

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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**Charles G. Penna,** )  
 )  
 **Petitioner,** )  
 )  
 **v.** )  
 )  
 **Illinois Department of Revenue,** )  
 )  
 **Respondent.** )

**No.**

RECEIVED  
DEC 22 2014  
BY: \_\_\_\_\_  
14 TT 249

**PETITION**

Charles G. Penna hereby petitions the Illinois Independent Tax Tribunal (“Tribunal”) to review and reverse and/or modify two Assessments and Notices of Intent issued by the Illinois Department of Revenue (“Department”) that purportedly hold Mr. Penna personally liable for the alleged unpaid tax liability of AlphaMetrix Group, LLC (“AMG”) for the periods ending June 30, 2009; March 31, 2011; June 30, 2011; September 30, 2011; December 31, 2011; and May 31, 2012 (“Periods at Issue”), in the total amount of \$100,174.79.<sup>1</sup> In support of his Petition, Mr. Penna states as follows:

**BACKGROUND FACTS**

1. On October 23, 2014, the Department issued an Assessment and Notice of Intent to Mr. Penna for the periods ending March 31, 2011; June 30, 2011; September 30, 2011; and December 31, 2011, assessing a personal liability penalty against him in the total amount of \$25,225.52. The personal liability penalty of \$25,225.52 is equal to the sum of \$365,715.62 in

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<sup>1</sup> The former President and Chief Executive Officer of AMG, Aleksis Kins, has also been identified as a responsible officer and is appealing to the Tribunal assessment(s) against him of personal liability penalty assessed on a similar basis, based on information and belief. A copy of Mr. Kins’ Petition to be filed with the Tribunal by December 22, 2014 is attached as Exhibit A.

Illinois withholding income tax, \$26,687.32 in penalties and \$278.41 in interest, less payments/credits in the amount of \$367,455.83, that the Department admits were owed by AMG. On the same date, the Department issued a second Assessment and Notice of Intent to Mr. Penna for the periods ending June 30, 2009 and May 31, 2012, assessing a personal liability penalty against him in the total amount of \$74,949.27. The personal liability penalty of \$74,949.27 is equal to the sum of \$46,851.00 in Illinois sales/use tax and E911 surcharge, \$15,684.00 in penalties and \$12,414.27 in interest that the Department alleged is owed by AMG. The personal liability penalties of \$25,225.52 and \$74,949.27 referred to in this paragraph are collectively referred to as the "Penalties." Copies of the Assessments and Notices of Intent ("Notices") are attached as Exhibit B to this Petition.

2. Mr. Penna resides at 747 North Wabash Avenue, Apt. No. 1003, Chicago, Illinois 60611. Mr. Penna's telephone number is (312) 813-0146, and his Taxpayer Identification number is XXX-XX-9455.

3. AMG was a Delaware limited liability company, headquartered in Chicago, that primarily, through its wholly-owned subsidiary AlphaMetrix LLC, sponsored a platform through which certain investors could invest in hedge funds and commodity pools managed by third-party investment managers. In late 2013, AMG's business operations were discontinued and a temporary equity receiver was appointed to take control of the business and, among other things, pay and settle claims made by creditors against AMG, including claims made by taxing authorities. On information and belief, the receiver established a procedure through which a creditor, including a taxing authority, may assert a claim against the receivership estate. On information and belief, the Department may still use this procedure to make a claim against

AMG for any and all taxes due and owing to the State of Illinois. On information and belief, the AMG receivership estate possesses sufficient funds to pay the total amount of the Penalties.

**Mr. Penna's Role at AlphaMetrix**

4. Mr. Penna joined AMG in May 2005. From May 2005 until the time period in late 2013 referenced in paragraph 3, Mr. Penna continuously was employed at AMG, consecutively holding the positions of Director of Risk Management and Chief Risk Officer. In 2008, Mr. Penna received an equity member interest in AMG. During all times of Mr. Penna's ownership of his equity membership, he owned less than a 10% interest in AMG.

5. During his employment at AMG, Mr. Penna's responsibilities with respect to AMG included, among other things, monitoring the positions held by the funds on the platform to ensure compliance with the risk thresholds set forth in the various funds' offering materials. Mr. Penna was not responsible for any tax matters, including but not limited to matters related to tax compliance, return preparation and filing, or tax payment.

6. While Mr. Penna was employed at AMG, AMG had a corporate accounting department. AMG's Chief Financial Officer managed this department and reported directly to its former Chief Operating Officer. Among other responsibilities, the corporate accounting department was responsible for working with AMG's outside accountants to prepare and file the company's tax returns, and to pay any taxes owed. Mr. Penna relied on AMG's COO, CFO and corporate accounting department to ensure that AMG paid all taxes owed.

7. Since the establishment of the receivership, the receiver has controlled AMG's business and possessed exclusive access to AMG's files and accounts. Since her appointment, Mr. Penna could not review, analyze or address in any way, any aspect of AMG's tax compliance, tax return filing, or tax payments.

**AMG's Illinois Sales and Use Tax Compliance During the Periods at Issue**

8. During the Periods at Issue, AMG employed an outside, unrelated accounting firm, Arthur Bell Certified Public Accountants (“Arthur Bell”), to prepare and file its Illinois sales and use tax returns. On information and belief, Arthur Bell properly filed the relevant sales and use tax returns, and paid the correct amount owed to the Department for the Periods at Issue.

**AMG’s Illinois Withholding Tax Compliance During the Periods at Issue**

9. During the Periods at Issue, AMG employed an unrelated third-party payroll services provider, ADP, LLC (“ADP”) to manage its payroll, and for the specific purpose of paying its Illinois withholding tax. On information and belief, ADP was responsible for filing the relevant withholding tax returns and paying the correct amount due to the Department for the Periods at Issue.

10. Mr. Penna lacks knowledge as to whether or not the Department ever issued an assessment or took any other actions to recover from AMG the tax, penalty and interest underlying the amount of Penalties assessed in the Notices.

Mr. Penna asserts the following errors related to the Notices:

**ERRORS**

11. The Department assessed the Penalties against Mr. Penna pursuant to 35 ILCS 735/3-7; 35 ILCS 5/1002(d); and 86. Ill. Admin. Code §§ 100.7370(d), 700.340. However, the Department’s Penalties should be abated as improper for three reasons: (1) AMG can pay the underlying owed; (2) Mr. Penna was not an officer or employee responsible for filing the returns and making payment for any taxes; and (3) Mr. Penna did not willfully fail to file the returns, pay the taxes, or otherwise evade the taxes that underlie the Penalties. *See, e.g.*, 35 ILCS 735/3-7 (describing the requirements for imposition of personal liability against an officer or employee for his entity’s unpaid trust tax liability).

### **ERROR 1**

12. The Department's attempt to hold Mr. Penna personally liable for AMG's alleged unpaid trust tax is improper because "[o]nly where the corporation has incurred ... tax liability *and is unable to pay such amounts* to the Department of Revenue may personal liability attach ...." *McLean v. Dep't of Revenue*, 326 Ill. App. 3d 667, 673-74 (1st Dist. 2001) (emphasis added); *see also Dep't of Revenue v. Heartland Invs., Inc.*, 106 Ill. 2d 19, 32 (1985) (same). Here, on information and belief, AMG has cash and other liquid assets on hand well in excess of the Penalties.<sup>2</sup> And the Department should have a priority claim for all amounts due and owing. Under Local Rule 66.1 of the United States District Court for the Northern District of Illinois, "the administration of estates by receivers . . . shall be similar to that in bankruptcy case . . ."<sup>3</sup> Section 507(a)(8) of the United States Bankruptcy Code provides that claims for unpaid trust taxes receive priority over general unsecured claims. Thus, if the Department has a valid claim for the Penalties, that claim should be a priority claim in the receivership.

### **ERROR 2**

13. The Department's assessments should be reversed for the independent reason that Mr. Penna is not a responsible officer under the governing statutes. Specifically, he was not an officer responsible for filing the returns and making payment for any taxes, including Illinois taxes. *See, e.g.*, 35 ILCS 735/3-7(a) (defining responsible officer as the officer or employee "who has the control, supervision, or responsibility of filing returns and making payment of the

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<sup>2</sup> Indeed, on information and belief, to date, the receiver has liquidated over \$680 million in commodity positions and currently possesses millions of dollars, assets amply sufficient to pay the Penalties.

<sup>3</sup> The United States District Court for the Northern District of Illinois appointed the receiver in matter styled *Commodity Futures Trading Commission v. AlphaMetrix, LLC, et al.*, No. 14-2472 and maintains jurisdiction over the administration of the receivership estate.

amount of any trust tax imposed . . . .”). Mr. Penna’s duties related to the development and implementation of AMG’s plan of strategic growth and business development. He was not responsible for preparing the company’s tax returns, filing them, or paying any tax due and owing. That was the responsibility of the Chief Operating Officer, to whom AMG’s CFO and accounting department reported. While Mr. Penna was employed at AMG and owned only a minority interest in AMG at all relevant times, these facts alone are insufficient to render him a responsible officer under the relevant statutes. *See, e.g., Cerone v. State of Ill.*, 2012 IL App (1st) 110214 (June 26, 2012) (noting that even a majority interest ownership interest by itself is not sufficient to hold an officer personally liable under the statute). Thus, Mr. Penna is not a responsible officer, and the Assessment should be vacated for this reason alone.

### **ERROR 3**

14. The Penalties must also be abated because Mr. Penna did not willfully fail to file the returns, pay the taxes, or otherwise evade the taxes that underlie the Penalties because he reasonably relied on AMG’s COO, CFO, its corporate accounting department, its third-party accountants (Arthur Bell), and its third-party payroll services provider (ADP) to ensure that the company’s returns were filed and its taxes were paid. Mr. Penna did not know the COO, CFO, corporate accounting department, Arthur Bell, and/or ADP failed to pay any taxes due and owing. Thus, no grounds exist to find Mr. Penna acted willfully under the relevant statutes. *See, e.g., Branson v. Dep’t of Revenue*, 168 Ill. 2d 247, 266-67 (1995) (affirming finding of no willfulness during period in which the taxpayer corporation’s bookkeeper was charged with paying bills and filing returns); *Estate of Young v. Dep’t of Revenue*, 316 Ill. App. 3d 366, 376-77 (1st Dist. 2000) (when there is a system in place for paying taxes, reliance on that system is reasonable when the taxpayer company is not “in serious financial difficulty”); *Dep’t of Revenue*

*v. Marion Sopko, Inc.*, 84 Ill. App. 3d 953, 956 (2d Dist.1980) (evidence of willfulness insufficient where corporate officer directed accountant to pay taxes stated in notice of deficiency and was not aware that accountant had underreported sales receipts).

**ERROR 4**

15. On information and belief, some portion of the tax allegedly owed by AMG that underlies the Penalties refers or relates to a tax owed by AMG for goods purchased for its own use, rather than a tax that was or should have been collected or withheld by AMG from another person.

16. To the extent the Penalties are imposed for a tax owed by AMG for goods purchased for its own use, the Penalties are imposed in violation of 35 ILCS 735/3-7(f). The statute expressly provides that an officer or employee of a taxpayer may only be found liable for a “trust tax,” which the statute defines as an amount “collected or withheld by a taxpayer from another person,” or for which “an amount is required to be collected or withheld by a taxpayer from another person.”

**ERROR 5**

17. Additionally, Mr. Penna is not subject to the Penalties to the extent that the tax liability underlying the Penalties has been paid by AMG and to the extent that the Department issued the Notices outside of the applicable statute of limitations period. *See* 35 ILCS 735/3-7(a); 35 ILCS 735/3-7(c).

**ERROR 6**

18. On information and belief, AMG does not owe the tax liability underlying the Penalties.

19. Therefore the Penalties should be abated.

20. Mr. Penna reserves the right to supplement his Petition with additional errors in the event that he receives the Notices and as he learns additional relevant facts.

**CONCLUSION AND RELIEF REQUESTED**

WHEREAS, Mr. Penna requests that the Notices be canceled and/or modified for the reasons contained herein and grant any other relief the Tribunal deems just.

Charles G. Penna

By: Mary Kay M. Martire  
One of the Petitioner's Attorneys

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lferrante@mwe.com

# **EXHIBIT A**

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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|--|---|------------|
| <b>Aleksis Kins,</b>                   | ) |            |
|  | ) |            |
| <b>Petitioner,</b>                     | ) |            |
|  | ) |            |
| <b>v.</b>                              | ) | <b>No.</b> |
|  | ) |            |
| <b>Illinois Department of Revenue,</b> | ) |            |
|  | ) |            |
| <b>Respondent.</b>                     | ) |            |

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**PETITION**

Aleksis Kins hereby petitions the Illinois Independent Tax Tribunal (“Tribunal”) to review and reverse and/or modify one or more Assessments issued by the Illinois Department of Revenue (“Department”) that purportedly hold Mr. Kins personally liable for the alleged unpaid tax liability of AMG Group, LLC (“AMG”) for one or more periods (“Periods at Issue”). On information and belief, the Assessments have been issued to but not received by Mr. Kins. In support of his Petition, Mr. Kins states as follows:

**BACKGROUND FACTS**

1. On June 11, 2014, the Department issued a Notice of Intent to Mr. Kins for the periods ending June 30, 2009 and May 31, 2012, notifying him that he had been identified as a responsible officer of AMG and that under Illinois law the Department may hold him personally liable for the alleged unpaid tax liability of AMG. The Notice of Intent contains separate pages identifying \$74,174.06 as the current amount that the Department is pursuing against AMG, composed of \$46,851.00 in Illinois sales/use tax and E911 surcharge, \$15,684.00 in penalties and \$11,639.06 in interest. A copy of the Notice of Intent is attached as Exhibit A to this Petition.

2. On October 23, 2014, the Department issued an Assessment and Notice of Intent to another allegedly responsible officer of AMG, Charles G. Penna, holding Mr. Penna personally liable for the \$25,225.52 AMG allegedly owes the Department for withholding taxes it failed to pay to the Department for the periods ending March 31, June 30, September 30, and December 31, 2011.<sup>1</sup> On the same date, the Department issued a separate Assessment and Notice of Intent to Mr. Penna holding Mr. Penna personally liable for the \$74,749.27 AMG allegedly owes the Department for Illinois sales/use tax and E911 surcharge it failed to pay to the Department for the periods ending June 30, 2009 and May 31, 2012. Mr. Penna is in the process of appealing the Assessments and Notices of Intent referred to in this paragraph to the Tribunal. A copy of Mr. Penna's Petition, which will be filed with the Tribunal by December 22, 2014, is attached as Exhibit B.

3. Based on information and belief and as confirmed by discussions with the Department, the Department has issued, but Mr. Kins has not received, one or more assessments against Mr. Kins similar to the Assessments and Notices of Intent issued to Mr. Penna referred to in paragraph 2. Thus, Mr. Kins petitions the Tribunal, on grounds similar to those set forth in Mr. Penna's Petition, to preserve his right to appeal any assessments issued to him by the Department for a personal liability penalty equal to alleged unpaid tax liability of AMG for the Periods at Issue, including any Assessments that have been or may in the future be issued to Mr. Kins referred to in this paragraph as "Notices," and any personal liability penalty assessed in the Notices as the "Penalties."

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<sup>1</sup> Based on information and belief, Mr. Kins has not received a Notice of Intent seeking to hold him personally liable for AMG's alleged unpaid withholding tax liability.

4. Mr. Kins resides at 424 E. North Water Street, Unit H, Chicago, Illinois 60611. Mr. Kins's telephone number is (312) 925-8287, and his Taxpayer Identification number is XXX-XX-5186.

5. AMG was a Delaware limited liability company, headquartered in Chicago, that primarily, through its wholly-owned subsidiary AlphaMetrix LLC, sponsored a platform through which certain investors could invest in hedge funds and commodity pools managed by third-party investment managers. In late 2013, AMG's business operations were discontinued and a temporary equity receiver was appointed to take control of the business and, among other things, pay and settle claims made by creditors against AMG, including claims made by taxing authorities. On information and belief, the receiver established a procedure through which a creditor, including a taxing authority, may assert a claim against the receivership estate. On information and belief, the Department may still use this procedure to make a claim against AMG for any and all taxes due and owing to the State of Illinois. On information and belief, the AMG receivership estate possesses sufficient funds to pay the total amount of the Penalties.

**Mr. Kins's Role at AMG**

6. Mr. Kins founded AMG in May 2005. From May 2005 until the appointment of the receiver, Mr. Kins continuously served as the manager of AMG. Throughout this period, Mr. Kins owned more than 50% of the equity of AMG.

7. As manager, Mr. Kins was responsible for developing and implementing AMG's strategic growth plan, which consisted primarily of: (a) expanding its wholly-owned subsidiary's technological platform for connecting hedge fund managers and commodity trading advisors with potential investors; and (b) engaging in marketing and other business development practices to attract managers and investors to the subsidiary's platform. Mr. Kins was not directly

responsible for any accounting, treasury, or tax matters, and, specifically, had no responsibility for any aspect of tax compliance, tax return preparation, tax return filing, or tax payment.

8. While Mr. Kins served as manager, AMG had a corporate accounting department. AMG's Chief Financial Officer managed this department and reported directly to its former Chief Operating Officer. Among other responsibilities, the corporate accounting department was responsible for working with AMG's outside accountants to prepare and file the company's tax returns, and to pay any taxes owed. Mr. Kins relied on AMG's COO, CFO and corporate accounting department to ensure that AMG paid all taxes owed.

9. Since the establishment of the receivership, the receiver has controlled AMG's business and possessed exclusive access to AMG's files and accounts. Since her appointment, Mr. Kins could not review, analyze or address in any way, any aspect of AMG's tax compliance, tax return filing, or tax payments.

#### **AMG's Illinois Sales and Use Tax Compliance During the Periods at Issue**

10. During the Periods at Issue, AMG employed an outside, unrelated accounting firm, Arthur Bell Certified Public Accountants ("Arthur Bell"), to prepare and file its Illinois sales and use tax returns. On information and belief, Arthur Bell properly filed the relevant sales and use tax returns, and paid the correct amount owed to the Department for the Periods at Issue.

#### **AMG's Illinois Withholding Tax Compliance During the Periods at Issue**

11. During the Periods at Issue, AMG employed an unrelated third-party payroll services provider, ADP, LLC ("ADP") to manage its payroll, and for the specific purpose of paying its Illinois withholding tax. On information and belief, ADP was responsible for filing the relevant withholding tax returns and paying the correct amount due to the Department for the Periods at Issue.

12. Mr. Kins lacks knowledge as to whether or not the Department ever issued an assessment or took any other actions to recover from AMG the tax, penalty and interest underlying the amount of Penalties assessed in the Notices.

Mr. Kins asserts the following errors related to the Notices:

### **ERRORS**

13. The Department assessed the Penalties against Mr. Kins pursuant to 35 ILCS 735/3-7; 35 ILCS 5/1002(d); and 86. Ill. Admin. Code §§ 100.7370(d), 700.340. However, the Department's Penalties should be abated as improper for three reasons: (1) AMG can pay the underlying owed; (2) Mr. Kins was not an officer or employee responsible for filing the returns and making payment for any taxes; and (3) Mr. Kins did not willfully fail to file the returns, pay the taxes, or otherwise evade the taxes that underlie the Penalties. *See, e.g.*, 35 ILCS 735/3-7 (describing the requirements for imposition of personal liability against an officer or employee for his entity's unpaid trust tax liability).

### **ERROR 1**

14. The Department's attempt to hold Mr. Kins personally liable for AMG's alleged unpaid trust tax is improper because "[o]nly where the corporation has incurred ... tax liability *and is unable to pay such amounts* to the Department of Revenue may personal liability attach ...." *McLean v. Dep't of Revenue*, 326 Ill. App. 3d 667, 673-74 (1st Dist. 2001) (emphasis added); *see also Dep't of Revenue v. Heartland Invs., Inc.*, 106 Ill. 2d 19, 32 (1985) (same). Here, on information and belief, AMG has cash and other liquid assets on hand well in excess of

the Penalties.<sup>2</sup> And the Department should have a priority claim for all amounts due and owing. Under Local Rule 66.1 of the United States District Court for the Northern District of Illinois, “the administration of estates by receivers . . . shall be similar to that in bankruptcy case . . .”<sup>3</sup> Section 507(a)(8) of the United States Bankruptcy Code provides that claims for unpaid trust taxes receive priority over general unsecured claims. Thus, if the Department has a valid claim for the Penalties, that claim should be a priority claim in the receivership.

### **ERROR 2**

15. The Department’s assessments should be reversed for the independent reason that Mr. Kins is not a responsible officer under the governing statutes. Specifically, he was not an officer responsible for filing the returns and making payment for any taxes, including Illinois taxes. *See, e.g.,* 35 ILCS 735/3-7(a) (defining responsible officer as the officer or employee “who has the control, supervision, or responsibility of filing returns and making payment of the amount of any trust tax imposed . . .”). Mr. Kins’s duties related to the development and implementation of AMG’s plan of strategic growth and business development. He was not responsible for preparing the company’s tax returns, filing them, or paying any tax due and owing. That was the responsibility of the Chief Operating Officer, to whom AMG’s CFO and accounting department reported. While Mr. Kins was the manager and owned a majority interest in AMG at all relevant times, these facts alone are insufficient to render him a responsible officer under the relevant statutes. *See, e.g., Cerone v. State of Ill.*, 2012 IL App (1st) 110214 (June 26,

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<sup>2</sup> Indeed, on information and belief, to date, the receiver has liquidated over \$680 million in commodity positions and currently possesses millions of dollars, assets amply sufficient to pay the Penalties.

<sup>3</sup> The United States District Court for the Northern District of Illinois appointed the receiver in matter styled *Commodity Futures Trading Commission v. AlphaMetrix, LLC, et al.*, No. 14-2472 and maintains jurisdiction over the administration of the receivership estate.

2012) (noting that a majority ownership interest by itself is not sufficient to hold an officer personally liable under the statute). Thus, Mr. Kins is not a responsible officer, and the Assessment should be vacated for this reason alone.

### **ERROR 3**

16. The Penalties must also be abated because Mr. Kins did not willfully fail to file the returns, pay the taxes, or otherwise evade the taxes that underlie the Penalties because he reasonably relied on AMG's COO, CFO, its corporate accounting department, its third-party accountants (Arthur Bell), and its third-party payroll services provider (ADP) to ensure that the company's returns were filed and its taxes were paid. Mr. Kins did not know the COO, CFO, corporate accounting department, Arthur Bell, and/or ADP failed to pay any taxes due and owing. Thus, no grounds exist to find Mr. Kins acted willfully under the relevant statutes. *See, e.g., Branson v. Dep't of Revenue*, 168 Ill. 2d 247, 266-67 (1995) (affirming finding of no willfulness during period in which the taxpayer corporation's bookkeeper was charged with paying bills and filing returns); *Estate of Young v. Dep't of Revenue*, 316 Ill. App. 3d 366, 376-77 (1st Dist. 2000) (when there is a system in place for paying taxes, reliance on that system is reasonable when the taxpayer company is not "in serious financial difficulty"); *Dep't of Revenue v. Marion Sopko, Inc.*, 84 Ill. App. 3d 953, 956 (2d Dist. 1980) (evidence of willfulness insufficient where corporate officer directed accountant to pay taxes stated in notice of deficiency and was not aware that accountant had underreported sales receipts).

### **ERROR 4**

17. On information and belief, some portion of the tax allegedly owed by AMG that underlies the Penalties refers or relates to a tax owed by AMG for goods purchased for its own use, rather than a tax that was or should have been collected or withheld by AMG from another person.

18. To the extent the Penalties are imposed for a tax owed by AMG for goods purchased for its own use, the Penalties are imposed in violation of 35 ILCS 735/3-7(f). The statute expressly provides that an officer or employee of a taxpayer may only be found liable for a “trust tax,” which the statute defines as an amount “collected or withheld by a taxpayer from another person,” or for which “an amount is required to be collected or withheld by a taxpayer from another person.”

**ERROR 5**

19. Additionally, Mr. Kins is not subject to the Penalties to the extent that the tax liability underlying the Penalties has been paid by AMG and to the extent that the Department issued the Notices outside of the applicable statute of limitations period. *See* 35 ILCS 735/3-7(a); 35 ILCS 735/3-7(c).

**ERROR 6**

20. On information and belief, AMG does not owe the tax liability underlying the Penalties.

21. Therefore the Penalties should be abated.

22. Mr. Kins reserves the right to supplement his Petition with additional errors in the event that he receives the Notices and as he learns additional relevant facts.

**CONCLUSION AND RELIEF REQUESTED**

WHEREAS, Mr. Kins requests that the Notices be canceled and/or modified for the reasons contained herein and grant any other relief the Tribunal deems just, including but not limited to providing Mr. Kins with immediate access to any Notices or Assessments that may have been issued by the Department to Mr. Kins.

Aleksis Kins

By: Mary Kay Martire  
One of the Petitioner's Attorneys

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DM\_US 57596305-2.094765.0011

# **EXHIBIT B**

**Collection Action**  
**Assessment and Notice of Intent**



October 23, 2014



Letter ID: L1402142432

CHARLES G. PENNA  
747 N WABASH APT NO 1003 APT 1003  
CHICAGO IL 60611

Taxpayer ID: XXX-XX-9455  
1002D Penalty ID: 1141090

ALPHAMETRIX GROUP LLC  
1 N WACKER DR  
# 4400  
CHICAGO IL 60606-2841

**We have determined you are personally liable  
for a penalty of \$25,225.52.**

The penalty is equal to the amount of unpaid liability of ALPHAMETRIX GROUP LLC, due to your status as a responsible officer, partner, or individual of ALPHAMETRIX GROUP LLC.

Illinois law (35 ILCS 5/1002(d)) 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 \$25,225.52** 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 **December 22, 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.

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

217 782-9904 ext. 31606  
217 785-2635 fax

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

Turn page

**Collection Action**  
**Assessment and Notice of Intent**



October 23, 2014



Letter ID: L1402142432

CHARLES G. PENNA  
747 N WABASH APT NO 1003 APT 1003  
CHICAGO IL 60611

Taxpayer ID: XXX-XX-9455  
1002D Penalty ID: 1141090

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.

**IL Withholding Income Tax**

Account ID: 38-3726364-000

| Period      | Tax       | Penalty  | Interest | Other | Payments/Credits | Balance  |
|-------------|-----------|----------|----------|-------|------------------|----------|
| 31-Mar-2011 | 91,144.95 | 6,676.22 | -        | -     | (92,885.16)      | 4,936.01 |
| 30-Jun-2011 | 90,021.97 | 6,795.48 | 2.56     | -     | (90,021.97)      | 6,798.02 |
| 30-Sep-2011 | 96,315.58 | 7,100.38 | 147.63   | -     | (96,315.58)      | 7,248.01 |
| 31-Dec-2011 | 98,233.12 | 6,115.26 | 128.22   | -     | (88,233.12)      | 6,243.48 |

DOR-EP-NPL-N-13-071

Retain this portion for your records

Fold and detach on perforation. Return bottom portion with your payment.

**Collection Action**

(R-12/06) (136)



Letter ID: L1402142432  
CHARLES G. PENNA

Total amount due: \$25,225.52

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.

000 006 003128578723 731 123199 8 0000002522552

**Collection Action**  
**Assessment and Notice of Intent**



October 23, 2014



Letter ID: L0272098272

CHARLES G. PENNA  
747 N WABASH APT NO 1003 APT 1003  
CHICAGO IL 60611

Taxpayer ID: XXX-XX-9455  
NPL Penalty ID: 1800887

ALPHAMETRIX GROUP LLC  
1 N WACKER DR  
# 4400  
CHICAGO IL 60606-2841

**We have determined you are personally liable  
for a penalty of \$74,949.27.**

The penalty is equal to the amount of unpaid liability of ALPHAMETRIX GROUP LLC, due to your status as a responsible officer, partner, or individual of ALPHAMETRIX GROUP 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 \$74,949.27.** Your payment must be guaranteed (e.g. 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 December 22, 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.

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

217 732-9904 ext. 31606  
217 785-2635 fax

**For information about**

- › how to pay
- › submitting proof
- › collection actions

Turn page →

**Collection Action**  
**Assessment and Notice of Intent**



October 23, 2014



Letter ID: L0272098272

CHARLES G PENNA  
747 N WABASH APT NO 1003 APT 1003  
CHICAGO IL 60611

Taxpayer ID: XXX-XX-9455  
NPL Penalty ID: 1800887

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: 4082-4071

| Period      | Tax       | Penalty   | Interest  | Other | Payments/Credits | Balance   |
|-------------|-----------|-----------|-----------|-------|------------------|-----------|
| 30-Jun-2009 | 23,536.00 | 10,455.00 | 10,075.22 | -     | -                | 44,066.22 |
| 31-May-2012 | 23,315.00 | 5,229.00  | 2,339.35  | -     | -                | 30,883.05 |

DOR-SP-NPL-IN-03-07

Please print this document for your records.

Fold and detach on perforation. Return bottom portion with your payment.

**Collection Action**

PAID 03 108



Letter ID: L0272098272  
CHARLES G. PENNA

**Total amount due: \$74,949.27**

Write the amount you are paying below

Mail this voucher and your payment to:  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19035  
SPRINGFIELD IL 62734-9035

\$ \_\_\_\_\_  
Write your Account ID on your check.

000 006 008744800164 731 123199 5 0000007494927