the factual allegations in paragraph 21.

22. As the first page of the 2011 Amended Return indicates, Petitioners filed the 2011 Amended Return because the 2011 overpayment was used to offset liabilities for the 2001 and 2002 tax years.

ANSWER: Department denies the factual allegations in paragraph 22. Page 1 of 2011 Form IL-1040-X, Step 2, Line I, does not indicate a reason for Taxpayer's filing of an Amended Return. Rather Line I contains the statement: "See Statement 1."

23. On October 15, 2013, Petitioners filed an IL-1040 Individual Income Tax Return for the 2012 tax year claiming a refund in the amount of \$62,688 ("2012 Original Return") as

the result of an overpayment.

ANSWER: Department admits that on October 15, 2013, Petitioners/Taxpayer filed an IL-1040 for the tax year ending December 31, 2012, reporting an overpayment of income tax in the amount of \$62,688. Department denies the remaining factual allegations in paragraph 23.

24. On October 26, 2013, the Department issued a Notice of Overpayment Adjustment to Petitioners, a copy of which is attached as Exhibit E, indicating that an overpayment of \$62,688 for the 2012 tax year was applied to unpaid liabilities for the 2002 and 2003 tax years.

ANSWER: The Notice speaks for itself. To the extent an answer is required, Department admits the factual allegations in paragraph 24.

25. On or about February 6, 2014, Petitioners filed an IL-1040-X Amended Individual Income Tax Return for the 2012 tax year claiming a protective refund in the amount of \$62,688 ("2012 Amended Return"). A copy of the first three pages of the 2012 Amended Return is attached hereto as Exhibit F.

ANSWER: Department admits the factual allegations in paragraph 25.

26. As the first page of the 2012 Amended Return indicates, Petitioners filed the 2012 Amended Return because the overpayment was used to offset liabilities for the 2002 through 2003 tax years.

ANSWER: Department denies the factual allegations in paragraph 26. Page 1 of 2012 Form IL-1040-X, Step 2, Line I, does not indicate a reason for Taxpayer's filing of an Amended Return. Rather Line I contains the statement: "See Statement 1."

27. On May 13, 2014, the Department issued Notice #1 denying Petitioner's refund claim for the 2011 tax year, and on May 19, 2014, the Department issued Notice #2 denying

Petitioner's refund claim for the 2012 tax year.

ANSWER: Department admits the factual allegations in paragraph 27.

28. The resolution of the Unitary Case will determine whether the Petitioners owe additional Illinois tax for the 2000 through 2003 tax years, and whether the refunds claimed by Petitioners on their Illinois Income Tax Returns for the Years at Issue can be used to offset the liabilities for the 2000 through 2003 tax years.

ANSWER: Department admits the resolution of the Unitary Case (10-IT-229) will determine whether Delta Sonic underreported its Illinois income tax for the tax year 2000. Department denies the resolution of the Unitary Case (10-IT-229) will determine whether Petitioners underpaid their Illinois Income tax in 2000 through 2003 because the Notice of Deficiency issued to Ronald Benderson on October 13, 2006 for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003 became final on December 12, 2006; 60 days after it was issued. Because Ronald Benderson's 2000, 2001, 2002 and 2003 tax assessments are final, the Department may apply any tax overpayments against the final liabilities for the tax years 2000 through 2003. Department denies all remaining factual allegations in paragraph 28.

COUNT I

29. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 27, inclusive, hereinabove.

ANSWER: Department incorporates and alleges its Answers to paragraphs 1 through 27 as if fully set forth herein.

30. Act Section 304(e) provides that when a taxpayer operates a "unitary business", a part of which is conducted in Illinois by one or more members of the group, the taxpayer reports its income in combination with the income of all of its unitary business affiliates.

ANSWER: Paragraph 30 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Illinois Income Tax Act Section 304(e) (35 ILCS 5/304(e)) speaks for itself.

31. Under Act Section 1501(a)(27), a unitary business group is "a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other."

ANSWER: Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Illinois Income Tax Act Section 1501(a)(27) (35 ILCS 5/1501(a)(27)) speaks for itself.

32. For a corporation, common ownership is direct or indirect control or ownership of more than 50% of the outstanding voting stock of the persons carrying on a unitary business activity. Act Section 1501(a)(27).

ANSWER: Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Illinois Income Tax Act Section 1501(a)(27) (35 ILCS 5/1501(a)(27)) speaks for itself.

33. For purposes of determining common ownership, Illinois Administrative Code Section 100.9700(f) in place for the 2000 through 2003 tax years provides that for attribution of stock ownership among certain individuals, an individual is considered to have indirect control over any stock of the corporation that he constructively owns pursuant to the family attribution rule of Internal Revenue Code ("IRC") Section 318(a)(1).

ANSWER: Paragraph 33 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Illinois Administrative Code Section 100.9700(f) (86 Ill. Admin. Code § 100.9700) speaks for itself.

34. The family attribution rule of IRC Section 318(a)(1) provides for attribution of

stock from one individual member of a family to another on a lineal basis so an individual is deemed to own stock owned by his spouse, children, grandchildren, and parents.

ANSWER: Paragraph 34 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Internal Revenue Code Section 318 (26 U.S.C. § 318) speaks for itself.

35. IRC Section 318(a)(1) does not attribute stock from one sibling to another.

ANSWER: Paragraph 35 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Internal Revenue Code Section 318 (26 U.S.C. 318) speaks for itself.

36. Neither the Act nor the Department's Regulation incorporate the attribution rules under IRC Sections 318(a)(2) and (a)(3), which would attribute stock from a trust or entity to a natural person, or vice versa.

ANSWER: Department admits Department of Revenue Regulation 100.9700(f) (86 Ill. Admin. Code § 100.9700), in effect in tax years 2000 through 2003, did not expressly include the attribution rules defined in IRC Section 318(a)(2) and 318(a)(3). Department denies the remaining factual allegations in paragraph 36. Department affirmatively states that Department of Revenue Regulation 100.9700(f) (86 Ill. Admin. Code § 100.9700) (eff. July 7, 2000) instructed Taxpayers to use IRC Section 318(a)(1) to determine indirect control or ownership of individuals (“(f) Attribution of stock ownership among certain individuals. For the purpose of IITA Section 1501(a)(27), an individual shall be considered to have indirect control over any stock that he is considered as owning under IRC section 318(a)(1).”). Department of Revenue Regulation 100.9700 (eff. July 7, 2000) did not provide guidance to Taxpayers for determining “indirect control” over persons other than individuals (trusts, corporations, partnerships, etc.). However, this failure to provide

guidance in every situation did not limit the Department's ability to use a method other than the method provided in IRC Section 318(a)(1) to determine whether persons other than individuals have "indirect control" for purposes of establishing common ownership under Section 1501(a)(27) of the Illinois Income Tax Act.

37. Because more than 50% of Delta Sonic and Benderson Development are owned by trusts, not individuals, the stock owned by these trusts may not be attributed to any individual, including the beneficiaries or the grantors.

ANSWER: Department denies the factual allegations in paragraph 37.

38. Based on the application of the family attribution rule of IRC Section 318(a)(1), Delta Sonic and Benderson Development are not commonly owned as required by the Act, and are therefore not unitary for the 2000 through 2003 tax years.

ANSWER: Department denies the factual allegations in paragraph 38.

39. Because Delta Sonic and Benderson Development are not engaged in a unitary business, the entities were not required to file a combined Illinois income tax return for the 2000 through 2003 tax years.

ANSWER: Department denies the factual allegations in paragraph 39.

40. Given that Delta Sonic and Benderson Development are not unitary, the Petitioners do not owe additional Illinois tax for the 2000 through 2003 tax years to which overpayments from the Years at Issue may be applied, and therefore, the refunds claimed by Petitioners for the Years at Issue should be granted.

ANSWER: Department denies the factual allegations in paragraph 40.

WHEREFORE, Department prays that the Tribunal enter an order that:

- (a) Finds that the Notices of Claim Denial issued to Ronald Benderson and Susan Justinger are correct;

- (b) enters judgment in favor of the Department and against the
Petitioner; and
- (c) grants such further relief as the Tribunal deems appropriate under
the circumstances.

DEPARTMENT'S AFFIRMATIVE DEFENSES

NOW COMES the Department of Revenue, by and through its Attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Affirmative Defenses, alleges as follows:

BACKGROUND

1. On October 13, 2006, Department issued a Notice of Deficiency to Delta Sonic Car Wash Systems, Inc. ("Delta Sonic") for the tax year ending December 31, 2000. A copy of that Notice is attached as Exhibit 1.
2. Although Delta Sonic filed a protest of the Notice of Deficiency dated October 13, 2006, in the Circuit Court of Cook County, that protest was dismissed with prejudice.
3. On January 23, 2007, Delta Sonic filed its protest (Complaint) of the Notice of Deficiency dated October 13, 2006. See Exhibit 2, Docket Sheet, Circuit Court of Cook County, Docket No. 07-L-50059.
4. On February 4, 2009, the Circuit Court of Cook County entered an Order dismissing Delta Sonic's protest of the Notice of Deficiency issued October 13, 2006, because Delta Sonic's protest (Complaint) was filed more than 60 days after the Notice of Deficiency was issued. See Exhibit 3. Defendant's Motion to Dismiss and Agreed Dismissal Order in Circuit Court of Cook County docket No. 07-L-50059.
5. Department's Notice of Deficiency issued October 13, 2006 to Delta Sonic became final on December 12, 2006. 35 ILCS 5/908(d).
6. Delta Sonic later filed a Form IL-1120-ST-X (amended Illinois income tax return) for tax years 2000, 2001, 2002, and 2003, respectively, which reversed the Department's unitary determination, and claimed a refund of tax overpayment for tax year 2000.

7. The Department denied Delta Sonic's refund claim for tax year ending December 31, 2000. A copy of the Department's Notice of Denial to Delta Sonic is attached as Exhibit 4.
8. On December 14, 2009, Delta Sonic protested the Department's refund claim denial for 2000.
9. Delta Sonic's protest was assigned docket number 10-IT-0229 in the Department's Office of Administrative Hearings.
10. As of the date of this Answer, docket number 10-IT-0229 is open/pending before the Department's Office of Administrative Hearings.
11. The issue pending in docket number 10-IT-0229 is whether Delta Sonic and Benderson Development were members of a unitary business group in 2000 through 2003.

AFFIRMATIVE DEFENSE I

Subject Matter Jurisdiction; Items not "reflected on" the 2011 and 2012 Notices issued to Ronald Benderson and Susan Justinger

12. Department incorporates its allegations in paragraphs 1 through 11 of its Affirmative Defenses as if fully set forth herein.
13. The Tax Tribunal has original jurisdiction over all determinations of the Department "reflected on" the Notice of Claim Denial issued to Ronald Benderson and Susan Justinger for the tax year ending December 31, 2011 and December 31, 2012, respectively. 35 ILCS 1010/1-45(a).
14. The Taxpayer in this matter is Ronald Benderson and Susan Justinger.
15. The Notices protested by Taxpayer are for Individual Income Tax for the years ending December 31, 2011 and December 31, 2012.

16. The Department's tax assessment to Delta Sonic was reflected on the Notice of Deficiency issued to Delta Sonic on October 13, 2006 for the tax year ending December 31, 2000. See Exhibit 1.
17. Delta Sonic's 2000 income tax assessment is not reflected on the Notices of Claim Denial issued to Taxpayer on May 14, 2014, or May 19, 2014, for the tax years ending December 31, 2011 and December 31, 2012, respectively.
18. This Tribunal does not have jurisdiction to determine whether Delta Sonic and Benderson Development were unitary in 2000 through 2003 because Delta Sonic's 2000 income tax assessment is not reflected on the Notices of Claim Denial issued to Taxpayer for tax years ending December 31, 2011 and December 31, 2012, which is the subject matter of the protest in the above captioned matter.
19. This Tribunal does not have jurisdiction to consider whether Delta Sonic and Benderson Development were unitary in 2000 through 2003 because Delta Sonic's protest of that determination is pending before the Office of Administrative Hearings as docket number 10-IT-0229.

WHEREFORE, Department prays this Tribunal enter an Order

- a) Finding that Delta Sonic's 2000 income tax assessment is not reflected on the Notices of Claim Denial issued to Taxpayer for tax years ending December 31, 2011 and December 31, 2012, respectively;
- b) Holding that this Tribunal does not have subject matter jurisdiction to determine whether Delta Sonic and Benderson Development were engaged in a unitary business in 2000 through 2003; and
- c) Granting any further relief this Tribunal deems just and appropriate.

AFFIRMATIVE DEFENSE II

Subject Matter Jurisdiction; Final Assessment of Delta Sonic

20. Department incorporates the allegations in paragraphs 1 through 18 of its Affirmative Defenses as if fully set forth herein.
21. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 et seq.) states: “Jurisdiction of the Tax Tribunal. . . . (e) The Tax Tribunal shall not have jurisdiction to review: . . .(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities.” 35 ILCS 1010/1-45.
22. Because the Notice of Deficiency issued on October 13, 2006 to Delta Sonic is final, this Tribunal does not have Subject Matter Jurisdiction to review the correctness of that Notice of Deficiency or the issues determined therein, including whether Delta Sonic and Benderson Development were members of a unitary group for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003. 35 ILCS 1010/1-45.

WHEREFORE, Department prays this Tribunal enter an Order

- (a) Finding that the Notice of Deficiency issued to Delta Sonic on October 13, 2006, for tax year ending December 31, 2000 became final on December 12, 2006; and
- (b) Holding that this Tribunal does not have subject matter jurisdiction to review the correctness of the Department’s Notice of Deficiency issued to Delta Sonic on October 13, 2006;
- (c) Holding that this Tribunal does not have subject matter jurisdiction to

determine whether Delta Sonic and Benderson Development were engaged in a unitary business in 2000 through 2003; and

(d) Granting any further relief this Tribunal deems just and appropriate.

AFFIRMATIVE DEFENSE III

Subject Matter Jurisdiction; Final Assessment of Ronald Benderson

23. Department incorporates the allegations in paragraphs 1 through 21 of its Affirmative Defenses as if fully set forth herein.
24. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 et seq.) states: “Jurisdiction of the Tax Tribunal. . . . (e) The Tax Tribunal shall not have jurisdiction to review: . . .(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities.” 35 ILCS 1010/1-45.
25. On October 13, 2006, Department issued a Notice of Deficiency to Petitioner, Ronald Benderson, for the tax years ending December 31, 2000, 2001, 2002, and 2003. A copy of that Notice of Deficiency is attached hereto as Exhibit 5.
26. Ronald Benderson did not file a Form EAR-14 or otherwise protest the Notice of Deficiency for 2000, 2001, 2002 and 2003 within 60 days of October 13, 2006.
27. Illinois Income Tax Act (IITA) Section 908(d) provides: “(d) Finality of decision. If the taxpayer fails to file a timely protest or petition under subsection (a) of this Section, then the Department's notice of deficiency shall become a final assessment at the end of the 60th day after the date of issuance of the notice of deficiency.” 35 ILCS 5/908(d).
28. Department’s Notice of Deficiency issued to Ronald Benderson on October 13, 2006 for

the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003 became final on December 12, 2006; 60 days after it was issued.

29. Because the October 13, 2006 Notice of Deficiency is final, this Tribunal does not have Subject Matter Jurisdiction to review the correctness of the Notice of Deficiency issued to Ronald Benderson or the income tax assessments for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003. 35 ILCS 1010/1-45.

WHEREFORE, Department prays that this Tribunal enter an Order

- (a) Finding that the Notice of Deficiency issued to Ronald Benderson on October 13, 2006, for the years ending December 31, 2000, December 31, 2001, December 31, 2002 and December 31, 2003, became final on December 12, 2006; and
- (b) Holding that this Tribunal does not have subject matter jurisdiction to review the correctness of the Notice of Deficiency issued to Ronald Benderson on October 13, 2006, for the tax years ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003; and
- (c) Granting any further relief this Tribunal deems just and appropriate.

AFFIRMATIVE DEFENSE IV

Subject Matter Jurisdiction; Final Assessment of 2010 Overpayment

30. Department incorporates the allegations in paragraphs 1 through 28 of its Affirmative Defenses as if fully set forth herein.

31. The Tax Tribunal has original jurisdiction over all determinations of the Department

reflected on the Notice of Claim Denial for the year(s) protested. 35 ILCS 1010/1-45(a).

32. Taxpayer alleges that “Petitioners had an overpayment of \$12,250 from the 2010 tax year which Petitioners' sought to apply toward its tax liability for the 2011 tax year.” Petition, ¶ 17.

33. On February 21, 2013, Department issued a Notice of Claim Denial to Petitioners/Taxpayer for the tax year ending December 31, 2010. A copy of that Notice is attached hereto as Exhibit 6.

34. Petitioners/Taxpayer did not protest the Notice of Claim Denial issued to Petitioners/Taxpayer on February 21, 2013.

35. The Notice of Claim Denial issued to Petitioners/Taxpayer on February 21, 2013 became final on Monday, April 22, 2013.

36. This Tribunal does not have subject matter jurisdiction to review the amount of tax overpayment of Petitioners/Taxpayer for the tax year ending December 31, 2010.

WHEREFORE, Department prays this Tribunal enter an Order:

- (a) Finding that the Notice of Claim Denial issued to Petitioners/Taxpayer on February 21, 2013 for the tax year ending December 31, 2010, became final on Monday, April 22, 2013;
- (b) Holding that this Tribunal does not have subject matter jurisdiction to review the amount of tax overpayment of Petitioners/Taxpayer for the tax year ending December 31, 2010; and
- (c) Granting any further relief this Tribunal deems just and appropriate.

AFFIRMATIVE DEFENSE V
Subject Matter Jurisdiction; Department’s Collection Activities

37. Department incorporates the allegations in paragraphs 1 through 36 of its Affirmative Defenses as if fully set forth herein.
38. Section 1-45 of the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 et seq.) states: “Jurisdiction of the Tax Tribunal. . . . (e) The Tax Tribunal shall not have jurisdiction to review: . . .(4) any action or determination of the Department regarding tax liabilities that have become finalized by law, including but not limited to the issuance of liens, levies, and revocations, suspensions, or denials of licenses or certificates of registration or any other collection activities.” 35 ILCS 1010/1-45.
39. Section 909(a) of the Illinois Income Tax Act (35 ILCS 5/909(a)) provides: “(a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund any balance to such person.”
40. The Department’s act of offsetting overpayments against final liabilities in accordance with Section 909(a) is a “collection activit[y]” for which this Tribunal does not have jurisdiction to review. 35 ILCS 1010/1-45.

WHEREFORE, Department prays this Tribunal enter an Order:

- (a) Finding that Department’s act of offsetting overpayments against final liabilities in accordance with Section 909(a) is a “collection activit[y]” pursuant to 35 ILCS 1010/1-45(e);
- (b) Holding that this Tribunal does not have subject matter jurisdiction to review Department’s act of offsetting overpayments against final

liabilities in accordance with Section 909(a);

- (c) Holding that this Tribunal has jurisdiction to determine the correct amount of Petitioners'/Taxpayer's tax overpayment for 2011 and 2012;
- (d) Holding that this Tribunal does not have subject matter jurisdiction to review the Department's application of Petitioners'/Taxpayer's tax overpayments for tax years 2011 and 2012 to final liabilities, once the amount of the overpayment is determined; and
- (e) Granting any further relief this Tribunal deems just and appropriate.

Respectfully submitted,
Illinois Department of Revenue

By: LISA MADIGAN,
Attorney General, State of Illinois

By: _____
Special Assistant Attorney General

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Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702

OCT 16 2006

October 13, 2006

NOTICE OF DEFICIENCY

FORM: IL-1120-ST

FEIN: 16-0972035

Delta Sonic Car Wash Systems, Inc.
570 Delaware Avenue
Buffalo, NY 14202-1284

TAXABLE YEAR ENDING:
12/31/2000

STATUTORY DEFICIENCY:
\$ 11,539.00

INTEREST TO DATE:
\$ 7,434.00

LESS AMTS. PREVIOUSLY PAID:
\$ 177.00

TOTAL AMOUNT DUE:
\$ 18,796.00

Pursuant to Section 904(c) of the Illinois Income Tax Act, notice is hereby given that the determination of your income tax liability for the above-noted taxable year discloses a deficiency in the amount shown above. The attached statement contains explanations of the adjustments and shows the computation of the deficiency.

IF YOU AGREE to this determination and pay the Total Amount Due shown above within thirty (30) days of the date of this notice, no additional interest will accrue. The payment should be forwarded to the address shown below.

IF YOU DO NOT AGREE, Section 908(a) of the Act provides that the Department shall reconsider the proposed assessment if within 60 days of the date of this notice, the taxpayer or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the assessment proposed, you may file a protest and, if desired, request a hearing. A protest, if filed, should be forwarded to the address shown below.

IF AN ADEQUATE AND TIMELY PROTEST is not received, the total amount of the deficiency shown will be deemed assessed as of the expiration of the aforementioned 60-day period pursuant to Section 903(a)(2) and 904(d). If no protest is filed and if the tax liability is not paid within 60 days of the date of this notice, a 15% penalty will be assessed under Section 3-3(b)(2) of the Uniform Penalty and Interest Act for liabilities which became due on or after January 1, 1994. (The penalty rate is 20% for liabilities due on or after January 1, 1998.) If the tax remains unpaid after a demand for payment, the Act permits, in addition to other remedies, the seizure and sale of real and personal property to enforce collection.

Sincerely,

Brian Hamer
Director

Enclosures: EAR-14, IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217-785-9375
ATTENTION: LF 99904A

Page 2
16-0972035
Delta Sonic Car Wash Systems, Inc.
570 Delaware Avenue
Buffalo, NY 14202-1284

STATEMENT

We changed the separate return that you filed for the taxable year ended December 31, 2000 to a unitary filing status. [35 ILCS 5/1501(a)(27), 502(e)]

We disallowed as nonbusiness income the following items that are transactions and activities in the regular course of your trade or business: Rental income and partnership income. [35 ILCS 5/1501(a)(1), (13)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2003, through November 17, 2003, your penalty and interest amounts may be doubled.
[35 ILCS 521/101(b)]

Illinois Department of Revenue

EDA-93 (Ver. 6.25)

IL-1120-ST AUDITOR'S REPORT

Oct/12/2006 PM

TAXPAYER NAME: Delta Sonic Car Wash Systems, Inc.

APE: 12/31/2000

AUDIT PERIOD: 1/1/2000 - 12/31/2002

STATUTE EXPIRES: 10/15/2006

FEIN: 16-0972035

IBT#: 1779-9600

AUDIT CODE: EL

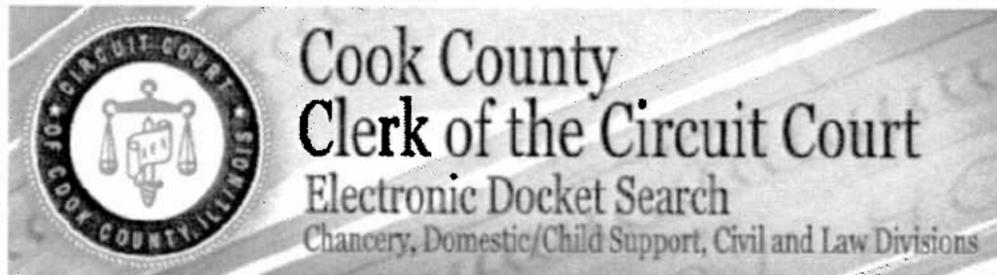
PART I - Base Income (Loss)		A As originally reported or adjusted	B Net Change	C Corrected amount
Unmodified base income from Part IA	1	4,760,754	11,313,103	16,073,857
Additions:				
State, municipal and other interest income excluded	2a	0	477,949	477,949
Illinois replacement tax deducted	2b	0	30,195	30,195
	2c	0	0	0
	2e	0	0	0
	2e	0	0	0
Total additions	3	0		508,144
Total income - line 1 plus line 3	4	4,760,754		16,582,001
Subtractions:				
Interest income from US Treasury obligations	5a	0	0	0
Enterprise zone or foreign trade zone dividends	5b	0	0	0
Enterprise zone contributions	5c	0	0	0
Enterprise zone or high impact business interest	5d	0	0	0
Expenses incurred in producing tax-exempt interest	5e	0	0	0
	5f	0	0	0
	5f	0	0	0
	5f	0	0	0
Total subtractions	6	0		0
Base income	7	4,760,754		16,582,001
Part IV - Base Income (loss) allocable to Illinois				
Base/unitary base income (loss) from Part I, Line 7	1	4,760,754	11,821,247	16,582,001
Nonbusiness income (loss)	2a	3,413,747	(3,413,747)	0
Non-unitary partnership, trust and estate business inc.	2b	0	0	0
Apportionable business income (loss)	4	1,347,007	15,234,994	16,582,001
APPORTIONMENT				
		EVERYWHERE	ILLINOIS	FACTOR
Sales Factor	5c	334,205,981	32,681,962	0.097790
Total Factor	6			0.097790
AVERAGE	7			0.097790
		(Column A cont.)	(Column B cont.)	(Column C cont.)
Business income apportionable to Illinois	8	349,962		1,621,554
Nonbusiness income (loss) allocable to Illinois	9	0	0	0
IL partnership, trust, & estate business income (loss)	10	0	0	0
Base income or net loss allocable to Illinois	11	349,962	1,271,592	1,621,554
Part II - Net Income (Loss) and Replacement Tax				
Base income or net loss allocable to Illinois	1a	349,962		1,621,554
Illinois net loss deduction (NLD)	1b	0	0	0
Income after NLD	1c	349,962		1,621,554
Standard exemption	4	74	24	98
Net Income	5	349,888		1,621,458
Replacement tax @ 1.5%	6a	5,248	19,074	24,322
Recapture of investment credits	6b	0	0	0
Total replacement tax before investment credits	7	5,248		24,322
Replacement tax investment credits	8	5,248	7,535	12,783
Net replacement tax	9	0	11,539	11,539

	(Column A cont)	(Column B cont)	(Column C cont)
Part III - Payments and Credits			
Total replacement tax		\$0	\$11,539
Credit from prior year and IL-505-B payments	16b	\$12,000	\$0
Tax paid with original return	2		\$0
Subsequent tax payments	3		\$177
Payments applied to penalty and interest	4		\$0
Total tax paid	5		\$12,177
Credit carryforward	6		\$12,000
Released refunds	7		\$0
Payments applied to other years liability(s)	8		\$0
Pending refund	9		\$0
Net tax paid	10		\$177
Amount of correct tax per audit	11		\$11,539
OVERPAYMENT	12		\$0
UNDERPAYMENT	13		\$11,362

PART V - Penalty and interest			TOTAL
Interest due	1		\$7,434
Other interest	2		\$0
3-3(a-10) penalty	3		\$0
3-5 penalty	4		\$0
3-3(b-10)(1) penalty	5		\$0
Other penalty	6		\$0
Interest on UPIA penalties			\$0
Total penalty and interest assessed			\$7,434
Less: penalty and interest paid			\$0
TOTAL TAX, PENALTY AND INTEREST	12		\$18,796

Part IA - Ordinary Income Adjustments			
Ordinary income (loss) from US 1120S	1	4,760,754	11,313,103
Additions from Schedule K, form US 1120S	2		16,073,857
Net income (loss) from rental real estate activity	2a	0	0
Net income (loss) from other rental activities	2b	0	0
Portfolio income (loss)	2c	0	0
Net IRC Sec 1231 casualty and theft gain (loss)	2d	0	0
Other income (loss)	2e	0	0
Total additions	2	0	0
Total of lines 1 and 3	3	4,760,754	16,073,857
Subtractions from Schedule K, form US 1120S	4		
Charitable contributions	4a	0	0
Expense deduction under IRC, Section 179	4b	0	0
Oil and gas depletion	4c	0	0
Interest on investment indebtedness	4d	0	0
Other items of expense	4e	0	0
Total subtractions	4	0	0
Unmodified base income	5	4,760,754	16,073,857

Date of Report	Region Number	Auditor
10/12/2008	25	Dale Blanchard
Discussed with	Title	Date
Robert Kline	Vice President	06/22/2008



Case Information Summary for Case Number
2007-L-050059

Filing Date: 1/23/2007
Division: Law Division
Ad Damnum: \$30001.00

Case Type: TAX (NOT PERSONAL PROPERTY)
District: First Municipal
Calendar: 1

Party Information

Plaintiff(s)

DELTA SONC CAR EASH
SYSTE

Attorney(s)

HORWOOD MARCUS BERK
CTD
500W MADISON#3700
CHICAGO IL, 60661
(312) 281-1117

**Date of
Service**

Defendant(s)

DIRECTOR OF THE ILLINOI

GIANNOULIAS ALEXI

Attorney(s)

HAMER BRIAN

ATTORNEY GENERALS
OFFICE
100 W RANDOLPH13-194
CHICAGO IL, 60601
(312) 814-3000

ILLINOIS DEPARTMENT OF

ATTORNEY GENERALS
OFFICE
100 W RANDOLPH13-194
CHICAGO IL, 60601
(312) 814-3000

TREASURER OF THE STATE

ATTORNEY GENERALS
OFFICE

100 W RANDOLPH13-194

CHICAGO IL, 60601

(312) 814-3000

Case Activity

Activity Date: 1/23/2007

Participant: DELTA SONC CAR EASH SYSTE

TAX (NOT PERSONAL PROPERTY) COMPLAINT FILED

Court Fee: 294.00

Attorney: HORWOOD MARCUS BERK
CTD

Ad Damnum Amount: 30001.00

Activity Date: 1/23/2007

Participant: DELTA SONC CAR EASH SYSTE

CASE SET ON STATUS CALL

Date: 3/22/2007

Judge: WHITE, ALEXANDER P

Court Time: 0935

Activity Date: 1/23/2007

Participant: DELTA SONC CAR EASH SYSTE

CASE SET ON INDIVIDUAL CALENDAR

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR WASH

AFFIDAVIT OF SERVICE FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR

AFFIDAVIT OF SERVICE FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC

CERTIFICATE OF MAILING FILED

Date: 1/26/2007
Court Time: 0930

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR WASH

CERTIFICATE OF MAILING FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR WASH

EXHIBITS FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC

NOTICE OF MOTION FILED

Date: 1/26/2007
Court Time: 0930

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR WASH

NOTICE OF FILING FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR WASH

NOTICE OF FILING FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC CAR

NOTICE OF FILING FILED

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/24/2007

Participant: DELTA SONIC

MOTION FILED

Date: 1/26/2007
Court Time: 0930

Attorney: HORWOOD MARCUS BERK
CTD

Activity Date: 1/26/2007

Participant: ILLINOIS DEPT REVENUE

APPEARANCE FILED - NO FEE PAID -

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: HAMER BRIAN

APPEARANCE FILED - NO FEE PAID -

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: TREASURER JUDY BAAR

APPEARANCE FILED - NO FEE PAID -

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: HAMER BRIAN

NOTICE OF FILING FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: ILLINOIS DEPARTMENT

NOTICE OF FILING FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: HAMER BRIAN

PROOF OF SERVICE FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: ILLINOIS DEPARTMENT

PROOF OF SERVICE FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: HAMER BRIAN

MOTION TO DISMISS FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: ILLINOIS DEPARTMENT

MOTION TO DISMISS FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/26/2007

Participant: DELTA SONIC CAR

FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS -
ALLOWED -

Date: 2/28/2007

Judge: WHITE, ALEXANDER P
Microfilm: LD000121191

Activity Date: 1/26/2007

Participant: HAMER BRIAN

FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS -
ALLOWED -

Date: 3/14/2007

Judge: WHITE, ALEXANDER P
Microfilm: LD000121191

Activity Date: 1/26/2007

Participant: DELTA SONIC CAR

INJUNCTION - ALLOWED -

Judge: WHITE, ALEXANDER P
Microfilm: LD000121189

Activity Date: 1/26/2007

Participant: HAMER BRIAN

CONTINUANCE

Date: 3/22/2007
Court Time: 1130

Judge: WHITE, ALEXANDER P
Microfilm: LD000121191

Activity Date: 2/28/2007

Participant: DELTA-SONIC

FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS -
ALLOWED -

Date: 3/7/2007

Judge: NOVAK RITA M.
Microfilm: LD000192400

Activity Date: 2/28/2007

Participant: HAMER BRIAN

FILE AMENDMENT OR ADDITIONAL OR AMENDED PLEADINGS -
ALLOWED -

Date: 3/21/2007

Judge: NOVAK RITA M.
Microfilm: LD000192400

Activity Date: 2/28/2007

Participant: HAMER BRIAN

STRIKE FROM MOTION CALL - ALLOWED

Date: 3/22/2007

Judge: NOVAK RITA M.
Microfilm: LD000192400

Activity Date: 2/28/2007

Participant: HAMER BRIAN

DISMISS ENTIRE CAUSE - DEFENDANT - CONTINUED -

Date: 4/5/2007
Court Time: 1115

Judge: NOVAK RITA M.
Microfilm: LD000192400

Activity Date: 4/4/2007

Participant: HAMER BRIAN

STRIKE FROM MOTION CALL - ALLOWED

Date: 4/5/2007

Judge: WHITE, ALEXANDER P
Microfilm: LD000311399

Activity Date: 4/4/2007

Participant: HAMER BRIAN

CASE SET ON STATUS CALL - CONTINUED -

Date: 6/7/2007
Court Time: 0930

Judge: WHITE, ALEXANDER P
Microfilm: LD000311399

Activity Date: 6/7/2007

Participant: DELTA SONIC CAR

CASE SET ON STATUS CALL - CONTINUED -

Date: 9/12/2007
Court Time: 0930

Judge: WHITE, ALEXANDER P
Microfilm: LD000484266

Activity Date: 9/12/2007

Participant: DELTA SONIC

CASE SET ON STATUS CALL - CONTINUED -

Date: 10/15/2007
Court Time: 0930

Judge: WHITE, ALEXANDER P
Microfilm: LD000744057

Activity Date: 10/15/2007

Participant: DELTA SONIC CAR

CASE SET ON STATUS CALL - CONTINUED -

Date: 11/15/2007
Court Time: 0930

Judge: WHITE, ALEXANDER P
Microfilm: LD000832019

Activity Date: 11/15/2007

Participant: DELTA SONIC

CASE SET ON STATUS CALL - CONTINUED -

Date: 1/22/2008
Court Time: 0930

Judge: GARDNER, SHELDON
Microfilm: LD000920759

Activity Date: 1/22/2008

Participant: DELTA

CASE SET ON STATUS CALL - CONTINUED -

Date: 3/20/2008
Court Time: 0930

Judge: WHITE, ALEXANDER P
Microfilm: LD000062456

Activity Date: 3/20/2008 Participant: DELTA SONIC CAR

CASE SET ON STATUS CALL - CONTINUED -

Date: 5/22/2008 Judge: WHITE, ALEXANDER P
Court Time: 0930 Microfilm: LD000203951

Activity Date: 5/22/2008 Participant: DELTA SONIC CAR

CASE SET ON STATUS CALL - CONTINUED -

Date: 8/5/2008 Judge: WHITE, ALEXANDER P
Court Time: 0930 Microfilm: LD000363902

Activity Date: 8/5/2008 Participant: DELTA

CASE SET ON STATUS CALL - CONTINUED -

Date: 10/28/2008 Judge: WHITE, ALEXANDER P
Court Time: 0930 Microfilm: LD000552143

Activity Date: 10/28/2008 Participant: DELTA

CASE SET ON STATUS CALL - CONTINUED -

Date: 1/22/2009 Judge: WHITE, ALEXANDER P
Court Time: 0930 Microfilm: LD000762492

Activity Date: 1/22/2009 Participant: ILLNIOS DEPARTMENT

NOTICE OF FILING FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/22/2009 Participant: ILLNIOS DEPARTMENT

PROOF OF SERVICE FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/22/2009 Participant: HAMER BRIAN

MOTION TO DISMISS FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/22/2009 Participant: ILLINOIS DEPARTMEN

MOTION TO DISMISS FILED

Attorney: ATTORNEY GENERALS OFFICE

Activity Date: 1/22/2009

Participant: DELTA

CASE SET ON STATUS CALL - CONTINUED -

Date: 2/4/2009

Judge: WHITE, ALEXANDER P

Court Time: 0930

Microfilm: LD000082107

Activity Date: 2/4/2009

Participant: DELTA

COURT RETAINS JURISDICTION OVER THIS MATTER

Judge: WHITE, ALEXANDER P

Activity Date: 2/4/2009

Participant: DELTA

DISMISS BY STIPULATION OR AGREEMENT

Judge: WHITE, ALEXANDER P

Please note: Neither the Circuit Court of Cook County nor the Clerk of the Circuit Court of Cook County warrants the accuracy, completeness, or the currency of this data. This data is not an official record of the Court or the Clerk and may not be represented as an official court record.

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**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION**

DELTA SONIC CAR WASH SYSTEMS, INC.,)

Plaintiff,)

v.)

BRIAN HAMER, IN HIS OFFICIAL)
CAPACITY AS DIRECTOR OF THE ILLINOIS)
DEPARTMENT OF REVENUE; the ILLINOIS)
DEPARTMENT OF REVENUE; and, ALEXI)
GIANNOULIAS, in his official capacity as)
TREASURER OF THE STATE OF ILLINOIS,)

Defendants.)

Case No. 07 L 50059

AGREED DISMISSAL ORDER

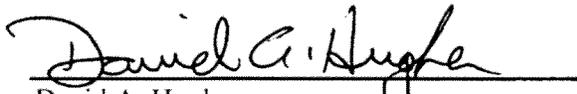
This matter coming before the Court on status, both parties represented by counsel, and the Court being fully advised in the premises, to wit, that the Defendants have filed a Motion to Dismiss and Plaintiff has agreed to voluntarily dismiss its Complaint with prejudice under the terms reflected in this Order,

IT IS HEREBY ORDERED THAT:

1. The Temporary Restraining Order previously entered by this Court on January 26, 2007, which enjoined transfer of Plaintiff's protest payment of \$18,796 to the General Revenue Fund pending a ruling on the Defendants' Motion to Dismiss, is hereby dissolved.
2. Defendant State Treasurer, despite objection by Defendants' counsel, is directed to disburse to the Plaintiff the sum of \$18,796 without statutory interest thereon.
3. The interest, if any, that Plaintiff might owe on the deficiency reflected on the Illinois Department of Revenue's Notice of Deficiency for Plaintiff's 2000 tax year is tolled during the period from the date of Plaintiff's payment under protest (December 28, 2006) through the date that it receives the refund referenced in paragraph 2 above.

4. If Plaintiff subsequently pays the refund referenced in paragraph 2 to the Department of Revenue, then Plaintiff is entitled to all statutory and administrative remedies as provided by law.
5. Plaintiff's Complaint is dismissed with prejudice, each party to bear its own costs and expenses.
6. The Court retains jurisdiction over the parties and the subject matter for purposes of enforcing the parties' agreement, and any related agreements entered into by and between the parties, and for purposes of enforcing this Order.

AGREED AS TO FORM AND SUBSTANCE:



David A. Hughes
Horwood Marcus & Berk Chartered
180 North LaSalle St., Suite 3700
Chicago, IL 60601
(312) 606-3200
Attorney no. 34957



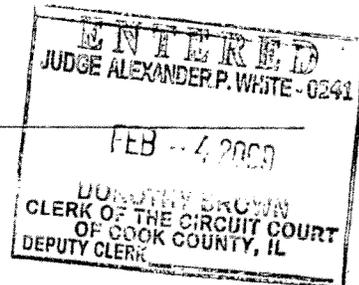
Michael Coveny
Assistant Attorney General
Revenue Litigation Bureau
100 w. Randolph St. - 13th Floor
Chicago, IL 60601
312-814-4142

DATED:

David A. Hughes
Horwood Marcus & Berk Chartered
180 North LaSalle Street, Suite 3700
Chicago, IL 60601
(312) 606-3200

ENTERED: 11

Judge



FILED
 09 JAN 22 AM 8:59
 CIRCUIT COURT OF COOK COUNTY
 LAW DIVISION
 CLERK

NO. 99000
 CIRCUIT COURT OF COOK COUNTY
 COUNTY DEPARTMENT, LAW DIVISION
 TAX AND MISCELLANEOUS REMEDIES SECTION

DELTA-SONIC CAR WASH SYSTEMS, INC.,)

Plaintiff,)

v.)

No. 07 L 050059

BRIAN HAMER, in his official capacity as)
 DIRECTOR OF THE ILLINOIS DEPARTMENT)
 OF REVENUE; the ILLINOIS DEPARTMENT OF)
 REVENUE; and, ALEXI GIANNOULIAS, in his)
 Official capacity as TREASURER OF THE STATE)
 OF ILLINOIS,)

(Calendar 1)

Defendants,)

DEFENDANT'S MOTION TO DISMISS

NOW COME the Defendants, the Illinois Department of Revenue, Brian Hamer, Director of the Illinois Department of Revenue, and Alexi Giannoulis, State Treasurer, (collectively the "Department") by and through their attorney, Lisa Madigan, Illinois Attorney General and pursuant to § 2-619(a)(1) of the Illinois Code of Civil Procedure hereby move this Honorable Court to dismiss Plaintiff's Verified Complaint for lack of jurisdiction. In support of their motion, the Department states as follows:

Background

After completing its audit of Plaintiff/taxpayer, on October 13, 2006 the Department issued its statutory notice of deficiency ("NOD") pursuant to § 904(a) of the Illinois Income Tax Act (the "IITA"). See 35 ILCS 5/904(a). See also ¶¶'s 19-22 of Plaintiff's Verified Complaint ("Complaint"). Under the IITA, a taxpayer has 60 days in which to contest a NOD, after which time the notice becomes final:

(a) Time for Protest. Within 60 days (150 days if the taxpayer is outside the United States) after the issuance of a notice of deficiency, the taxpayer may file with the Department a written protest against the proposed assessment in such form as the Department may by regulations prescribe, setting forth the grounds on which such protest is based. If a protest is filed, the Department shall reconsider the proposed assessment and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representative a hearing.

* * *

(d) Finality of decision. The action of the Department on the taxpayer's protest shall become final:

(1) 30 days after issuance of a notice of decision as provided in subsection (b);

* * *

35 ILCS 5/908(a) and 908(d).

(2) Notice of deficiency. If a notice of deficiency has been issued, the amount of the deficiency shall

be deemed assessed on the date provided in section 904(d) if no protest is filed; or if a protest is filed, then upon the date when the decision of the Department becomes final.

35 ILCS 5/903(a)(2).

(d) Assessment when no protest. Upon the expiration of 60 days after the date on which it was issued (150 days if the taxpayer is outside the United States), a notice of deficiency shall constitute an assessment of the amount of tax and penalties specified therein, except only for the such amounts as to which the taxpayer shall have filed a protest with the Department, as provided in Section 908.

35 ILCS 5/904(d).

(c) Governmental Agencies.

An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expires without such proceedings being instituted.

35 ILCS 5/917(c).

The Department's Assessment is Final

In this case, the Department issued its NOD to Plaintiff on October 13, 2006. See ¶ 21 of the Complaint. Under the IITA, that assessment became final 60 days after it was issued, i.e., on December 12, 2006 prior to the filing of this complaint on January 23, 2007, because this taxpayer took no action of any kind to protest the proposed assessment within the statutory required 60

days from the date the NOD was issued. Therefore, the NOD is final and cannot be contested anywhere, before the Department or in circuit court under the Protest Monies Act.

The rule that taxpayers cannot contest a final tax assessment in any forum is not exactly a new or radical concept but is based instead on the need for certainty/finality in the State's function of collecting taxes. *Department of Revenue v. Jones*, 141 Ill. App. 3d 968, 970 (1st Dist. 1986) ("The Department contends that once the assessment becomes final, the amount of liability and more generally, any issue of law or fact concerning the retailer's liability, cannot be questioned. This contention is correct") (emphasis added). A final assessment is the procedural and substantive equivalent of a circuit court judgment, which generally cannot be reviewed or attacked more than 30 days after entry. *Cook v. Department of Revenue*, 281 Ill. App. 3d 171, 178 (2nd Dist. 1996) ("We conclude that a final assessment is a judgment or its procedural and substantive equivalent").

While the Protest Monies Act is unquestionably a viable remedy or means to review proposed as opposed to final tax assessments, there is no authority suggesting or holding that it can be used to review or attack final assessments.

If that were the case, no Department assessment would ever be final. Given the above authority, not to mention common sense, that cannot be the result.

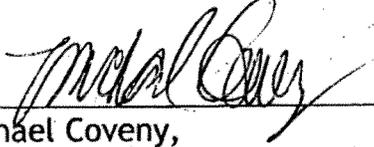
Since the Department's NOD became final on December 13, 2006 absent any action on Plaintiff's part, i.e., by default, it represents a final assessment immune from review under the IITA and the Protest Monies Act. As such, this court is without jurisdiction to review it under the Protest Monies Act or otherwise. Therefore, Plaintiff's Complaint should be dismissed and the monies previously paid by Plaintiff under protest should be transferred to the general revenue fund of the State of Illinois or to the fund(s) it would have gone into had not protest been made. Under the terms of the Protest Monies Act, once this court determines it is without jurisdiction to hear Plaintiff's case, the funds Plaintiff previously paid under protest must be transferred to the general revenue fund or other state fund because Plaintiff can only be awarded such monies if the court reaches the merits of Plaintiff's Complaint. Absent a ruling on the merits of Plaintiff's Complaint, the court can only: (i) dismiss Plaintiff's Complaint; and (ii) dissolve the injunction. Dissolving the injunction means the funds go to the appropriate state fund they otherwise would have been deposited in absent such injunction. See 30 ILCS 230/2a. Therefore, Plaintiff's Complaint should be dismissed under § 2-619(a)(1) for lack of jurisdiction and

the preliminary injunction previously entered by this court on January 23, 2007 should be dissolved. Further, the monies in the protest fund should be deposited in the appropriate state fund that they would have been deposited absent the preliminary injunction under the express terms of the Protest Monies Act.

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-4142

By: 
Michael Coveny,
Assistant Attorney General



Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702

NOTICE OF DENIAL

05/26/2010

Delta-Sonic Car Wash Systems Inc.
570 Delaware Avenue
Buffalo, NY 14202-1207

FORM: IL-1120 ST

FEIN: 16-0972035

TAXABLE YEAR ENDING
12/31/2000

AMOUNT DENIED
\$18,796.00

Pursuant to Section 909(e) of the Illinois Income Tax Act, notice is hereby given that your claim for refund of income tax overpayment in the amount of \$18,796.00 for the taxable year ending 12/31/2000, filed on 04/30/2009, is denied in its entirety.

IF YOU DO NOT AGREE, Section 910(a) of the Act provides that the Department shall reconsider the denial if within 60 days of the date of this notice, the claimant or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the proposed denial of your claim, you may file a protest and, if desired, request a hearing. If an adequate and timely protest is not received, the denial of your claim in its entirety will become final as of the expiration of the aforementioned 60-day period pursuant to Section 909(f). A protest, if filed, should be forwarded to the address shown below.

Sincerely,

Brian Hamer
Director

Enclosures: EAR-14
IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217 785-4472
ATTENTION: JD A1647683584

CC: Fred O. Marcus
Horwood Marcus & Berk Chtd.
180 N. LaSalle St Suite 3700
Chicago, IL 60601

STATEMENT

FEIN: 36-1208597
Hemlock Federal Bank for Savings
5700 W. 159th Street
Oak Forest, IL 60452

FEIN: 16-0972035
Delta-Sonic Car Wash Systems Inc.

TAXABLE YEAR ENDING: 12/31/2000

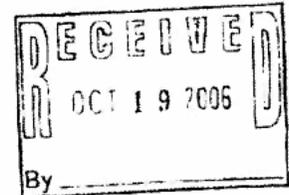
The claim for refund identified in this notice is hereby denied in full. The Department holds the tax as determined by the previous audit examination as presented on the Notice of Deficiency issued 10/13/2006, as well as the related interest, to be the correct liability for that year as of the date of the Notice of Deficiency. (This previous audit was identified as Track #99904A or A1803041792.)

REFERENCE: JD A1647683584



Illinois Department of Revenue

101 W. Jefferson St.
Springfield, IL 62702



October 13, 2006

NOTICE OF DEFICIENCY

Ronald Benderson
570 Delaware Avenue
Buffalo, NY 14202-1207

FORM: IL-1040

SSN: 075-34-4824

TAXABLE YEARS ENDING:
12/31/2000, 12/31/2001, 12/31/2002,
12/31/2003

STATUTORY DEFICIENCY:
\$ 124,183.00

INTEREST TO DATE:
\$ 36,869.00

TOTAL AMOUNT DUE:
\$ 161,052.00

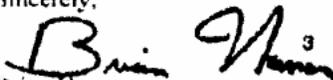
Pursuant to Section 904(c) of the Illinois Income Tax Act, notice is hereby given that the determination of your income tax liability for the above-noted taxable year discloses a deficiency in the amount shown above. The attached statement contains explanations of the adjustments and shows the computation of the deficiency.

IF YOU AGREE to this determination and pay the Total Amount Due shown above within thirty (30) days of the date of this notice, no additional interest will accrue. The payment should be forwarded to the address shown below.

IF YOU DO NOT AGREE, Section 908(n) of the Act provides that the Department shall reconsider the proposed assessment if within 60 days of the date of this notice, the taxpayer or his authorized representative files a written protest setting forth the grounds upon which the protest is based and, if requested, shall grant the taxpayer or his authorized representative a hearing (under Section 914). Thus, if you disagree with the assessment proposed, you may file a protest and, if desired, request a hearing. A protest, if filed, should be forwarded to the address shown below.

IF AN ADEQUATE AND TIMELY PROTEST is not received, the total amount of the deficiency shown will be deemed assessed as of the expiration of the aforementioned 60-day period pursuant to Section 903(a)(2) and 904(d). If no protest is filed and if the tax liability is not paid within 60 days of the date of this notice, a 15% penalty will be assessed under Section 3-3(b)(2) of the Uniform Penalty and Interest Act for liabilities which became due on or after January 1, 1994. (The penalty rate is 20% for liabilities due on or after January 1, 1998.) If the tax remains unpaid after a demand for payment, the Act permits, in addition to other remedies, the seizure and sale of real and personal property to enforce collection.

Sincerely,


Brian Hamer
Director

Enclosures: EAR-14, IDR-867
Return Envelope

NOTICE SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
PHONE: 217-785-9375
ATTENTION: LF 30072B

Page 2
075-34-4824
Ronald Benderson
570 Delaware Avenue
Buffalo, NY 14202-1207

STATEMENT

We determined that, as a nonresident, for the taxable years ended December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2003, you received income allocable to Illinois from your distributive share of S-Corporation income from Delta Sonic Car Wash Systems, Inc., Benderson Development Company, Inc., Har-Wal Associates, Inc., Blend-All Hotel Development, Inc., Tram-K Holdings, Inc., and Walden Avenue Blend-All Hotel Development, Inc. that was not reported.
[35 ILCS 5/502(a)(1)]

We are imposing a late-payment penalty for underpayment of estimated tax for the taxable year ended December 31, 2003 because you did not pay the required amount of estimated tax payments by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date;
- 15 percent of any amount that is paid later than 90 days but no later than 180 days after the due date;
- 20 percent of any amount that is paid later than 180 days after the due date.

[35 ILCS 735/3-3(b-15)(1)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2003, through November 17, 2003, your penalty and interest amounts may be doubled.
[35 ILCS 521/101(b)]



Illinois Department of Revenue

EDA-24 (Ver. 7.30)

IL-1040 AUDITOR'S REPORT

Oct/13/2006 AM

Taxpayer Name: RONALD BENDERSON
Spouse's Name:

SSN: 075-34-4824
SSN:

Mailing Address: 570 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-1207

Tax Year Start Date: 01/01/2000
Tax Year Ending: 12/31/2000
Statute Expires: 10/15/2006
Track #: 30072B

Audit Period: YE: 12/00,12/01,12/02,12/03,12/04

Table with 4 columns: Description, As Filed, Net Change, As Corrected. Rows include Filing Status, Residency Code, Adjusted Gross Income, Additions (Federally Tax-Exempt Interest, Other Additions), Subtractions (Retirement and Social Security, Military Pay, Illinois Income Tax Refund, U.S. Government Obligations Interest, Other Subtractions), Total Subtractions, Illinois Base Income, Exemptions (Number of Federal, Dependent, 65 or Older and Blind), Total Exemption Amount, Net Income from Schedule NR, Net Taxable Income, Tax @ 3%, Recapture From Schedule 4255, and Total Tax Due.

Taxpayer: RONALD BENDERSON

SSN: 075-34-4824

APE: 12/31/2000

	As Filed	Net Change	As Corrected
Total Tax Due (from EDA24 front)	\$0		\$24,263
Payments and Credits			
17 Illinois Income Taxes Withheld (W-2)	0	0	0
18 Estimated Payments (IL-1040-ES, IL-505-I) and Prior Year Overpayment Credits	0	0	0
Payment Made With Original Return	0	0	0
Other Payments	0	0	0
19 Foreign Tax Credit From Schedule CR	0	0	0
20 Illinois Property Tax Paid:	0	0	0
Property Tax Credit for This Year	0	0	0
Qualifying Education Expenses:	0	0	0
Education Expense Credit	0	0	0
Federal Earned Income Credit:	0	0	0
Illinois Earned Income Credit	0	0	0
21 Tax Credits From Schedule 1299-C	0	0	0
22 Total Payments and Credits	0	0	0
Donations to Voluntary Contributions Funds	0	0	0
24 Credit Carryforward to Next APE	0	0	0
Amount(s) Refunded	0	0	0
Refund/Credit Used in Other APE	0	0	0
Payments Applied to Penalty/Interest	0	0	0
Net Payments and Credits	0	0	0
Net Tax Due	0	24,263	24,263
Interest Due on Tax	0	15,368	15,368
Penalty:			
Late Filing Penalty	0	0	0
Negligence Penalty	0	0	0
Late Payment Penalty for Underpayment of Est. Tax	0	0	0
Late Payment Penalty for Unpaid Tax	0	0	0
Less: Penalty Paid	0	0	0
Total Penalty Due	0	0	0
28 Total Tax, Penalty and Interest Due	\$0	\$39,629	\$39,629

Date of Report	Region Number	Auditor
10/13/2006	1	DALE VIRGIL BLANCHARD
Discussed with	Title	Date
PAUL SPEAKER	ACCOUNTANT	04/17/2006



Illinois Department of Revenue

EDA-24 (Ver. 7.30)

IL-1040 AUDITOR'S REPORT

Oct/13/2006 AM

Taxpayer Name: RONALD BENDERSON
Spouse's Name:

SSN: 075-34-4824
SSN:

Mailing Address: 570 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-1207

Tax Year Start Date: 01/01/2001
Tax Year Ending: 12/31/2001
Statute Expires: 10/15/2008
Track #: 30072B

Audit Period: YE: 12/00,12/01,12/02,12/03,12/04

Table with 4 columns: Description, As Filed, Net Change, As Corrected. Rows include Filing Status, Residency Code, Adjusted Gross Income, Additions (Federally Tax-Exempt Interest, Other Additions), Subtractions (Retirement and Social Security, Military Pay, Illinois Income Tax Refund, U.S. Government Obligations Interest, Other Subtractions), Total Subtractions, Illinois Base Income, Exemptions, Total Exemption Amount, Net Income from Schedule NR, Net Taxable Income, Tax @ 3%, Recapture From Schedule 4255, and Total Tax Due.

Taxpayer: RONALD BENDERSON

SSN: 075-34-4824

APE: 12/31/2001

	As Filed	Net Change	As Corrected
Total Tax Due (from EDA24 front)	\$0		\$24,311
Payments and Credits			
17 Illinois Income Taxes Withheld (W-2)	0	0	0
18 Estimated Payments (IL-1040-ES, IL-505-I) and Prior Year Overpayment Credits	0	0	0
Payment Made With Original Return	0	0	0
Other Payments	0	0	0
19 Foreign Tax Credit From Schedule CR	0	0	0
20 Illinois Property Tax Paid:	0		
Property Tax Credit for This Year	0	0	0
Qualifying Education Expenses:	0		
Education Expense Credit	0	0	0
Federal Earned Income Credit:	0		
Illinois Earned Income Credit	0	0	0
21 Tax Credits From Schedule 1299-C	0	0	0
22 Total Payments and Credits	0	0	0
Donations to Voluntary Contributions Funds	0	0	0
24 Credit Carryforward to Next APE	0	0	0
Amount(s) Refunded	0	0	0
Refund/Credit Used in Other APE	0	0	0
Payments Applied to Penalty/Interest	0	0	0
Net Payments and Credits	0	0	0
Net Tax Due	0	24,311	24,311
Interest Due on Tax	0	11,942	11,942
Penalty:			
Late Filing Penalty	0	0	0
Negligence Penalty	0	0	0
Late Payment Penalty for Underpayment of Est. Tax	0	0	0
Late Payment Penalty for Unpaid Tax	0	0	0
Less: Penalty Paid	0	0	0
Total Penalty Due	0	0	0
28 Total Tax, Penalty and Interest Due	\$0	\$36,253	\$36,253

Date of Report	Region Number	Auditor
10/13/2008	1	DALE VIRGIL BLANCHARD
Discussed with	Title	Date
PAUL SPEAKER	ACCOUNTANT	04/17/2008

EDA-24 back



Illinois Department of Revenue

EDA-24 (Ver. 7.30)

IL-1040 AUDITOR'S REPORT

Oct/13/2006 AM

Taxpayer Name: RONALD BENDERSON
Spouse's Name:

SSN: 075-34-4824
SSN:

Mailing Address: 570 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-1207

Tax Year Start Date: 01/01/2002
Tax Year Ending: 12/31/2002
Statute Expires: 10/15/2006
Track #: 30072B

Audit Period: YE: 12/00,12/01,12/02,12/03,12/04

Table with 4 columns: Description, As Filed, Net Change, As Corrected. Rows include Filing Status, Residency Code, Adjusted Gross Income, Additions (Federally Tax-Exempt Interest, Other Additions), Subtractions (Retirement and Social Security, Military Pay, Illinois Income Tax Refund, U.S. Government Obligations Interest, Other Subtractions), Total Subtractions, Illinois Base Income, Number of Exemptions, Total Exemption Amount, Net Income from Schedule NR, Net Taxable Income, Tax @ 3%, Recapture From Schedule 4255, and Total Tax Due.

Taxpayer: RONALD BENDERSON

SSN: 075-34-4824

APE: 12/31/2002

	As Filed	Net Change	As Corrected
Total Tax Due (from EDA24 front)	\$0		\$26,074
Payments and Credits			
17 Illinois Income Taxes Withheld (W-2)	0	0	0
18 Estimated Payments (IL-1040-ES, IL-505-I) and Prior Year Overpayment Credits	0	0	0
Payment Made With Original Return	0	0	0
Other Payments	0	0	0
19 Foreign Tax Credit From Schedule CR	0	0	0
20 Illinois Property Tax Paid:	0		
Property Tax Credit for This Year	0	0	0
Qualifying Education Expenses:	0		
Education Expense Credit	0	0	0
Federal Earned Income Credit:	0		
Illinois Earned Income Credit	0	0	0
21 Tax Credits From Schedule 1299-C	0	0	0
22 Total Payments and Credits	0	0	0
Donations to Voluntary Contributions Funds	0	0	0
24 Credit Carryforward to Next APE	0	0	0
Amount(s) Refunded	0	0	0
Refund/Credit Used in Other APE	0	0	0
Payments Applied to Penalty/Interest	0	0	0
Net Payments and Credits	0	0	0
Net Tax Due	0	26,074	26,074
Interest Due on Tax	0	4,690	4,690
Penalty:			
Late Filing Penalty	0	0	0
Negligence Penalty	0	0	0
Late Payment Penalty for Underpayment of Est. Tax	0	0	0
Late Payment Penalty for Unpaid Tax	0	0	0
Less: Penalty Paid	0	0	0
Total Penalty Due	0	0	0
28 Total Tax, Penalty and Interest Due	\$0	\$30,764	\$30,764

Date of Report	Region Number	Auditor
10/13/2006	1	DALE VIRGIL BLANCHARD
Discussed with	Title	Date
PAUL SPEAKER	ACCOUNTANT	04/17/2008



Illinois Department of Revenue

EDA-24 (Ver. 7.30)

IL-1040 AUDITOR'S REPORT

Oct/13/2006 AM

Taxpayer Name: RONALD BENDERSON
Spouse's Name:

SSN: 075-34-4824
SSN:

Mailing Address: 570 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-1207

Tax Year Start Date: 01/01/2003
Tax Year Ending: 12/31/2003
Statute Expires: 10/15/2006
Track #: 30072B

Audit Period: YE: 12/00,12/01,12/02,12/03,12/04

Table with 4 columns: Description, As Filed, Net Change, As Corrected. Rows include Filing Status, Residency Code, Adjusted Gross Income, Additions (Federally Tax-Exempt Interest, Other Additions), Subtractions (Retirement and Social Security, Military Pay, Illinois Income Tax Refund, U.S. Government Obligations Interest, Other Subtractions), Total Subtractions, Illinois Base Income, Exemptions (Number of Federal, Dependent, 65 or Older and Blind), Total Exemption Amount, Net Income from Schedule NR, Net Taxable Income, Tax @ 3%, Recapture From Schedule 4256, and Total Tax Due.

Taxpayer: RONALD BENDERSON

SSN: 075-34-4824

APE: 12/31/2003

	As Filed	Net Change	As Corrected
Total Tax Due (from EDA24 front)	\$0		\$43,779
Payments and Credits			
17 Illinois Income Taxes Withheld (W-2)	0	0	0
18 Estimated Payments (IL-1040-ES, IL-505-I) and Prior Year Overpayment Credits	15,000	0	15,000
Payment Made With Original Return	0	0	0
Other Payments	0	0	0
19 Foreign Tax Credit From Schedule CR	0	0	0
20 Illinois Property Tax Paid:	0	0	0
Property Tax Credit for This Year	0	0	0
Qualifying Education Expenses:	0	0	0
Education Expense Credit	0	0	0
Federal Earned Income Credit:	0	0	0
Illinois Earned Income Credit	0	0	0
21 Tax Credits From Schedule 1299-C	0	0	0
22 Total Payments and Credits	15,000	0	15,000
Donations to Voluntary Contributions Funds	0	0	0
24 Credit Carryforward to Next APE	0	0	0
Amount(s) Refunded	15,000	0	15,000
Refund/Credit Used in Other APE	0	0	0
Payments Applied to Penalty/Interest	0	0	0
Net Payments and Credits	0	0	0
Net Tax Due	0	43,779	43,779
Interest Due on Tax	0	4,871	4,871
Penalty:			
Late Filing Penalty	0	0	0
Negligence Penalty	0	0	0
Late Payment Penalty for Underpayment of Est. Tax	0	0	0
Late Payment Penalty for Unpaid Tax	0	5,758	5,758
Less: Penalty Paid	0	0	0
Total Penalty Due	0	0	5,758
28 Total Tax, Penalty and Interest Due	\$0	\$54,408	\$54,408

Date of Report	Region Number	Auditor
10/13/2006	1	DALE VIRGIL BLANCHARD
Discussed with	Title	Date
PAUL SPEAKER	ACCOUNTANT	04/17/2006

Notice of Claim Denial

Form IL-1040-X, Amended Individual Income Tax Return



#BWNKMGV
#CNXX X2X3 769X 2722#
RONALD BENDERSON
570 DELAWARE AVENUE
BUFFALO NY 14202

February 21, 2013



Letter ID: CNXXX2X3769X2722

Account ID: P07891585

Reporting Period: December 2010



Dear Taxpayer:

We are writing regarding your 2010 Form IL-1040-X, Amended Individual Income Tax Return.

Based on our review, we denied your claim for refund of overpayment of income tax. This review is not the result of an audit.

We changed Line 22 from \$0.00 to \$38,409.95.

Your Form IL-1040-X Line 22 did not match the total amount of

- previous overpayments, refunds, or credit carryforward,
- your original voluntary contributions on Form IL-1040, and
- the use tax you reported on Form IL-1040.

We changed the amount of previous overpayments on Line 22 of your IL-1040-X to the amount shown in our records.

We changed Line 25 from \$44,800.00 to \$42,500.00.

The amount of estimated payments you claimed does not agree with our records.

If you do not agree with our determination, you may file a written protest against our denial, and, if you desire, you may request a hearing. You must do so within 60 days of the date of this notice. Your protest may be filed by completing and sending us the enclosed Form EAR-14, Format for Filing a Protest for Income Tax, or by sending us a letter that states that it is a protest and contains all of the information requested in the Form EAR-14. Please enclose a copy of this letter with your protest.

If you file an acceptable protest on time, we must reconsider our denial. We will grant you or your authorized representative a hearing, if you request one. If you do not file a written protest on time, this denial shall become your final assessment.

If you agree with the amount you owe on the "Form IL-1040-X Financial Details" page, send your payment to "Illinois Department of Revenue." Write your Account ID on your check and mail it to the address at the bottom of this letter. You must pay the total balance due within 30 days of the date of this notice to avoid additional penalty and interest.

If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns. Please return a copy of this letter with any further correspondence.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m., or visit our web site at tax.illinois.gov. Our address and telephone number are below.

Steve Bermingham
Revenue Tax Specialist II

INDIVIDUAL PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19023
SPRINGFIELD IL 62794-9023

217 785-1393
217 557-5353 fax

Enclosures: EAR-14, Format for Filing a Protest for Income Tax

Notice of Claim Denial

RONALD BENDERSON

Summary



Letter ID: CNXXX2X3769X2722

Account ID: P07891585

Reporting Period: December 2010

Form IL-1040-X Financial Details

<i>Line Description</i>	<i>Amount</i>
Income	
1 Federal adjusted gross income (AGI)	1,771,421.00
2 Federally tax-exempt interest income	222,876.00
3 Other additions to your income	635,785.00
4 Total income	2,630,082.00
Subtractions	
5 Social Security and retirement income	0.00
6 Illinois refund included in US1040	0.00
7 Other subtractions to your income	69,639.00
8 Total subtractions	69,639.00
9 Illinois base income	2,560,443.00
Exemptions	
10 Exemption allowance	5,000.00
Net Income	
12 Net income (part-year & non-resident)	691,128.00
Total tax	
13 Tax	20,693.00
14 Recapture of investment tax credits	0.00
16 Total tax	20,693.00
Nonrefundable Credits	
17 Tax paid to another state	0.00
18 Schedule ICR credits	0.00
19 Schedule 1299-C credit	0.00
20 Total nonrefundable credits	0.00
21 Tax after nonrefundable credits	20,693.00
Previous Overpayments	
22 Previous overpayments, refunds, or credit carryforward, and original contributions	38,409.95
23 Tax after previous overpayments	59,102.95
Payments and Refundable Credit	
24 Illinois Income Tax withheld	0.00
25 Estimated payments (IL-1040-ES, IL-505-I, and prior year credit)	42,500.00
26 Pass-through entity payments	15,827.00
27 Earned Income Credit	0.00
28 Amount previously paid	0.00
29 Total payments and refundable credit	59,327.00
Refund or Balance Due	
30 Overpayment	224.05
Penalty	224.05
Interest	0.00
32 Total penalty and interest	224.05
34 Amount you owe	0.00
Payment with IL-1040-X	0.00
Total amount you owe	0.00

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to department notices by asking questions, paying the amount due, or providing proof to refute the department's findings.
- You have the right to appeal department decisions, in many instances, within specified time periods, by asking for department review, or by taking the issue to court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other department procedures, you may contact us. Our contact information is on the front of this notice.