

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>ADAM C. KERI,</b>	)	
<b>Petitioner,</b>	)	
v.	)	<b>15-TT-242</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**NOTICE OF FILING**

TO: Al Giudice  
211 N. Clinton, Suite 3S  
Chicago, Illinois, 60025

Email: [AL827@AOL.COM](mailto:AL827@AOL.COM)

The undersigned representative for the Illinois Department of Revenue (the "Department") certifies that, on January 5, 2016, she filed the Department's Answer with the Illinois Independent Tax Tribunal.



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Susan Budzileni  
Special Assistant Attorney General

**CERTIFICATE OF SERVICE**

The undersigned representative for the Illinois Department of Revenue certifies that, on January 5, 2016, she served the Department's Answer on the individual identified above, at the email address shown above.



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Susan Budzileni  
Special Assistant Attorney General

Illinois Department of Revenue  
100 West Randolph Street Level 7-900  
Chicago, IL 60601  
(312) 814-1716

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>Petitioner,</b>	)	
v.	)	<b>15-TT-242</b>
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<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**ANSWER**

**NOW COMES** Respondent, the Illinois Department of Revenue of the State of Illinois (the "Department"), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Adam C. Keri's, ("Petitioner") Petition and respectfully pleads as follows:

1. Taxpayer: Adam C. Keri  
4021 W. 95<sup>th</sup> Place  
Oak Lawn, IL 6045[3]

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation ("Rule") 310(a)(1)(A) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). It appears that Petitioner is confusing the term "Taxpayer" with "Petitioner." In this matter, Adam C. Keri is the "Petitioner" and The Pros Service Depot is the "Taxpayer." To the extent an answer is required, Department denies that Adam C. Keri is the Taxpayer.

2. Attorney: Al Giudice  
Giudice Law Offices Ltd.  
211 N. Clinton, Suite 3S  
Chicago, IL 60661  
312-287-2500

**ANSWER:** The information contained in Paragraph 2 is required by Rule 310(a) (1) (B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

3. Social Security #: omitted.

**ANSWER:** The information contained in Paragraph 3 is required by Rule 310(a) (1) (C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits that it has Petitioner's tax identification number in its records.

4. Statutory Notice: Attached as Exhibit A.

**ANSWER:** The information contained in Paragraph 3 is required by Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits that on September 23, 2015, it issued a Notice of Collection Action Assessment and Notice of Intent (“Notice”) and determined Petitioner personally liable for the unpaid liability of The Pros Service Depot (“Taxpayer” or “PROS”) due to his status as a responsible officer, partner or individual of Taxpayer for unpaid Illinois withholding income tax for the tax periods ending December 31, 2007 through December 31, 2008. The Department states that the Notice speak for itself.

5. Tax Years Involved: 2007, 2008.

**ANSWER:** The Department admits that the five (5) tax periods contained in the Notice, which span over two (2) tax years, namely 2007 and 2008. The tax periods at issue are December 31, 2007, March 31, 2008, June 30, 2008, September 30, 2008 and December 31, 2008 (“Tax Periods at Issue”).

#### PRELIMINARY STATEMENT

6. Petitioner was an individual taxpayer who was a shareholder in [a] home repair establishment located in Illinois.

**ANSWER:** Upon information and belief the Department admits that Taxpayer (The Pros Service Depot) was in the home repair line of business. Department has insufficient information to either admit or deny the factual allegation of whether Petitioner was a shareholder in a home repair business as set forth in paragraph 6. The terms “establishment” and “individual taxpayer” are vague and, therefore, the Department denies all other allegations in Paragraph 6.

7. The establishment was The Pros Service Depot (“PROS”).

**ANSWER:** The Department admits that The Pros Service Depot (“PROS”) is the Taxpayer. The term “establishment” is vague and, therefore, the Department denies all other allegations in Paragraph 7.

8. PROS filed its withholding tax returns.

**ANSWER:** The Department denies Paragraph 8.

9. It is alleged that PROS did not pay all of its payroll taxes for the period 2007-2008.

**ANSWER:** The Department admits that Taxpayer/PROS did not pay any Illinois withholding income taxes for the Tax Periods at Issue. The phrase “did not pay all of its payroll taxes for the period 2007-2008” is vague and, therefore, the Department denies all other allegations in Paragraph 9.

10. The Respondent issued a [sic] two Assessments and Notice of Intent (“NOD”) to assess a penalty against the tax payer [sic] due to his alleged status as a responsible officer of PROS for the tax years 2007-2008 on September 23, 2015.

**ANSWER:** The Department states that it appears that Petitioner is confusing and/or interchanging the Notice of Deficiency issued on November 17, 2014, and the Notice issued on September 23, 2015. For clarification, the Department issued the November 17, 2014, Notice of Deficiency against Taxpayer/Pros. Thereafter, on September 23, 2015, the Department issued the Notice (Collection Action Assessment and Notice of Intent) against Adam Keri/Petitioner.

Department admits that it issued one (1) Notice to Petitioner as a responsible officer, partner or individual of Taxpayer/Pros and this notice assessed a penalty against Petitioner for Taxpayer’s/Pro’s unpaid liability for the Tax Periods at Issue. The Department admits that it issued a Notice of Deficiency to Taxpayer on November 17, 2014, a copy of which is attached as Department’s Answer Exhibit 1. The November 17, 2014, Notice of Deficiency and September 23, 2015, Notice speak for themselves. The phrase “for the tax years 2007-2008” is vague and, therefore, the Department denies all other allegations in Paragraph 10.

11. The amounts assessed for additional tax, penalties and interest under the NOD are \$15,117.36.

**Answer:** Department admits that the September 23, 2015, Notice assessed a penalty (which includes tax, penalty and interest accrued through September 23, 2015) in the amount of \$15,117.36 against Petitioner and the Department states that Notice speaks for itself. The Department admits that on November 17, 2014, it issued a NOD and assessed a deficiency against the Taxpayer/Pros in the amount of \$16,806.62 (interest accrued through November 17, 2014) for the Tax Periods at Issue together with the additional tax periods including 3/2007, 6/2007, and 9/2007. Further, the Department states that it appears that Petitioner is confusing and/or interchanging the November 17, 2014, Notice of Deficiency and the September 23, 2015 Notice. For clarification, the November 17, 2014, Notice of Deficiency was issued against the Taxpayer/Pros and the September 23, 2015, Notice (Collection Action Assessment and Notice of Intent) was issued against Petitioner.

#### JURISDICTION

12. Jurisdiction is based on the fact that the amount in controversy exceeds \$15,000.00 pursuant to 35 ILCS 1010/1.

**ANSWER:** The Department admits that the Tax Tribunal has jurisdiction over this matter because the amount at issue in the September 23, 2015, Notice exceeds \$15,000 as provided for in § 1-45 of the Illinois Independent Tax Tribunal Act of 2012. 35 ILCS 1010/1-45.

#### QUESTIONS PRESENTED

13. Is the taxpayer a responsible officer of PROS under Illinois law?

**ANSWER:** The Department states and admits Petitioner is a responsible officer, partner, or individual of PROS under Illinois law. The Department further states that it appears that Petitioner is confusing/interchanging the terms “taxpayer” and “petitioner” in this matter. The Department states that the “taxpayer” is The Pros Service Depot and the “petitioner” is Adam C. Keri.

14. Are the NODs issued for TYE 2008-2009 barred by the Illinois Income Tax Act’s (IITA) statute of limitations?

**ANSWER:** The Department states that the November 17, 2014, Notice of Deficiency was issued for the audit periods 1/2007-12/2008 *not* for TYE 2008-2009 as alleged by Petitioner. The Department denies that its November 17, 2014 Notice of Deficiency is barred by the Illinois Income Tax Act’s (IITA) statute of limitations. Additionally, the Department denies that the September 23, 2015, Notice is barred by the Illinois Income Tax Act’s (IITA) statute of limitations.

#### FACTS

15. PROS filed its payroll tax returns for 2007 and 2008.

**ANSWER:** The term “payroll tax returns for 2007 and 2008” is vague. The Department denies that Taxpayer/PROS filed its Illinois withholding income tax returns (Form IL-941) for the Tax Periods at Issue.

16. The Respondent issued the NODs on September 23, 2015 (Exhibit A).

**ANSWER:** The Department admits that it issued one (1) collection Action Assessment and Notice of Intent (Notice) against Petitioner on September 23, 2015. The Department admits that it issued a Notice of Deficiency against Taxpayer/PROS on November 17, 2014. The Department further states that the documents contained in Petitioner’s Exhibit A is one notice, namely the Notice, a Collection Action Assessment and Notice of Intent to assess a penalty against Petitioner for an unpaid liability of Taxpayer/PROS. The Department states that the second page of Petitioner’s Exhibit A is a statement that outlines the type of tax, tax periods and amount of liability. Further, the Department states that it appears that Petitioner is confusing and/or interchanging the November 17, 2014, Notice of Deficiency and the September 23, 2015 Notice. For clarification, the November 17, 2014, Notice of Deficiency was issued against the Taxpayer/Pros and the September 23, 2015 Notice (Collection Action Assessment and Notice of Intent) was issued against Petitioner.

17. The Petitioner did not intentional[ly] and knowing[ly] fail to pay withholding taxes.

**ANSWER:** The Department denies Paragraph 17.

#### ARGUMENT

18. The statue imposes personal liability for paying to the state unpaid corporate Retailers’ Occupation Tax, Use Tax and Withholding tax obligations provide[d] as follows:

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. 35 ILCS 735/3-7.

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (35 ILCS 735/3-7) and states that such law speaks for itself.

19. This section of the statute sets forth two tests for determining whether a person has personal liability for unpaid sales and withholding taxes incurred by a corporation. First, the person must be responsible for accounting for and paying the tax due. Second, the individual must willfully have failed to file for and/or pay the corporate taxes due.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (35 ILCS 735/3-7) and states that such law speaks for itself.

20. The statute does not define the concept of willful failure.

**ANSWER:** Paragraph 20 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required.

21. The issue of willfulness is concerned with the state of the responsible person's state of mind. *Sawyer v. U.S.*, 831 F.2d 755 (7<sup>th</sup> Cir. 1987) "Willful failure to pay taxes has generally been defined as involving intentional, knowing and voluntary acts or alternatively, reckless disregard for obvious or known risks." *Branson*, 168 Ill 2d at 255.

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits that the case law referred to in Paragraph 21 and states that such law speaks for itself.

22. The Petitioner did not willfully fail to pay the withholding taxes.

**ANSWER:** The Department denies Paragraph 22.

23. Section 905(a) of the IITA provides:

Sec. 905. Limitations on Notices of Deficiency.

(a) In general. Except as otherwise provided in this Act:

- (1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed, and
- (2) No deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period.

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act (35 ILCS 5/905(a)) and states that such statute speaks for itself.

24. The Petitioner's payroll tax returns for 2007 and 2008 would be due no later than January 2009 and the [*sic*] pursuant to Section 905 of the IITA the NOD would have had to have been filed prior to January 2012 (Three years after the date of the filed return).

**ANSWER:** Paragraph 24 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department admits the existence, force and effect of the Illinois Income Tax Act and states that such statutes speak for themselves.

25. Since the Respondent issued the NOD for the TYE and 2008 and 2009 on September 23, 2014 the NODs were not timely because they were not issued within three years from the date Petitioner filed its Illinois returns.

**ANSWER:** Department states that it did not issue any Notices of Deficiency on September 23, 2014. Department states that it issued the Notice on September 23, 2015, to Petitioner for the Tax Periods at Issue. The Department denies that the September 23, 2015, Notice was untimely issued. Further, the Department denies that the November 17, 2014, Notice of Deficiency was untimely issued to Taxpayer/PROS. Further, the Department states that TYE or tax year ending 2009 is not part of this matter.

#### CONCLUSION

26. Since the Petitioner did not willful[ly] fail to pay over the required taxes, he is not a responsible party under Illinois law and the [P]etitioner should not be found to be personally liable for the withholding taxes of PROS.

**ANSWER:** Paragraph 26 contains a legal conclusion, not a material allegation of fact. Therefore, pursuant to Rule 310(b)(2), no answer is required. To the extent an answer is required, Department denies paragraph 26.

27. Since the Respondent did not timely issue the NODs for TYE 2007 and 2008, they are barred by IITA § 905(a)(1)'s statute of limitation.

**ANSWER:** The Department denies Paragraph 27.

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order that:

- a. Denying each prayer for relief in Petitioner's Petition;
- b. Finding the September 23, 2015, Notice is correct as issued;
- c. Granting judgment in favor of the Department and against the Petitioner, and;
- d. Grants any further relief to the Department this Tribunal deems just and appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois



By:

\_\_\_\_\_  
Special Assistant Attorney General  
Date: January 5, 2016

Susan Budzileni  
Special Assistant Attorney General  
Telephone: (312) 814-1716  
Email: [susan.budzileni@illinois.gov](mailto:susan.budzileni@illinois.gov)

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph Street, 7-900  
Chicago, IL 60601  
Facsimile: (312) 814-4344



# Notice of Deficiency

for Form IL-941, Illinois Quarterly Withholding Tax Return

Department's Answer Exhibit 1



November 17, 2014



Letter ID: CNXXX18228269766

#BWNKMGV  
#CNXX X182 2826 9766#  
THE PROS SERVICE DEPOT  
PO BOX 899  
HILLSIDE IL 60162-0899



**Taxpayer ID:** 37-1549333  
**Audit ID:** A1695154176  
**Audit periods:** 01/2007 - 12/2008  
**Tax due:** \$9,089.04  
**Penalty due:** \$3,999.16  
**Interest due:** \$3,718.42  
**Balance due:** \$16,806.62

We have audited your account for the period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

**If you agree to the deficiency**, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than \$15,000, or if no tax deficiency 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**, file a protest with us, the Illinois Department of Revenue, within **60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, contact us at the telephone number shown below.

Sincerely,

Brian Hamer  
Director

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD, IL 62794-9012  
(217) 524-2230

# Statement

Department's Answer Exhibit 1

Date: November 17, 2014

Name:

Taxpayer ID: 37-1549333

## Reasons for deficiency

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d).

We determined that you did not withhold Illinois Income Tax from your employees wages, file tax returns, and pay to us tax from compensation paid to your employees.  
[35 ILCS 5/701, 704, 705]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

## Penalties

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. This penalty is based on the amount required to be 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)] (For liabilities due after 1/1/04 and before 12/31/2004)

## Interest

Interest in the amount of \$3,718.42 has been computed through November 17, 2014.

# Statement

Department's Answer Exhibit 1

Date: November 17, 2014

Name:

Taxpayer ID: 37-1549333

## Audit Periods

Filing Period	Tax Balance	Penalty Balance	Interest Balance	Period Balance
03/2007	\$423.80	\$186.47	\$245.97	\$856.24
06/2007	\$423.80	\$186.47	\$228.88	\$839.15
09/2007	\$423.80	\$186.47	\$211.78	\$822.05
12/2007	\$423.80	\$186.47	\$195.41	\$805.68
03/2008	\$1848.46	\$813.32	\$788.50	\$3450.28
06/2008	\$1848.46	\$813.32	\$729.55	\$3391.33
09/2008	\$1848.46	\$813.32	\$682.97	\$3344.75
12/2008	\$1848.46	\$813.32	\$635.36	\$3297.14
	<b>Tax Total</b>	<b>Penalty Total</b>	<b>Interest Total</b>	<b>Total</b>
	\$9089.04	\$3999.16	\$3718.42	\$16806.62

## Computation of balance due

Reporting Period: 01/2007 - 12/2008

Total deficiency (this notice)	\$13,088.20
Plus interest on tax through November 17, 2014	\$3,718.42
Total balance due	\$16,806.62

## Bankruptcy Information

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.

## 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, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit 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.