

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

HARLEY W. LEE,)	
Petitioner,)	
v.)	Case No. 14-TT-138
)	
ILLINOIS DEPARTMENT OF REVENUE and)	Judge Brian Barov
BRIAN HAMER, in His official capacity as)	
DIRECTOR of the ILLINOIS)	
DEPARTMENT OF REVENUE,)	
Respondents.)	

NOTICE OF FILING

To: Philip D. Speicher
MATHIS MARIFIAN & RICHTER, LTD.
23 Public Square, Suite 300
P.O. Box 307
Belleville, Illinois 62222
Email: pspeicher@mmrltd.com

PLEASE TAKE NOTICE that on August 8, 2014, the undersigned filed with the Illinois Independent Tax Tribunal, 160 North LaSalle St., Room N506, Chicago, Illinois 60601, the

ILLINOIS DEPARTMENT OF REVENUE’S ANSWER,

a copy of which is attached hereto and served upon you.

LISA MADIGAN, Illinois Attorney General

By: /s/ Faith Dolgin
Faith Dolgin, SPAAG
100 W. Randolph St., 7th Floor
Chicago, Illinois 60601
312.814.3185

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served a copy of this Notice of Filing and the document therein mentioned on the parties set forth above by U.S. Mail and by email on August 8, 2014.

/s/ Faith Dolgin
Faith Dolgin

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ILLINOIS DEPARTMENT OF REVENUE’S ANSWER

NOW COME the Respondents, the Illinois Department of Revenue of the State of Illinois (“Department”) and Brian Hamer, in his official capacity as the Director of the Department of Revenue, by and through their attorney, LISA MADIGAN, Illinois Attorney General, and for their Answer to the Taxpayer’s Petition respectfully plead as follows:

JURISDICTIONAL STATEMENT

1. Jurisdiction before the Independent Tax Tribunal is appropriate, as this Petition arises from a Transfer of Assets – Assessment and Notice of Intent issued on May 21, 2014 by the Illinois Department of Revenue against Petitioner for Illinois Sales/Use Tax, E911 Surcharge, and Illinois Withholding Income Tax in excess of \$15,000.00 in the aggregate.

ANSWER: The Respondents admit the allegations contained in Paragraph 1.

2. On February 6, 2014, the Department issued a Transfer of Assets – Assessment and Notice of Intent (Letter #L1542851936) (the “Notice”), proposing an assessment of the following taxes for the following periods, plus penalties and interest:

<u>Tax</u>	<u>Period</u>	<u>Amount</u>
Sales/Use Tax & E911 Surcharge	6/30/2013	\$10,833.46
Sales/Use Tax & E911 Surcharge	7/31/2013	\$13,668.89
Sales/Use Tax & E911 Surcharge	8/31/2013	\$234.35
Sales/Use Tax & E911 Surcharge	9/30/2013	\$5,456.94
Sales/Use Tax & E911 Surcharge	10/31/2013	\$1,664.03
Sales/Use Tax & E911 Surcharge	11/30/2013	\$675.01
Sales/Use Tax & E911 Surcharge	12/31/2013	\$1,080.79
IL Withholding Income Tax	9/30/2013	\$248.75
IL Withholding Income Tax	12/31/2013	\$840.64

A copy of the Notice is attached hereto as **Exhibit A** and is incorporated herein by reference.

ANSWER: The Respondents admit that the Department issued the Transfer of Assets – Assessment and Notice of Intent (Letter #L1542851936) to the Petitioner on May 21, 2014 (“Notice”) which proposes liability against him in connection with his purchase and/or acquisition of assets from the Seller and in connection with the amount of the Seller’s unpaid tax liability so far assessed. The Respondents further admit that the liability referenced in Paragraph 2 reflects the liability proposed against the Petitioner under the Notice and that interest continues to accrue. The Respondents deny any remaining allegations contained in Paragraph 2.

3. Petitioner is an individual whose address is 1 N. Hickory St., Du Quoin, IL 62832.

ANSWER: The Respondents admit the allegations contained in Paragraph 3.

4. Petitioner’s Social Security Number is omitted from this Petition in accordance with the rules published by the Illinois Independent Tax Tribunal.

ANSWER: The Respondents admit the allegations contained in Paragraph 4.

5. Petitioner purchased the assets of Jackson Pools and Spas, LLC (the “Seller”) in 2014.

ANSWER: The Respondents admit the allegations contained in Paragraph 5.

6. The purchase price for the assets was Twenty Thousand Dollars (\$20,000.00), to be paid in four equal installments of Five Thousand Dollars (\$5,000.00).

ANSWER: According to an Asset Purchase Agreement given to the Department by the Seller (“APA”), the Respondents admit that Paragraph 3 provides that the Buyer agreed to purchase the Equipment, as defined by the APA, for Twenty Thousand Dollars (\$20,000.00). The Respondents further admit that the APA provides that the “Buyer shall pay the sum of “\$5,000 per year for the next Four (4) years for the business” and that “[a]t any time the Buyer may pay the full amount owed.” The Respondents are without information sufficient to form a belief as to the truth of any remaining allegations contained in Paragraph 6.

7. At the time of the purchase, the Seller owed approximately \$34,702.76 to the Department for sales taxes and withholding taxes.

ANSWER: The Respondents admit that the liquidated amount owed by the Seller at the time of Petitioner’s purchase of assets under the APA was approximately \$34,702.76. The Respondents further state that there may be additional tax liability owed by the Seller that has not yet otherwise been assessed. The Respondents deny any remaining allegations contained in Paragraph 7.

8. Petitioner previously notified the Department of the purchase and agreed to withhold all four installment payments and pay over each installment to the Department.

ANSWER: The Respondents admit that, during a field call made by one of the Department's agents at Petitioner's place of business, the Petitioner and the agent discussed the Petitioner's purchase of assets under the APA. The Respondents deny that the Petitioner complied with the filing and notice procedures detailed under either *35 ILCS 5/902* or *35 ILCS 120/5j* and deny the remaining allegations contained in Paragraph 8

9. Despite Petitioner's agreement to pay over such amounts to the Department, the Department subsequently issued the Notice proposing to assess the Seller's tax liability against Petitioner.

ANSWER: The Respondents admit that the Department issued the TOA Notice proposing to assess liability against the Petitioner. The Respondents deny that there exists any agreement between the Department and the Petitioner and, therefore, deny any remaining allegations contained in Paragraph 9.

10. The Seller's liability exceeds the reasonable value of the assets purchased by Petitioner from the Seller.

ANSWER: The Respondents are without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

ERROR IN DETERMINATION OF PETITIONER'S LIABILITY

11. The Department erroneously determined that Petitioner is liable for the Seller's unpaid liability despite the fact that the Seller's liability exceeds the reasonable value of the assets purchased by Petitioner from the Seller.

ANSWER: The Respondents are without information sufficient to form a belief as to the truth of the allegation that Seller's liability exceeds the reasonable value of the assets purchased by Petitioner from Seller. The Respondents deny all remaining allegations contained in Paragraph 11.

12. 35 ILCS 120/5j and 35 ILCS 5/902 state that a purchaser may be personally liable for a seller's unpaid withholding taxes or sales and use taxes only if the purchaser, after receiving notice from the Department, fails to withhold all or a portion of the purchase price and pay over such amount to the Department to be applied to the Seller's liability.

ANSWER: Paragraph 12 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Illinois Tax Tribunal Rule 310(b)(2). The Respondents admit the existence, force and effect of the statutory authority referred to in Paragraph 12 and state that such authority speaks for itself.

13. 35 ILCS 120/5j and 35 ILCS 5/902 further state that a purchaser, under any circumstances, shall only be liable "up to the amount of the reasonable value of the property acquired by the purchaser..."

ANSWER: Paragraph 13 contains a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Illinois Tax Tribunal Rule 310(b)(2). The Respondents

admit the existence, force and effect of the statutory authority referred to in Paragraph 13 and state that such authority speaks for itself.

14. Because Petitioner notified the Department of the purchase and agreed to pay over the full purchase price to the Department, Petitioner is not liable under 35 ILCS 120/5j or 35 ILCS 5/902.

ANSWER: The Respondents deny that the Petitioner followed the notice procedures detailed under either *35 ILCS 120/5j* or *35 ILCS 5/902* and deny all remaining allegations contained in Paragraph 14.

15. Even if it is determined that Petitioner is liable under 35 ILCS 120/5j and/or 35 ILCS 5/902, Petitioner is not liable for the full amount of the Seller's unpaid taxes, because Petitioner's liability is limited to the reasonable value of the property acquired from the Seller.

ANSWER: The Respondents admit that Petitioner is liable under *35 ILCS 120/5j* and/or *35 ILCS 5/902* in connection with the Seller's unpaid tax liability arising under the Retailers' Occupation Tax Act, *35 ILCS 120/1, et seq.*, and the Illinois Income Tax Act, *35 ILCS 5/101, et seq.* The Respondents are without sufficient information as to the extent and value of the property acquired by the Petitioner from the Seller and, therefore, deny the allegations contained in Paragraph 15.

WHEREFORE, the Respondents pray that the Tribunal enter an order:

- a. denying each and every prayer for relief in Taxpayer's Petition;
- b. finding that the Transfer of Asset Notice issued on May 21, 2014 is correct as issued;
- c. ordering judgment in favor of the Respondents and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate.

Respectfully Submitted,
LISA MADIGAN, Illinois Attorney General

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