

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>NOTTUS, INC.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Case No. 14-TT-167</b>
	)	
<b>THE ILLINOIS DEPARTMENT OF REVENUE,</b>	)	<b>Judge Brian F. Barov</b>
	)	
<b>Respondent.</b>	)	

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**NOTICE OF FILING**

TO: Mr. Jason Bartell  
Bartell Powell, LLP  
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Champaign, IL 61820  
(217) 352-5900

**PLEASE TAKE NOTICE**, that on October 31, 2014, the Department filed the enclosed **ANSWER** with the Illinois Independent Tax Tribunal, Illinois Department of Revenue, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601.

Respectfully submitted,

/s/ Jonathan M. Pope

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CHICAGO, ILLINOIS**

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NOTTUS, INC.,	)	
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Petitioner,	)	
	)	Case No. 14-TT-167
v.	)	
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to the Nottus, Inc. (“Petitioner”) Petition and respectfully pleads as follows:

**INTRODUCTION**

1. The “Notice” was issued by the Department on July 1, 2014, assessing personal liability in the amount of \$216,517.16 for the unpaid tax debt of Cardinal EMS, Ltd. (“Cardinal”). A copy of the “Notice” is attached to this Petition.

**ANSWER:** The Department admits that it issued on or about July 1, 2014 a Transfer of Assets – Assessment and Notice of Intent (“Notice”) assessing personal liability against Petitioner in the amount of \$216,517.16 for unpaid withholding taxes of Cardinal.

2. Petitioner is a corporation with its principal place of business in Monticello, Illinois.

**ANSWER:** The Department admits the factual allegations in paragraph 2.

3. Petitioner is located at 2149 Shady Rest Road, Monticello, Illinois, 61856-8099, and its telephone number is (217) 762-2369. The Taxpayer Account number (FEIN) is 27-3533018.

**ANSWER:** The Department admits the factual allegations in paragraph 3.

4. The Illinois Income Tax Act permits a purchaser to be held personally liable for any debt incurred by a seller where the purchaser acquires a major part of a taxpayer's assets.

**ANSWER:** Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Illinois Independent Tax Tribunal Regulation ("Rule") 310(b)(2) (86 Ill. Adm. Code §5000.310). The Department admits the existence, force, and effect at all relevant times of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*).

5. Nottus should not be held personally liable for the unpaid tax debt of Cardinal because Nottus did not purchase a major part of Cardinal's assets.

**ANSWER:** Paragraph 5 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statement contained in paragraph 5.

6. Furthermore, the penalty imposed upon Nottus by the Department is not supported by the plain language of the Illinois Bulk Sales Act.

**ANSWER:** Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statement contained in paragraph 6.

7. According to the Bulk Sales Act, a purchaser who fails to file proper notice of sale with the Department shall be personally liable for the amount owed but unpaid up to the amount of the reasonable value of the property acquired by the purchaser.

**ANSWER:** Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 86 Ill. Adm. Code §130.1701.

8. Therefore, in the event that the Act is found to be applicable to Nottus's purchase of any of Cardinal's assets, personal liability should be limited to no more than the reasonable value of the property acquired.

**ANSWER:** Paragraph 8 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

### **BACKGROUND AND RELEVANT FACTS**

9. On July 1, 2014, the Department issued a "Collection Action, Transfer of Assets – Assessment and Notice of Intent" to Nottus for the unpaid tax debt of Cardinal. The determination letter provides that Nottus is personally liable in the amount of \$216,517.16 for failing to properly notify the Illinois Department of Revenue's Bulk Sales Unit of its purchase of certain Cardinal assets.

**ANSWER:** The Department admits the factual allegations in paragraph 9.

10. Nottus has not purchased any of Cardinal's assets, or in the alternative, has purchased less than \$216,517.16 of Cardinal's assets.

**ANSWER:** The Department denies the factual allegations contained in paragraph 10.

### **APPLICABLE LAW**

11. Illinois law permits a purchaser to be held personally liable for any debt incurred by a seller if the purchaser does not comply with the bulk sale reporting requirement. However, the Income Tax Act only applies to circumstances where a purchaser acquires a major part of a taxpayer's assets.

**ANSWER:** Paragraph 11 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*).

12. The Illinois Income Tax Act reads in pertinent part:

“If any taxpayer, outside the usual course of his business, sells or transfers the *major part* of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 business days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department. . . .”

35 ILCS 5/902 (West 2014) (emphasis added).

**ANSWER:** The Department admits the existence, force, and effect at all relevant times of 35 ILCS 5/902(d) referred to in Paragraph 12 and states that such law speaks for itself.

13. The Illinois courts have held that the purchase of a major part of a company's business assets refers to the purchase of greater than fifty percent of the assets. *Zenith Radio Distributing Corporation v. Mateer* (1941), 311 Ill.App.2d 263, 266, 35 N.E.2d 815; see also *Continental Casualty Co. v. Burlington Truck Lines, Inc.* (1966), 70 Ill.App.2d 405, 217 N.E.2d 293.

**ANSWER:** Paragraph 13 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

14. This rationale is evidenced in *U.S. v. Goldblatt Bros.* (1942), 128 F.2d 576. In *Goldblatt*, defendant was charged by the trial court with violation of the Act for failure to report a transfer of assets to the plaintiff creditor. Defendant, owner of a chain of department stores, purchased the bulk of assets owned by a shoe repair company in a sale outside the regular course of business. The appellate court determined that the purchase – which included all of the physical assets, machinery and equipment used for the shoe repair business – constituted purchase of a major part of the company's assets, and was subject to the bulk sales reporting requirement. Thus, the defendant was found to have violated the Act and the decision of the trial court was affirmed.

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

15. The Illinois Bulk Sales Act also places a financial limit on any liability imposed upon a purchaser of another company's assets. The Act reads in pertinent part:

“If the purchaser or transferee fails to file the above described notice of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable to the Department for the amount owed hereunder by the seller or transferor but unpaid, **up to the amount of the reasonable value of the property acquired** by the purchaser or transferee.”

35 ILCS 5/902 (West 2014) (emphasis added).

**ANSWER:** Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 35 ILCS 5/902(d) referred to in Paragraph 15 and states that such law speaks for itself.

### COUNT I

16. Nottus was erroneously held personally liable by the Department for the unpaid tax debt of Cardinal. Nottus should not be held liable because Nottus did not purchase a major part of Cardinal's assets.

**ANSWER:** Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statements contained in paragraph 16.

17. Considering the plain language of the Income Tax Act as cited above, there is no evidence that Nottus purchased a major part of Cardinal's assets. As such, notice was not required by Nottus to the Department under the Act, and personal liability of Cardinal's debts should not attach to Nottus.

**ANSWER:** Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statements contained in paragraph 17. The Department admits the existence, force, and effect at all relevant times of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*).

18. The Illinois case law provided above also establishes that a purchase of a major part of a company's business assets refers to the purchase of greater than fifty percent of that company's assets.

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

19. The *Goldblatt* case cited herein is also easily distinguishable from the Petitioner's case. *Goldblatt* involved the purchase of *all* of the physical assets, machinery and equipment used for the business. Here, Nottus has not purchased any such assets.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent paragraph 19 may contain an allegation of fact, the Department denies such allegation.

## **COUNT II**

20. Even if the Act is found to be applicable to Nottus's purchase of certain Cardinal assets, the Department erroneously exceeded the limit of Cardinal's personal liability as set forth in the Illinois Bulk Sales Act.

**ANSWER:** Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department denies the statement contained in paragraph 20.

21. According to the Act, personal liability should be limited to no more than the reasonable value of the property acquired.

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force, and effect at all relevant times of 86 Ill. Adm. Code §130.1701.

22. As such, if the Income Tax Act is determined to apply to Nottus's purchase of any of Cardinal's assets, which no such evidence exists as of this Petition, Nottus would at most be liable to the Department for no more than the reasonable value of the assets acquired from Cardinal.

**ANSWER:** Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent paragraph 22 may contain an allegation of fact, the Department denies such allegation.

### **CONCLUSION AND RELIEF REQUESTED**

23. As indicated by both statutory and case law, the Income Tax Act was intended to apply to circumstances in which a purchaser acquires a major part of a company's assets. A purchase equaling significantly less than fifty percent of the assets, as is the case with Nottus, is

not subject to the provisions or penalties of the Act. [Petitioner's prayer for relief contained in Paragraph 23 omitted].

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent paragraph 23 may contain an allegation of fact, the Department denies such allegation.

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

- a. deny any prayer for relief in the Petitioner's Petition;
- b. find the Notices of Deficiency at issue correct as issued;
- c. order judgment in favor of Department and against Petitioner; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

24. In the alternative, in the event that the Act is found to be applicable to Nottus's purchase of any of Cardinal's assets, personal liability should be limited to no more than the reasonable value of the property acquired. [Petitioner's prayer for relief contained in Paragraph 24 omitted].

**ANSWER:** Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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

- a. deny any prayer for relief in the Petitioner's Petition;
- b. find the Notices of Deficiency at issue correct as issued;
- c. order judgment in favor of Department and against Petitioner; and

d. grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
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Dated: October 31, 2014