

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>WILLIAM J. KIMMEL,</b>	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 14 TT 186</b>
<b>ILLINOIS DEPARTMENT</b>	)	<b>Judge Brian F. Barov</b>
<b>OF REVENUE,</b>	)	
<b>Respondent</b>	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

**INTRODUCTION**

1. The Taxpayer petitioning this matter is William J. Kimmel, 8940 Linden Ln., Prairie Village, Kansas 66207. His phone number is 800-345-4551.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. The Taxpayer is represented by Creighton R. Castle, 1 W. Old State Capitol Plaza, Suite 600, Springfield, Illinois 62701. His phone number is (217) 899-3088 and e-mail address is [crcastle@griffinwinning.com](mailto:crcastle@griffinwinning.com).

ANSWER: The Department admits the allegations in paragraph 2 of

the petition.

3. The Taxpayer encloses a Notice of Tax Liability for Form EDA-105-R, ROT Audit Report dated October 30, 2013 for the period July 1, 2009, through March 31, 2012 ("Notice A"), a Notice of Tax Liability for Form EDA-105-R, ROT Audit Report dated October 30, 2013 for the period July 1, 2007, through June 30, 2009 ("Notice B"), and a Collection Action, Assessment and Notice of Intent dated August 8, 2014 issued by the Department to William J. Kimmel (the "Collection Action"), a copy of such notices are attached as Group Exhibit A.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

#### **SUMMARY**

1. The Department seeks to impose personal liability for tax under the Retailers' Occupation Tax Act ("ROTA"), against the Taxpayer for tax assessed by the Department against R J Kool Company of St. Louis, LLC (the "Company"), a Missouri limited liability company.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. The Taxpayer is one of the owners of K H Holdings, LLC, a Missouri limited liability company.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. K H Holdings, LLC owns a 100 percent interest in the Company.

ANSWER: The Department admits the allegations in paragraph 3 of

the petition.

4. The Taxpayer and J. Darren Harding collectively own a 100 percent interest in R J Kool Company of Missouri, an Iowa corporation.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the petition and therefore neither admits or denies said allegations.

5. Notice A and Notice B, which constituted the basis for the Collection Action, were issued to Walker Washer Service (“WWS”).

ANSWER: The Department states that the notices speak for themselves and therefore denies the allegations in paragraph 5 of the Petition.

6. WWS sold certain assets to the Company back in April, 2002, and the owner of WWS, Billey Walker, entered in a 5-year non-compete agreement with the Company, a copy of which is enclosed as Exhibit B.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the petition and therefore neither admits or denies said allegations.

7. On information and belief, Billey Walker may have recommenced business after the non-compete period (*i.e.*, 2007).

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the petition and therefore neither admits or denies said allegations.

8. Notice A and Notice B are addressed to WWS, but indicate a taxpayer identification number belonging to the Company.

ANSWER: The Department states that the notices speak for themselves and therefore denies the allegations in paragraph 8 of the Petition.

9. The Taxpayer had no ownership interest or involvement as an officer or an employee with WWS.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. The Taxpayer engaged counsel in August, 2014.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. The Taxpayer's counsel contacted Curt Regensberger, Revenue Audit Supervisor, Illinois Department of Revenue, 15 Executive Dr. Ste. 2, Fairview Heights, Illinois 62208 (618-304-6901) to decipher the discrepancies in the assessments involving the company identified in Notice A and Notice B (*i.e.*, WWS) and the company identified in the Collection Action (*i.e.*, R J Kool Company of St. Louis).

ANSWER: The Department admits the allegations in paragraph 11 of the petition.

12. From counsel's contact with Mr. Regensberger, it appears that the Department issued Notice A and Notice B based on a Sales Agreement issued to LaQuinta Inn on January 8, 2009 (the "Sales Agreement"), a copy of which is attached hereto as Exhibit C, and estimated a tax liability therefrom.

ANSWER: The allegations in paragraph 12 of the petition consist

not of material allegations of fact, but primarily of conclusions, and are therefore denied.

13. The Sales Agreement was executed by Tom Aubuchon, not the Taxpayer.

ANSWER: The Department states that sales agreement speaks for itself and therefore denies the allegations in paragraph 13 of the Petition.

14. The order was executed by Mr. Aubuchon, even though the sale was outside of the sales territory prescribed by suppliers.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. The sales tax, if any, from the transaction encompassed by the Sales Agreement should have been reflected by R J Kool Company of Missouri.

ANSWER: The allegations in paragraph 15 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

16. The Taxpayer was unaware that, if sales tax was due for the transaction involving the Sales Agreement, such tax was not reported and paid to the Department.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 of the petition and therefore neither admits or denies said allegations.

17. The Company filed its last sales tax return with the Department for the period ending June 30, 2007, as it ceased to transact business.

ANSWER: The Department lacks knowledge or information sufficient to

form a belief as to the truth or falsity of the allegations in paragraph 17 of the petition and therefore neither admits or denies said allegations.

18. The Company's final items of income, gain, loss, deduction, and credits appeared on K H Holdings, LLC's income tax return filed in 2008.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 18 of the petition and therefore neither admits or denies said allegations.

19. It was the intent of the owners of K H Holdings, LLC, that business operations of the Company would be taken over by R J Kool Company of Missouri.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 of the petition and therefore neither admits or denies said allegations.

20. It was only during the Department's investigation when the Taxpayer learned that the Sales Agreement was improperly completed by one of the sales associates and sales tax was not paid.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 20 of the petition and therefore neither admits or denies said allegations.

21. All invoices should have been processed through R J Kool Company of Missouri after the Company ceased business in 2007.

ANSWER: The allegations in paragraph 21 of the petition are vague and conclusionary and are denied.

22. In 2012, R J Kool Company of Missouri filed an Illinois Business Registration Application with the Department.

ANSWER: The Department admits the allegations in paragraph 22 of the petition.

23. The Taxpayer is unaware of any further invoices being issued under the Company's name, rather than the name of R J Kool Company of Missouri, for sales occurring in Illinois after June 30, 2007.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 of the petition and therefore neither admits or denies said allegations.

24. At all times relevant, R J Kool Company of Missouri's controller, Lisa Robinson, was responsible for filing and the sales tax returns with the Department, and paying for the tax due with the company's funds.

ANSWER: The allegations in paragraph 24 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

25. Upon information from Mr. Regensberger, the Taxpayer did not execute the Illinois Business Registration Application for the Company as being responsible for filing returns and paying taxes due.

ANSWER: The Department denies that the Taxpayer did not execute the Illinois Business Registration Application for the Company as being responsible for filing returns and paying taxes due.

26. The Taxpayer did not review and execute Illinois Sales Tax Returns for the Company and was not responsible for paying such taxes.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 26 of the petition and therefore neither admits or denies said allegations.

27. Based on counsel's correspond with Mr. Regensberger, it was agreed that the Department will perform an audit of R J Kool Company of Missouri for the period January 1, 2009, through June 30, 2014 (the "Audit Period") to derive an appropriate tax due the Department under ROTA. A copy of correspondence between taxpayer's counsel and Mr. Regensberger is enclosed.

ANSWER: The Department states that the attached correspondence attached to the petition speaks for itself and therefore denies the allegations in paragraph 27 of the petition.

28. The Audit Period will cover the date that the Sales Agreement was issued and executed.

ANSWER: The allegations in paragraph 28 of the petition consist not of material allegations of fact, but primarily of conclusions, and are therefore denied.

29. The Taxpayer has been informed that the Department will commence an audit of R J Kool Company of Missouri in November, 2014.

ANSWER: The allegations in paragraph 29 of the complaint are so vague and lacking in specificity (e.g. there is no allegation as to who made the purported representation, to whom it was allegedly made, whether the alleged representation

was oral or in writing etc.) as to be not reasonably capable of being answered. The allegations are therefore denied.

The remainder of the petition under the headings “Applicable Statute” and “Analysis” consists not of specific material allegations of fact, but primarily of factual and legal conclusions, and argument and is therefore denied generally.

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

- a. denying the prayer for relief in the Petitioner’s Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and granting such further relief as this Tribunal deems appropriate under the circumstances.

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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**WILLIAM J. KIMMEL**

**v.**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE**

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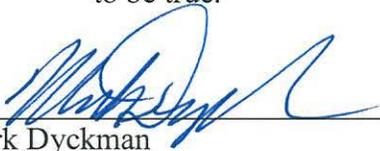
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**14-TT-186**

**AFFIDAVIT OF MARK DYCKMAN  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 4, 6, 7, 9, 10, 14,16,17,18, 19, 20, 23, and 26. (Petition section captioned "Summary").

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



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Mark Dyckman  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 11-7-14

Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: 

George Foster  
Special Assistant Attorney General

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## CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on November 10, 2014 a copy of the Department's ANSWER was served on Creighton R. Castle, Giffin Winning Cohen & Bodewes, P.C. by causing a copy to be sent by electronic mail to [crcastle@giffinwinning.com](mailto:crcastle@giffinwinning.com).

