



## **BACKGROUND AND RELEVANT FACTS**

6. Ninth Circle, Inc. was incorporated on December 20, 2001. Petar J. Caljkusic was the sole incorporator. Ninth Circle, Inc. was authorized to issue 10,000 shares of no par stock and issued shares for a total consideration of \$1,000.00. All 1,000 shares were issued to Petar J. Caljkusic.
7. At the initial shareholder's meeting, Petar J. Caljkusic elected himself, Charles J. Wicker and Joseph C. Wicker as directors. The Directors then convened a meeting to elect officers. Those minutes were signed by Petar J. Caljkusic; the other signature lines were blank.
8. At the shareholder meeting, Petar J. Caljkusic was elected President; Joseph C. Wicker, Vice President and Charles J. Wicker as Secretary.
9. This was the only corporate meeting recorded in the minute book and the only meeting that Petitioner attended.
10. Ninth Circle, Inc. was in the business of repairing automobiles up until the time it was involuntarily dissolved.
11. Petar J. Caljkusic operated the automobile repair business from that date through the current date.
12. Petitioner was not a trained mechanic nor had experience in the automotive repair industry.
13. Petitioner was never employed by Ninth Circle, Inc. nor did he receive any form of compensation or benefit. Petitioner was not involved in the operations nor had any power to control the financial decisions of the business.
14. Petitioner worked as a landscape contractor. He owned and operated Wicker Landscaping from 2004 to the present day.
15. The Department of Revenue never completed its examination. The assessment was based on 50% of the gross receipts for the sample period multiplied by the tax rate and extrapolated for the period under examination.
16. The Department did not exclude bank deposits from sources other than sales.

17. The Department did not examine sales invoices to determine the amount of personal property transferred in connection with the sale of service.
18. Petar J. Caljkusic paid sales tax to his suppliers for the purchase of personal property transferred to customers. The Department did not examine invoices from suppliers to determine the amount of sales tax paid to the suppliers.

### **ERROR I**

19. The Department of Revenue did not establish a prima facie case that Joseph C. Wicker is a responsible party against whom a penalty equal to the total amount of tax interest and penalty can assessed. Section 3-7 of the Uniform Penalty and Interest Act sets certain requisites, which if met, establishes the Department's prima facie case. Those requisites require the individual to be an officer or employee of a 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 any trust tax imposed in accordance with that Act. As of the time of inception of the audit, there was no such taxpayer. Ninth Circle, Inc. had been involuntarily dissolved over a year before the commencement of the audit. The Department audited the wrong party. In order to establish a prima facie case, the Department must audit the requisite taxpayer, establish liability and allege that Joseph C. Wicker was an officer or employee of the taxpayer properly under audit.

### **ERROR II**

20. The assessment of interest and penalties are an amount in excess of the amount of tax, if any, which may be owed. The assessment against third parties is limited to the actual amount of tax interest and penalty. The Department failed to complete its audit and as such, it is impossible to determine which tax, if any, is due from Ninth Circle, Inc. Until that is determined, there can be no assessment against responsible parties.

### **ERROR III**

21. Joseph C. Wicker is not a responsible party. He did not own stock, work, nor earn money from Ninth Circle, Inc. and did not keep records for Ninth Circle, Inc. He had no ability to determine whether bills were paid or not paid. He had no power to control neither the financial decisions of the business nor the operations of the business. In short, he did not have the ability do anything that would deem him to be a responsible party.

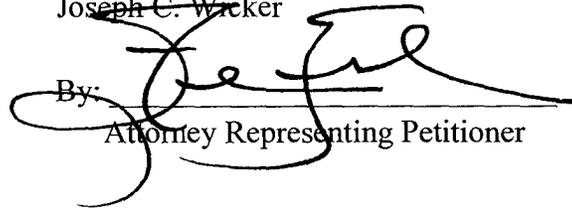
**CONCLUSION AND RELIEF REQUESTED**

- 22. Petitioner Joseph C. Wicker should be dismissed.
- 23. The Department of Revenue should conclude its audit based on a review of all invoices.
- 24. The Department of Revenue should reduce the liability by the amount of sales tax paid to suppliers.

WHEREAS, Petitioner requests that the "Notice" be modified or canceled for the reasons contained herein.

Dated: May 3, 2016

Joseph C. Wicker

By:   
Attorney Representing Petitioner

Steven S. Gilson  
Gilson, Labus & Silverman, LLC  
223 W. Jackson Blvd., Suite 750  
Chicago, Illinois 60606  
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E: [sgilson@glscpa.com](mailto:sgilson@glscpa.com)  
ARDC #: 0961299

# Exhibit A

## Notice of Tax Liability for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX X122 X239 5X49#  
JOSEPH WICKER  
204 E DIVISION ST  
MANTENO IL 60950-1827

March 10, 2016



Letter ID: CNXXX122X2395X49

Account ID: 3283-2060



We have audited your account for the reporting periods July 01, 2009, through June 30, 2015. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	83,884.00	0.00	83,884.00
Late Payment Penalty Increase	16,777.00	0.00	16,777.00
Late Filing Penalty Increase	1,678.00	0.00	1,678.00
Interest	7,585.33	0.00	7,585.33
Assessment Total	\$109,924.33	\$0.00	\$109,924.33

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

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 May 09, 2016. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. 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, 230/2a.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 you do not protest this notice or pay the assessment total 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 to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

# Taxpayer Statement



March 9, 2016

TDD 1 800 544-5304



Letter ID: CNXXX148535X6723

Account ID: 3283-2060

#BVNKMVG  
#CNXX X148 535X 6723#  
NINTH CIRCLE INC  
ATTN: JOSEPH WICKER  
204 E DIVISION ST  
MANTENO IL 60950-1827

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

## Sales/Use Tax & E911 Surcharge

Account ID: 3283-2060

Period	Tax	Penalty	Interest	Other Payments/Credits	Balance
30-Jun-2015	83,884.00	18,455.00	7,585.33	-	Not Included*

- \* This liability is under protest and is not reflected in the balances.
- \* This period is in Tax Tribunal.
- \* \$109,924.33 of this amount is subject to protest.

SOA

F-000187

If necessary, respond to:

ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19004  
SPRINGFIELD IL 62794-9004

## Exhibit B

WWW.CYBERDRIVEILLINOIS.COM

JESSE WHITE  
SECRETARY OF STATE



## CORPORATION FILE DETAIL REPORT

Entity Name	NINTH CIRCLE, INC.	File Number	61943692
Status	DISSOLVED		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	12/20/2001	State	ILLINOIS
Agent Name	JOSEPH C WICKER	Agent Change Date	06/26/2006
Agent Street Address	22033 HOWELL DR STE 5	President Name & Address	PETAR J CALTKISIC 9135 SUTTON CT ORLAND PK IL 60462
Agent City	NEW LENOX	Secretary Name & Address	INVOLUNTARY DISSOLUTION 05 09 08
Agent Zip	60451	Duration Date	PERPETUAL
Annual Report Filing Date	00/00/0000	For Year	2007

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