

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

J. DARREN HARDING,)
)
) Petitioner,)
)
) v.)
)
) ILLINOIS DEPARTMENT OF REVENUE,)
)
) Respondent.)

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PETITION

The Petitioner, J. Darren Harding, hereby petitions the Illinois Independent Tax Tribunal to deny the Illinois Department of Revenue's ("Department") claim that he is subject to personal liability for taxes assessed under the Retailers Occupation Tax Act relating to R J Kool Company of St. Louis for the period July 1, 2007, through June 30, 2009, and for the period July 1, 2009 through March 31, 2012, for the reasons stated below:

JURISDICTIONAL STATEMENT

Jurisdiction is proper with the Illinois Independent Tax Tribunal as the liability exceeds \$15,000.00.

INTRODUCTION

1. Taxpayer. The Taxpayer petitioning this matter is J. Darren Harding, 6809 Cedar Street, Prairie Village, Kansas 66208. His phone number is 816-474-9274.

2. Taxpayer's Counsel. 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@giffinwinning.com.

3. Statutory Enclosures. 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 J Darren Harding (the "Collection Action"), a copy of such notices are attached as Group Exhibit A.

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.

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

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

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

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

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.

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

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

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

10. The Taxpayer engaged counsel in August, 2014.

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).

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.

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

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

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.

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.

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.

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.

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.

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.

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

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

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.

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.

25. 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.

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

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

APPLICABLE STATUTE

The Uniform Penalties and Interest Act states, in pertinent part, “Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the 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. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section.” 35 ILCS 735/3-7.

ANALYSIS

Pursuant to the statute, in order to be subjected to this penalty, a person must (1) be an employee or officer of the corporation, (2) have control, supervision or responsibility for filing returns and paying the taxes, and (3) willfully fail to file the returns, pay the tax or otherwise evade or defeat the tax.

The Taxpayer should not be held liable for the penalty equal to the amount of the unpaid liability of the Company as he did not willfully fail to file sales tax returns post-dating June 30, 2007, he did not willfully fail to make payment of sales tax due the Department for sales tax returns post-dating June 30, 2007, and he did not willfully attempt to evade or defeat the tax under ROTA.

In *Department of Revenue v. Heartland Investments, Inc.*, 106 Ill.2d (1985) the court held that willful failure to pay requirement was met by evidence that the Retailers’ Occupation taxes

collected by a company were knowingly used by pay corporate creditors other than the Department of Revenue. Further, in *Ruth v. United States*, 823 F.2d 1091 (7th Cir. 1987), willfulness may be established by a showing of “gross negligence involving a known risk of violation,” as where a responsible party clearly ought to have known of a “grave risk of non payment” and who is in a position to easily find out, but does nothing.

Here, the members of K H Holdings LLC decided to consolidate the business activities of the Company into R J Kool Company of Missouri. The Company’s sales activities were wound down by June 30, 2007, and all final items of income, gain, loss, deduction and credit were reflected on K H Holdings, LLC’s income tax return for 2008. All invoices should have been processed through R J Kool Company of Missouri after the Company ceased business in 2007. The Taxpayer was unaware that the Sales Agreement was completed in the name of the Company. If sales tax was due the Department on the transaction encompassed by the Sales Agreement, the Taxpayer was also unaware that it was not reported and paid by R J Kool Company of Missouri. It was only during the Department’s investigation when the Taxpayer learned the Sales Agreement was improperly completed by a sales associated, as the sale was completed outside of prescribed territory assigned by the suppliers. R J Kool Company of Missouri has agreed to the Department’s request for an audit of its books and records, and such audit is scheduled to occur in November, 2014 for the period January 1, 2009 through June 30, 2014. The audit shall address, among other matters, whether sales tax is due the state of Illinois for the sale covered by the Sales Agreement.

CONCLUSION AND RELIEF REQUESTED

As J. Darren Harding did not willfully fail to file the relevant returns, pay the tax or otherwise evade or defeat the tax under ROTA, he respectfully requests that the Illinois Independent Tax Tribunal deny the Illinois Department of Revenue's claim that he is subject to

personal liability for taxes under ROTA relating to R J Kool Company of St. Louis for the period July 1, 2007, through June 30, 2009, and for the period July 1, 2009 through March 31, 2012.

Respectfully submitted,



J. DARREN HARDING, Petitioner

Creighton R. Castle (Registration No. 6215856)
Giffin, Winning, Cohen & Bodewes, P.C.
One W. Old State Capitol Plaza
Suite 600, Myers Building
P.O. Box 2117
Springfield, IL 62705
(217) 525-1571
crcastle@giffinwinning.com

EXHIBIT A

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



#BWNKMGV
#CNXX X174 7782 88X4#
WALKER WASHER SERVICE
234 W 12TH AVE
KANSAS CITY MO 64116-4158

October 30, 2013



Letter ID: CNXXX174778288X4

Account ID: 3325-9038



We have audited your account for the reporting periods July 01, 2009, through March 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	13,848.00	0.00	13,848.00
Late Payment Penalty Increase	2,770.00	0.00	2,770.00
Late Filing Penalty Increase	277.00	0.00	277.00
Interest	878.07	0.00	878.07
Assessment Total	\$17,773.07	\$0.00	\$17,773.07

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **December 30, 2013**. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

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

217 785-6579

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



#BWNKMGV
#CNXX XX67 4X41 X569#
WALKER WASHER SERVICE

234 W 12TH AVE

KANSAS CITY MO 64116-4158

October 30, 2013



Letter ID: CNXXXX674X41X569

Account ID: 3325-9038



We have audited your account for the reporting periods July 01, 2007, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	10,071.00	0.00	10,071.00
Late Payment Penalty Increase	4,028.00	0.00	4,028.00
Late Filing Penalty Increase	403.00	0.00	403.00
Interest	3,408.42	0.00	3,408.42
Assessment Total	\$17,910.42	\$0.00	\$17,910.42

If you do not agree, you may file a protest and request an administrative hearing within 60 days of the date of this notice, which is **December 30, 2013**. 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.

If you have questions, please write us or call our Springfield office weekdays between 8:00 a.m. and 4:00 p.m. Our address and telephone number are listed below.

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

217 785-6579

Collection Action
Assessment and Notice of Intent



August 8, 2014



Letter ID: L1463946768

J DARREN HARDING
6809 CEDAR ST
PRAIRIE VLG KS 66208-1444

Taxpayer ID: XXX-XX-8658
NPL Penalty ID: 3030044



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge

Account ID: 3325-9038

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	10,071.00	4,531.00	3,875.26	-	-	18,477.26
31-Mar-2012	13,848.00	3,147.00	1,199.03	-	-	18,194.03

IDOR-5P-NPL (N-03/07)

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: L1463946768
J DARREN HARDING

Total amount due: \$36,671.29

Write the amount you are paying below.

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

\$ _____
Write your Account ID on your check.

Collection Action

Assessment and Notice of Intent



August 8, 2014



Letter ID: L1463946768

J DARREN HARDING
6809 CEDAR ST
PRAIRIE VLG KS 66208-1444

Taxpayer ID: XXX-XX-8658
NPL Penalty ID: 3030044



RJ KOOL CO OF ST LOUIS LLC
234 W 12TH AVE
KANSAS CITY MO 64116-4158

We have determined you are personally liable for a penalty of \$36,671.29.

The penalty is equal to the amount of unpaid liability of RJ KOOL CO OF ST LOUIS LLC, due to your status as a responsible officer, partner, or individual of RJ KOOL CO OF ST LOUIS LLC.

Illinois law (35 ILCS 735/3-7) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$36,671.29. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

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

- **If the amount of this liability 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 **October 7, 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, 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 the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax

For information about
› how to pay
› submitting proof
› collection actions

Turn page

To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review.

You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

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 relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

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.
- civil judgments.
- 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.
- prosecution for bad checks and deceptive practice.
- 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.



Illinois Department of Revenue

Authority to Levy Statutory References and Taxpayers' Bill of Rights

Authority to Levy

From 35 ILCS 5/1109 of the Income Tax Act and 35 ILCS 120/5f of the Retailers' Occupation Tax Act.

In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment. Levy shall not be made until the Department has caused a demand to be made on the taxpayer in the manner provided above. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the salary, wages, commissions and bonuses of any employee, including officers, employees, or elected officials of the United States as authorized by Section 5520a of the Government Organization and Employees Act (5 U.S.C. 5520a), but not upon the salary or wages of officers, employees, or elected officials of any state other than this State by serving a notice of levy on the employer, as defined in Section 701(d). Levy shall not be made until the Department has caused a demand to be made on the employee in the manner provided above. The provisions of Section 12-803 of the Code of Civil Procedure relating to maximum compensation subject to collection under wage deduction orders shall apply to all levies made upon compensation under this Section. To the extent of the amount due on the levy, the employer or other person making payments to the taxpayer shall hold any non-exempt wages or other payments due or which subsequently come due. The levy or balance due thereon is a lien on wages or other payments due at the time of the service of the notice of levy, and such lien shall continue as to subsequent earnings and other payments until the total amount due upon the levy is paid, except that such lien on subsequent earnings or other payments shall terminate sooner if the employment relationship is terminated or if the notice of levy is rescinded or modified. The employer or other person making payments to the taxpayer shall file, on or before the return dates stated in the notice of levy (which shall not be more often than bimonthly) a written answer under oath to interrogatories, setting forth the amount due as wages or other payments to the taxpayer for the payment periods ending immediately prior to the appropriate return date. A lien obtained hereunder shall have priority over any subsequent lien obtained pursuant to Section 12-808 of the Code of Civil Procedure, except that liens for the support of a spouse or dependent children shall have priority over all liens obtained hereunder.

Illinois law (735 ILCS 5/12-803 of the Code of Civil Procedure) and Federal law (15 U.S.C. 1673) define "maximum wages subject to collection."

Federal law places a ceiling of 25% of the amount of an employee's disposable earnings subject to garnishment, so long as state law does not prohibit garnishment or provide for more limited garnishment than is allowed by federal law.

"The maximum wages, salary commissions, and bonuses subject to collection under a deduction order, for any work week shall not exceed the lesser of (1) 15% of such gross amount paid for that week, or (2) the amount by which *disposable earnings* (emphasis added) for a week exceed 45 times the Federal Minimum Hourly Wage prescribed by Section 206(a)(1) of Title 29 of the United States Code, as amended, in effect at the time the amounts are payable.... The term "*disposable earnings*" (emphasis added) means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." (735 ILCS 5/12-803)

Taxpayers' Bill of Rights

- You have the right to call the Illinois 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 our notices by asking questions, paying the amount due, or providing proof to refute our findings.
- You have the right to appeal our decisions in many instances within specified time periods by asking for our review or by taking the
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment, within certain time periods.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 *et seq.*

For more information about these rights and other departmental procedures, visit our Web site at www.revenue.state.il.us or contact us at the address or telephone numbers below.

call: 1 800 732-8866
1 217 782-3336
1 800 544-5304 (TDD-telecommunications device for the deaf)

write: ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19044
SPRINGFIELD IL 62794-9044

EXHIBIT B

Non-Compete Agreement

This Non-Compete Agreement is entered into on this 15th day of April, 2002, between RJ Kool Company of St. Louis, LLC (the "Company"), a Missouri Limited Liability Company, and Billey Walker ("Walker"), an individual.

Whereas, Walker is the sole owner of Walker Washer Service, a Missouri Sole Proprietorship;

Whereas, on the date hereof, Purchaser is purchasing from Seller, and Seller is selling to Purchaser, certain operating assets of Seller; and

Whereas, Walker is entering into this Non-Compete Agreement with Company as a condition precedent to the obligations of Company to purchase the assets of Seller;

Now, therefore, in consideration of mutual promises herein contained and other good and valuable consideration, the Company and Walker agree as follows:

1. **Non-Disclosure.** From and after the date hereof, Walker shall not:
 - a. Except as required to perform Walker's duties as an employee or consultant of the Company, use for the benefit of Walker or others, or in any way divulge, disclose or communicate to any individual, entity or other group or organization, any information about the business of the Company, of any kind, nature or description, without regard to whether such information is deemed confidential or material (collectively referred to herein as "Company Information"), including but not limited to: (i) information of a technical nature such as, but not limited to, methods, know-how or procedures; (ii) information of a business nature such as, but not limited to, information about costs, purchasing, profits, markets, product demand, buying habits and preferences, sales, or lists of customers, suppliers, or clients; and (iii) new business development information, planned or in progress, third party affiliations, or business and marketing strategies.
 - b. Induce or influence any person who is engaged by the Company as an employee, agent, or otherwise, to terminate his or her engagement or to engage or otherwise participate in a business activity directly or indirectly competitive with the Company.

2. **Non-Competition.** For a period of five (5) years from and after the date hereof, Walker shall not, directly or indirectly, either for Walker's own account, or as a partner, employee, officer, consultant, accountant, director, shareholder or otherwise, own, manage, control, operate, be employed by, participate in or otherwise be connected with the ownership, management, operation or control of any business which, within the Territory (as hereinafter defined), is engaged in the business of selling, leasing, marketing, distributing, developing any products or services provided by the Company during the term of this Agreement. The term "Territory" as used in this Section 2 means a 750 mile radius of the Greater St. Louis geographic area.

3. **Protection of Proprietary Information.** Walker shall protect and preserve and assist the Company in maintaining the confidentiality of all Company Information and report to the Company immediately any known or suspected violations or breaches of the confidentiality of the Company Information, whether caused by Walker or others. Walker shall not remove Company Information from any secured area or secured status or from Company's premises without the express prior written consent of the President of the Company.

4. **Consideration for Covenant Not to Compete and Related Obligations.** In consideration of the obligations of Walker under Sections 1 through 3 hereof, the Company agrees to purchase assets per the Definitive Purchase Agreement.

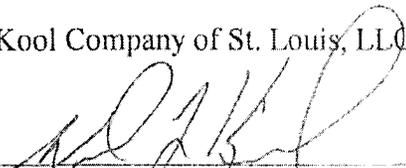
5. **Enforcement.** If either party to this Agreement violates any provision hereof, the aggrieved party shall be entitled to any and all applicable remedies at law or equity to prevent further breaches of this Agreement, including injunctive relief from a court of competent jurisdiction.

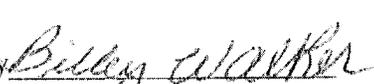
6. **Reformation.** If a court of competent jurisdiction determines any covenant herein to be unenforceable, then such court shall be empowered to reform such covenant herein in such a manner so that it is enforceable to the fullest extent consistent with the law.

7. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

In Witness Whereof, the parties hereto have duly executed this Agreement on the day and year first above written.

RJ Kool Company of St. Louis, LLC

By  William Kimmel, Member "Company"

By  Billey Walker "Walker"

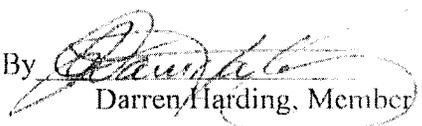
By  Darren Harding, Member "Company"

EXHIBIT C

Sales Agreement



By and Between:

R.J. Kool Company
11669 Liburn Park Road
St. Louis, MO 63146

Telephone: 314-991-9121
Fac: 314-991-4034
Toll Free: 866-232-5665

Bill to:	Barry Hayden La Quinta Inn Mascoutah, IL
Ship to:	La Quinta Inn Mascoutah, IL

Sales Number: 001172 Date 1/8/2009 Expires on: 4/30/2009 Salesperson Tom Aubuchon

Part #	Mfr	Description	Price	Qty	Extend
UC60BN2	Unimac	60lb. Washer/Extractor Programmable Microprocessor (8 Cycle) Stainless Steel Cabinet ELECTRICAL VOLTAGE: (O) 208-240/60/3 single phase	\$5,999.00	2	\$11,998.00
		Initial here to approve voltage			
UT075NRQ	Unimac	75 LB Natural Gas Tumbler / Dryer Dual Digital Timer Reversing Cylinder Three Year Warranty 200-208/240/60/3	\$3,834.75	2	\$7,669.50
CAM2742TQ	Whirlpool	27" 2-Speed Washer Factory Installed Coin Slide & Box 3.2 Cu. Ft. Wash Basket 18 lbs. Push Button Controls High Efficiency, Low Water Factor 3 Cycles	\$605.00	2	\$1,210.00
CEM2940TQ	Whirlpool	29" Electric Dryer Factory Installed Coin Slide & Coin Box 7.0 Cu. Ft. Drum Capacity Push Button Controls 3 Cycles * Power Cord Sold Separately * 8 Quarter Coin Slide Capacity (\$1 factory preset)	\$525.00	2	\$1,050.00
Install	R.J. Kool	Full Installation. All utilities within 3-5 feet. Customer is responsible for adequate door openings and ground level access to laundry room.	\$1,200.00	1	\$1,200.00

Part #	Mfr	Description	Price	Qty	Extend
Freight	Common Carrier	Additional runs of utilities if required not included in price. Factory Freight	\$1,000.00	1	\$1,000.00

TAX to 6/10 233 56 56

Payment

The total purchase price, including applicable taxes is \$25,497.97
 Customer agrees to pay the full amount immediately upon receipt.

R.J. Kool, Co.
 By: Tom R. Kool
 Account Executive
 APPROVED FOR R.J. KOOL, CO.
 By: _____
 Authorized Signature
Tom R. Kool
 Print Name and Title
 Date: 1/9/09

[Signature]
 Customer
 By: _____
 Authorized Signature
Barry Hayden
 Print Name and Title
 Date: 1/9/09 P.O.# _____

Total \$25,627.50

Sub-Total	\$24,127.50
	500.00
Tax	\$1,370.47
Total	\$25,497.97

NO TAX

Entire Agreement
 This Agreement, INCLUDING PROVISIONS ON THE ATTACHED PAGE, constitutes the entire agreement between the parties, and supersedes and replaces other prior understandings or agreements whether oral or written relating to the Equipment. This Agreement may not be changed, modified, or varied except by the specific written and signed approval by authorized representatives of each party. Any customer purchase order or similar document issued relating to the purchase of the Equipment shall be governed only by the terms and conditions of this Agreement, which shall supersede and prevail over terms and conditions of such customer purchase order. This Agreement shall not become binding on R.J. Kool unless approved by R.J. Kool management, as provided above. Restocking fee's will apply for cancelled agreements.

Additional Terms and Conditions

Sales Number 001172

1. **TITLE:** All risk of loss and title to the Equipment, subject to Section 2, shall pass Customer upon the date the Equipment is delivered to Customer.
2. **SECURITY INTEREST:** Customer hereby grants to R.J. Kool a security interest in the Equipment in order to secure Customer's obligations hereunder, and agrees upon request of R.J. Kool to execute any documents necessary to perfect such interest. If the purchase price is not paid in accordance with the payment terms, R.J. Kool shall have all the rights and remedies of a secured party as provided in Article 9 of the Uniform Commercial Code and R.J. Kool shall be entitled to reasonable attorney fees and legal expenses incurred with respect to this security interest and the enforcement of any R.J. Kool's other rights under this Agreement. Finance charges of 18% per annum, or the highest allowable rate of interest in Customer's state, whichever is lower, will be assessed on all delinquent amounts. If any of Customer's obligations to R.J. Kool are not promptly paid when due, Customer shall be in default hereunder and all unpaid amounts shall become immediately due and payable. If the default continues for ten (10) days after written or telegraphic notice thereof by R.J. Kool, R.J. Kool may, at its option, render the Equipment unusable until R.J. Kool receives payment in full and/or enter upon the premises where the Equipment is installed and retake possession thereof without notice, free from any claims of Customer.
3. **DELIVERY:** The equipment delivery date shall be at a time to be mutually agreed upon by the parties with appropriate adjustment for conditions beyond the reasonable control of R.J. Kool.
4. **TAXES:** Customer shall pay, or reimburse R.J. Kool for, all applicable taxes imposed on Customer or R.J. Kool for the sale or use of the Equipment, or upon this Agreement, except that personal property taxes assessed on the Equipment before the date title passes shall be paid by R.J. Kool.
5. **INDEMNIFICATION:** Customer shall indemnify and hold harmless R.J. Kool from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities including attorney fees, claimed by any person, organization, association, or otherwise arising out of or, relating to the Equipment, its use, possession, operation, and/or condition, except to the extent caused by the gross negligence or willful misconduct of R.J. Kool.
6. **LIMITATION OF LIABILITY:** R.J. Kool shall not be liable for any special, indirect, incidental or consequential damages or for loss, damage or expense, directly or indirectly arising from Customer's use of or inability to use the equipment, either separately or in combination with other Equipment, or for personal injury or loss or destruction of property, or from any other causes.
7. **WARRANTIES:** R.J. Kool warrant to Customer good and clear title to the Equipment free and clear of liens and encumbrances, subject to any security interest retained by R.J. Kool. R.J. Kool hereby warrants the Equipment against defects in materials and workmanship as follows:

provided that no repairs, substitutions, modifications, or additions have been made except by R.J. Kool and provided that after delivery to Customer, the Equipment has not been subjected to accident, neglect, misuse, or used in violation of any instructions supplied by R.J. Kool. R.J. Kool's sole liability hereunder shall be to repair or replace the Equipment at its own expense during normal working hours, and the foregoing warranty shall constitute the exclusive remedy of Customer and the exclusive liability of R.J. Kool for any breach of any Warranty related to this Agreement. Customer will permit or arrange for access to the premises for any R.J. Kool's warranty service.

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE, AND R.J. KOOL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, OR FITNESS FOR A PARTICULAR PURPOSE.

8. **LAW:** This Agreement shall be governed by the laws of Missouri. Should a dispute arise concerning the Equipment or this Agreement, the Court to determine this dispute shall be the Court of proper jurisdiction in Clay County, Missouri.
9. **ASSIGNMENT:** This Agreement may not be assigned by Customer without the prior written consent of R.J. Kool.

10. MISCELLANEOUS: Titles to the paragraphs of this Agreement are solely for the convenience of the parties and do not explain, modify, or interpret the provisions herein. If more than one Customer is named in this Agreement, the liability of each shall be joint and several.

R.J. Kool is not liable for any failure or delay in performance due to any cause beyond its control.

If any provisions of the Agreement are in conflict with any statute or rule of law of any state or territory wherein it may be sought to be enforced, then such provisions shall be deemed null and void to the extent that they may conflict therewith, but without invalidating the remaining provisions hereof.

If R.J. Kool incurs attorneys fees and costs if R.J. Kool is successful in such enforcement.

Initials: _____

R.J. Kool Co.

Initials: _____

Customer

**Correspondence
between Counsel
and Curt Regensberg**

Montgomery, Michelle

From: Castle, Creighton
Sent: Friday, October 03, 2014 9:05 AM
To: Montgomery, Michelle
Subject: FW: R J Kool Companies

From: Regensberger, Curt [Curt.Regensberger@Illinois.gov]
Sent: Friday, September 12, 2014 2:28 PM
To: Castle, Creighton
Subject: RE: R J Kool Companies

So the RJ Kool of St. Louis was being handled by RJ Kool of Missouri. We should then see these transactions in our audit of RJ Kool of Missouri. RJ Kool of Missouri has nexus back to **1/1/09** our statutory period so we will be auditing RJ Kool of Missouri for the period of 1/1/09 to 6/30/14. We will be able to work out all the company differences in this audit and come up to the correct answer.

Thank You

Curt Regensberger
Revenue Audit Supervisor
Illinois Department of Revenue
15 Executive Dr. Ste 2
Fairview Heights, Il. 62208
618-304-6901



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From: Castle, Creighton [mailto:crcastle@giffinwinning.com]
Sent: Thursday, September 11, 2014 8:39 AM
To: Regensberger, Curt
Cc: jason@encompassaccounting.com; Montgomery, Michelle
Subject: RE: R J Kool Companies

Curt,

As we discussed, the Illinois Department of Revenue plans to conduct an audit of R J Kool Company of St. Louis ("St. Louis") and R J Kool Company of Missouri ("Missouri"). For Missouri, I understand that the audit will cover 2012 and forward. After discussion with my client, I believe the liability for St. Louis may be eliminated as it had not transacted business after 2007. I understand that there was one invoice dated January 8, 2009, that the Department which had the name R J Kool Company and an address of St. Louis. This transaction should have been reported by Missouri or its parent, KH Holdings. The accountant can confirm with the auditor.

The accountant is Jason Goethe, 11515 Knox St., Overland Park, Kansas 66214. Phone 816-377-0588.

I will go ahead and file a petition with the Illinois Independent Tax Tribunal by October 7th relating to the Collection Action against J. Darren Harding.

Thank you, Creighton

1 W Old State Capitol Plz Ste 600
Springfield IL 62701-1383
(P) 217.525.1571
(F) 217.525.1710
www.giffinwinning.com

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From: Regensberger, Curt [Curt.Regensberger@Illinois.gov]
Sent: Tuesday, September 09, 2014 3:23 PM
To: Castle, Creighton
Subject: R J Kool Companies

I have the POA and I am ready to talk

Thank You

Curt Regensberger
Revenue Audit Supervisor
Illinois Department of Revenue
15 Executive Dr. Ste 2
Fairview Heights, Il. 62208
618-304-6901

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