

ILLINOIS INDEPENDENT
TAX TRIBUNAL

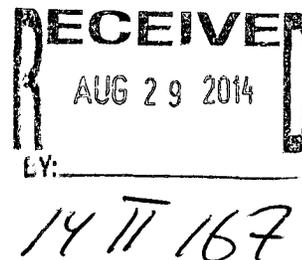
NOTTUS, INC.,

Petitioner,

vs.

ILLINOIS DEPARTMENT
OF REVENUE,

Respondent.



PETITION

The Petitioner, NOTTUS, INC., (“Nottus”), hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Tax Liability (“Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

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

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.

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.

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

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.

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.

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.

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.

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.

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).

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.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.

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.

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).

ERROR 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.

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.

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.

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.

ERROR 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.

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

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.

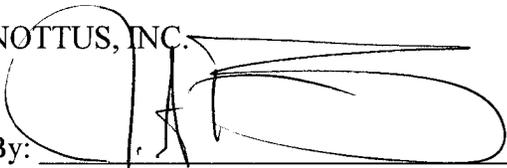
CONCLUSION AND RELIEF REQUESTED

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. Therefore, Petitioner requests that the Illinois Department of Revenue rescind its collection action and assessment of personal liability against Petitioner in the amount of \$216,517.16, and release Petitioner from any further liability related thereto.

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. Therefore, Petitioner requests that the Illinois Department of Revenue rescind its collection action and assessment of personal liability against

Petitioner in the amount of \$216,517.16, issue a new collection action for an amount not to exceed the reasonable value of the assets acquired from Cardinal, and upon taxpayer's payment of the same, release Petitioner from any further liability related thereto.

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

NOTTUS, INC. 
By: _____
Jason A. Barickman, one of its Attorneys

Representatives:

Jason Barickman
ARDC #: 6285694
MEYER CAPEL, a Professional Corporation
202 North Center Street, Suite 2
Bloomington, IL 61701
PH: 309-829-9486
FAX: 309-827-8139

Collection Action

Transfer of Assets - Assessment and Notice of Intent



July 1, 2014



Letter ID: L0304039648

NOTTUS, INC
2149 SHADY REST RD
MONTICELLO IL 61856-8099

Taxpayer ID: XX-XXX3018
Asset Transfer ID: 840699



CARDINAL EMS LTD
PO BOX 111
MONTICELLO, IL 61856-0111

We have determined you are personally liable for \$216,517.16.

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 CARDINAL EMS LTD . However, you did not make the required notification to us and the CARDINAL EMS LTD had outstanding debt with us at the time of this purchase or transfer. You can be held personally liable for this debt.

Pay us \$216,517.16 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 August 30, 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

Turn page

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 0 - . 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.

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.

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

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



July 1, 2014



Letter ID: L0304039648

NOTTUS, INC
 2149 SHADY REST RD
 MONTICELLO IL 61856-8099

Taxpayer ID: XX-XXX3018
 Asset Transfer ID: 840699



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

IL Withholding Income Tax

Account ID: 20-4723820-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	17,052.43	4,010.48	347.90	-	(19,198.54)	2,212.27
30-Sep-2009	24,884.78	2,838.48	2,987.19	-	(1,501.01)	29,209.44
31-Dec-2009	25,007.08	1,959.24	1,797.75	-	(9,574.65)	19,189.42
30-Jun-2010	23,604.02	322.99	121.09	-	(22,374.09)	1,674.01
30-Sep-2010	20,832.15	1,847.27	1,512.74	-	(3,359.44)	20,832.72
31-Dec-2010	85,066.91	8,628.69	6,589.20	-	-	100,284.80
30-Jun-2012	17,961.55	774.05	185.60	-	(11,221.09)	7,700.11
30-Sep-2012	18,659.00	2,589.08	372.64	-	-	21,620.72
31-Dec-2012	12,281.77	1,328.18	183.72	-	-	13,793.67

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: L0304039648
 NOTTUS, INC

Total amount due: \$216,517.16

Write the amount you are paying below.

\$ _____
 Write your Account ID on your check.

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