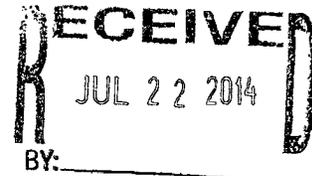


STATE OF ILLINOIS
IN PROCEEDINGS BEFORE THE
INDEPENDENT TAX TRIBUNAL

HARLEY W. LEE)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
REVENUE and BRIAN A. HAMER in)
His official capacity as Director of the)
Illinois Department of Revenue,)
)
Respondent.)

Docket No. 14-_____

14TT138



PETITION

Petitioner hereby petitions for a redetermination of the tax liabilities set forth in the Transfer of Assets – Assessment and Notice of Intent issued by the Illinois Department of Revenue dated May 21, 2014, against Harley W. Lee (“Petitioner”). As the basis for its case, Petitioner alleges 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.

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.

FACTUAL BACKGROUND

3. Petitioner is an individual whose address is 1 N. Hickory St., Du Quoin, IL 62832.
4. Petitioner's Social Security Number is omitted from this Petition in accordance with the rules published by the Illinois Independent Tax Tribunal.
5. Petitioner purchased the assets of Jackson Pools and Spas, LLC (the "Seller") in 2014.
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) each.
7. At the time of the purchase, the Seller owed approximately \$34,702.76 to the Department for sales taxes and withholding taxes.
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.

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.

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

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 purchase by Petitioner from the Seller.

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.

13. 35 IICS 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..."

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.

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

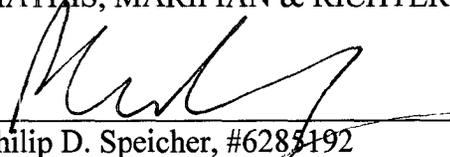
taxes, because Petitioner's liability is limited to the reasonable value of the property acquired from the Seller.

WHEREFORE, Petitioner prays that this Tribunal hear its Petition and determine its liability for tax, penalties and interest in accordance with the assertions of errors and facts set forth hereinabove, and for all other appropriate relief.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

By:


Philip D. Speicher, #6283192
Attorneys for Petitioner
23 Public Square, Suite 300
Belleville, IL 62220
(618) 234-9800
(618) 234-9786 (fax)
pspeicher@mmrltd.com

Collection Action
Transfer of Assets - Assessment and Notice of Intent

EXHIBIT "A"



May 21, 2014



Letter ID: L1542851936

HARLEY W. LEE
1 N HICKORY ST
DU QUOIN IL 62832-1609

Taxpayer ID: [REDACTED]
Asset Transfer ID: 2620428



JACKSON POOLS AND SPAS LLC
1 N HICKORY ST
DU QUOIN, IL 62832-1609

We have determined you are personally liable for \$34,702.76.

Illinois law (35 ILCS 5/902 and 35 ILCS 120/5j) provides that a purchaser or transferee is personally liable for any debt incurred by the seller or transferor if the sale, purchase, or transfer of assets was made without proper notification to the Illinois Department of Revenue's Bulk Sales Unit.

You purchased or transferred assets from JACKSON POOLS AND SPAS LLC. However, you did not make the required notification to us and the JACKSON POOLS AND SPAS LLC had outstanding debt with us at the time of this purchase or transfer. You can be held personally liable for this debt.

Pay us \$34,702.76 immediately.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is July 20, 2014.** Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 203/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.**

If the debt remains unpaid and becomes final, we intend to take collection enforcement action against you to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your bank accounts.

LORI GATHARD
COLLECTIONS
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD, IL 62794-9035

217 524-2549
217 524-0526 fax

For information about
› how to pay
› what you owe
› collection actions



To avoid collection action

Pay

You must pay using one of the following two methods.

1. Pay by guaranteed remittance (i.e., cashier's check, money order) made payable to the Illinois Department of Revenue. Send your guaranteed payment (i.e., cashier's check, money order) to us with the voucher on the next page or bring your payment to us at the address on the front of this letter.
2. Pay using the "check by phone" method by calling us at 217 524-2549 . You will need your check number, account number, and bank routing number, and we will prepare a check to submit to your financial institution. Note: If you pay using "check by phone", we may apply your payment to your liability that day, which will reduce the amount of daily interest that accrues.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Collection actions

Applicable Illinois laws

Illinois law (35 ILCS 5/902 and 35 ILCS 120/5j) provides that a purchaser or transferee may be liable for any debt incurred by the seller or transferor if the sale, purchase or transfer of assets was done without proper notification to the Illinois Department of Revenue's Bulk Sales Unit.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, etc.
- seizure and sale of your assets.
- referral to a collection agency.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- civil judgments.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action
Transfer of Assets - Assessment and Notice of Intent



May 21, 2014



Letter ID: L1542851936

HARLEY W. LEE
 1 N HICKORY ST
 DU QUOIN IL 62832-1609

Taxpayer ID: [REDACTED]
 Asset Transfer ID: 2620428



This statement lists our most recent information about your unpaid balance.

Sales/Use Tax & E911 Surcharge						Account ID: 3980-8718
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2013	10,373.00	1,344.76	115.70	-	(1,000.00)	10,833.46
31-Jul-2013	11,991.00	1,538.92	138.97	-	-	13,668.89
31-Aug-2013	2,172.00	360.64	1.61	-	(2,300.00)	234.25
30-Sep-2013	4,734.00	668.08	54.86	-	-	5,456.94
31-Oct-2013	1,407.00	240.70	16.33	-	-	1,664.03
30-Nov-2013	570.00	98.40	6.61	-	-	675.01
31-Dec-2013	930.00	141.60	9.19	-	-	1,080.79

IL Withholding Income Tax						Account ID: 27-1718190-000
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Sep-2013	1,850.44	92.20	3.46	-	(1,697.35)	248.75
31-Dec-2013	730.94	103.10	6.60	-	-	840.64

IDOR-4-XFER (R-11/13)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L1542851936
 HARLEY W. LEE

Total amount due: \$34,702.76

Write the amount you are paying below.

\$ _____
 Write your Taxpayer ID on your check.

Mail this voucher and your payment to:
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19035
 SPRINGFIELD IL 62794-9035

000 006 015963816648 731 123199 6 0000003470276

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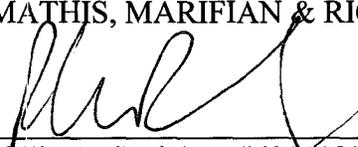
ENTRY OF APPEARANCE

COMES NOW Philip D. Speicher of Mathis, Marifian & Richter, Ltd., and enters his appearance as attorney of record for Petitioner, Harvey W. Lee. The undersigned is an attorney and is duly admitted to practice before the courts of the State of Illinois.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

By:


Philip D. Speicher, #6285192
Attorneys for Petitioner
23 Public Square, Suite 300
Belleville, IL 62220
(618) 234-9800
(618) 234-9786 (fax)
pspeicher@mmrltd.com

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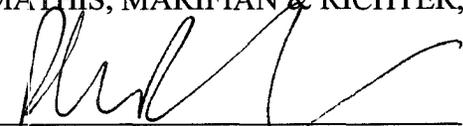
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 18, 2014, copies of Petitioner's Petition, Entry of Appearance and Request for Telephone Appearance were served upon the Illinois Department of Revenue via U.S. First Class mail, postage prepaid, and addressed to:

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

MATHIS, MARIFIAN & RICHTER, LTD.

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Attorneys for Petitioner
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