

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

INSIGHT DIRECT USA INC.,)	
Petitioner)	
)	
)	No. 15-TT-39
)	
v.)	Chief Judge James M. Conway
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

VERIFIED ANSWER OF THE ILLINOIS DEPARTMENT OF REVENUE

Respondent, Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Petitioner’s Petition (the “Petition”) as follows:

A. Jurisdiction and Venue

1. This timely petition involves two Notices of Tax Liability (“NTLs”) each of which assess an amount in excess of \$15,000.00 in tax, penalty and interest under a tax law identified in Section 1-45 of the Tax Tribunal Act; therefore, the Tax Tribunal has jurisdiction over this petition.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 2 and 3 and states such documents speak for themselves.

2. Insight Direct accepts the Tax Tribunal’s designation of its office in Cook County as the venue in which to conduct the hearing in this matter.

ANSWER: The Department admits the allegations contained in paragraph 2.

B. The Parties

1. Plaintiff, Insight Direct USA Inc.

3. Insight Direct is a corporation maintaining its principal office at 6820 South Harl Avenue, Tempe, Arizona 85283-4318.

ANSWER: The Department denies that Insight Direct USA, Inc. maintains its principal office at 6820 South Harl Avenue, Tempe, Arizona, 85283-4318.

4. Insight Enterprises, Inc. is a leading global information technology (“IT”) provider of hardware, software and service solutions to business and public sector institutions in North America, Europe, the Middle East, Africa and Asia-Pacific.

ANSWER: The Department admits the allegations contained in paragraph 4.

5. Insight Direct is an indirect subsidiary of Insight Enterprises, Inc.

ANSWER: The Department denies the term “indirect” as vague and ambiguous and denies that term on this basis. The Department otherwise admits the allegations contained in paragraph 5.

6. Insight Direct provides integrated IT solutions to its clients through its extensive hardware, software and service offerings and efficient supply chain combined with highly skilled technology specialists and engineers with expertise in complex solutions such as data center, collaboration, application integration and migration, security, virtualization and cloud.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 6 and therefore neither admits or denies the allegations.

7. Insight Direct is authorized by the Illinois Secretary of State to transact business in Illinois, and has been so authorized since April 19, 1994.

ANSWER: The Department admits the factual allegations contained within Paragraph 7.

8. Insight Direct is registered to collect and remit, respectively, the taxes imposed on purchasers and retailers of tangible personal property by the Illinois Use Tax Act (the

“UTA”), 35 ILCS 105/1 *et seq.*, and the Illinois Retailers’ Occupation Tax Act (the “ROTA”), 35 ILCS 120/1 *et seq.*, collectively referred to in their operation as the “Sales Tax”.

ANSWER: The Department admits the allegations contained in paragraph 8.

2. Defendant, the Illinois Department of Revenue.

9. The Department is charged by law with administering the revenue laws of the State of Illinois, including the ROTA and the UTA. 25 ILCS 2505-25; 20 ILCS 2505-90.

ANSWER: The Department denies that the proper citation is 25 ILCS 2505-25, as it should likely be 20 ILCS 2505-25. Otherwise, the Department admits the allegations contained in paragraph 9.

10. The Department is an agency of the Executive Department of the government of this State. 20 ILCS 5/5-15.

ANSWER: The Department admits the allegations contained in paragraph 10.

C. Applicable Laws

1. The Retailers’ Occupation Tax Act

(a) Returns and Payment

11. The ROTA imposes a tax on persons engaged in the occupation of selling tangible personal property at retail in Illinois (“retailers”).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 11 and states such provision speaks for itself.

12. The Retailers Occupation Tax (the “ROT”) is imposed on the retailers’ gross receipts from a taxable retail sale.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 12 and states such provision speaks for itself.

13. Section 3 of the ROTA, in pertinent part, provides that “every person engaged in the business of selling tangible personal property at retail in this State during the preceding calendar month shall file a return with the Department” reporting, among other information, the total receipts from sales of tangible personal property, the total deductions therefrom allowed by law, the total taxable receipts, and the amount of tax due with the return, and providing for the imposition of penalties and interest for failures to report and pay tax as required therein. 35 ILCS 120/3.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 13 and states such provision speaks for itself.

14. Section 5 of the ROTA, in pertinent part, reads as follows:

. . . In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by this Act but fails to pay the tax, or any part thereof, when due, a penalty in an amount determined in accordance with Section 3-3 of the Uniform Penalty and Interest Act shall be added thereto. . .

* * *

. . . In addition to any penalty provided for in this Act, any amount of tax which is ***not paid when due*** shall bear interest at the rate and in the manner specified in Sections 3-2 and 3-9 of the Uniform and Penalty Interest Act ***from the date when such tax becomes past due until such tax is paid or a judgment therefor is obtained*** by the Department. . .

35 ILCS 120/5 (emphasis added).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 14 and states such provision speaks for itself.

(b) Sale at Retail and Resale

15. For purposes of the ROTA, “sale at retail” is defined by Section 1 of the ROTA as “any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale . . .”

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 15 and states such provision speaks for itself.

16. At all times relevant hereto, excluded from the scope of a “sale at retail” were gross receipts from the independently and separately contracted and invoiced sale of shipping services by a retailer, specified as follows in the Department’s ROTA regulations:

(b) The answer to the question of whether or not a seller, in computing his Retailers’ Occupation Tax liability, may deduct, from his gross receipts from sales of tangible personal property at retail, amounts charged by him to his customers on account of his payment of transportation or delivery charges in order to secure delivery of the property to such customers, or on account of his incurrance of expense in making such delivery himself, depends not upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price. In addition, charges for transportation and delivery must not exceed the costs of transportation or delivery. If those charges do exceed the cost of delivery or transportation, the excess amount is subject to tax.

* * *

(d) If the seller and the buyer agree upon the transportation and delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the “selling price” of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers’ Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. . . The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking

delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

86 Ill. Admin. Code § 130.415(b) and (d).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 16 and states such regulation speaks for itself.

17. Section 2(c) of the ROTA, in pertinent part, provides that:

. . . Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sale for resale, or that a particular sale is a sale for resale.

35 ILCS 120/2(c).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 17 and states such provision speaks for itself.

2. The Use Tax Act

18. The UTA imposes a tax on a purchaser of tangible personal property for use or consumption, and not for resale, from a retailer, the Use Tax (the "UT"). 35 ILCS 105/1 *et seq.*

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 18 and states such provision speaks for itself.

19. The UT is imposed on the purchase price of a taxable retail purchase.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 19 and states such provision speaks for itself.

20. Section 12 of the UTA incorporates by reference as though fully set forth in the UTA the above described sections of the ROTA, along with other specified sections of the ROTA. 35 ILCS 105/12.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 20 and states such provision speaks for itself.

3. The Tax Delinquency Amnesty Act

21. From October 1, 2010 through November 8, 2010, the Department administered a second “amnesty program” authorized by the General Assembly in Public Act 96-1435.

ANSWER: The Department admits the factual allegations contained within Paragraph 21.

22. Public Act 96-1435 amended the Tax Delinquency Amnesty Act (the “TDAA”) [35 ILCS 745/1 *et seq.*]. Section 10, as amended, in pertinent part, provides as follows:

Sec. 10. Amnesty Program. The Department shall establish an amnesty program for all taxpayers owing any tax imposed by reason of or pursuant to authorization by any law of the State of Illinois and collected by the Department.

The amnesty program shall be for a period from October 1, 2003 through November 15, 2003 and for a period beginning on October 1, 2010 and ending November 8, 2010.

The amnesty program shall provide that, upon payment by a taxpayer of all taxes due from that taxpayer to the State of Illinois for any taxable period ending (i) after June 30, 1983 and prior to July 1, 2002 for the tax amnesty period occurring from October 1, 2003 through November 15, 2003, and (ii) after June 30, 2002 and prior to July 1, 2009 for the tax amnesty period beginning on October 1, 2010 through November 8, 2010, the Department shall abate and not seek to collect any interest or penalties that may be applicable and the Department shall not seek civil or criminal prosecution for any taxpayer for the period of time for which amnesty has been granted to the taxpayer. Failure to pay all taxes due to the State for a taxable period shall invalidate any amnesty granted under this Act. Amnesty shall be granted only if all amnesty conditions are satisfied by the taxpayer.

Amnesty shall not be granted to taxpayers who are a party to any criminal investigation or to any civil or criminal litigation that is pending in any circuit court or appellate court or the Supreme Court of this State for nonpayment, delinquency, or fraud in relation to any State tax imposed by any law of the State of Illinois.

* * *

The Department shall adopt rules as necessary to implement the provision of this Act.

35 ILCS 745/10.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 22 and states such provision speaks for itself.

23. The Department promulgated regulations to administer the TDAA. 86 Ill. Admin. Code. § 520.101 *et seq.*

ANSWER: The Department admits the allegations contained in paragraph 23.

24. Section 520.101(a) of the Regulations provided that “As more fully described in Section 520.105, the Amnesty Program will apply to payments of contested and uncontested tax liabilities received by the Department from October 1, 2010 through November 8, 2010.”

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 24 and states such regulation speaks for itself.

25. Section 520.101(b) of the Department’s Regulations provides as follows:

(b) Definitions and special provisions. For purposes of this Part:

(1) “200% Sanction” means the doubling of the rates of penalty and interest imposed on a taxpayer with an Eligible Liability who fails to participate in the Amnesty Program. See UPIA Sections 3-2(g), 3-3(j), 3-4(e), 3-5(e), 3-6(d), and 3-7.5(c). The 200% Sanction does not apply to:

(A) a liability that results from a Federal Change, if the Federal Change is not final as of the end of the Amnesty Program Period. . .

* * *

- (4) “Eligible Liability” means a tax liability with respect to which a taxpayer may participate in the Amnesty Program. See subsections (h) and (i) of Section 520.105.
- (5) “Established Liability” means an Eligible Liability that has been assessed or become final prior to the beginning of the Amnesty Program Period; any amount paid under the Protest Act prior to the beginning of the Amnesty Program Period; or any *amount of tax shown on a* notice of deficiency, notice of assessment or *notice of tax liability that was issued prior to the beginning of the Amnesty Program Period* or on an amended return or waiver of restrictions on assessment presented by the Department to the taxpayer prior to the beginning of the Amnesty Program Period *after the conclusion of an audit* (including any proceedings before the Informal Conference Board).

* * *

- (8) “Notice and Demand” means any demand for payment issued by the Department that is eligible for the 30-day interest-free grace period under UPIA Section 3-2(c-5). . .

86 Ill. Admin. Code §520.101(b)(1)(A), (4), (5) and (8) (emphasis added).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 25 and states such provision speaks for itself.

26. Section 520.105(b) of the Department’s Regulations provides, in pertinent part, as follows:

- (b) Participation in the Amnesty Program.
 - (1) A taxpayer may participate in the Amnesty Program selectively, provided that the taxpayer completely satisfies its Eligible Liability for the tax type and tax period for which amnesty is sought. Thus, a taxpayer may participate in the Amnesty Program with respect to:

- (A) particular types of tax liability, but not others (e.g., Illinois Income Tax, but not Illinois Retailers Occupation Tax), or
 - (B) particular tax periods but not others (e.g., 2003 Illinois Income Tax but not 2004 Illinois Income Tax). . .
- (2) Except as otherwise expressly provided in this Section:
- (A) In the case of an Eligible Liability that has been assessed or has otherwise become subject to collection action by the Department, the taxpayer participates in the Amnesty Program by paying the Eligible Liability during the Amnesty Program Period.
 - (B) In the case of an Eligible Liability that has not been assessed or otherwise become subject to collection action by the Department, the taxpayer participates in the Amnesty Program by filing the appropriate return or amended tax return to report the Eligible Liability and making payment of the Eligible Liability to the Department during the Amnesty Program Period. . .

86 Ill. Admin. Code §520.105(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 26 and states such regulation speaks for itself.

27. Section 520.105(f) of the Department's Regulations provides, in pertinent part, as follows:

- (f) Matters Under Audit or Pending Before the Informal Conference Board. A tax liability under Audit (including audits under review before the Informal Conference Board) is eligible for the Amnesty Program.
 - (1) After an audit has been concluded, by the issuance of an amended return or waiver of restrictions on assessment that becomes final prior to the beginning of the Amnesty Program Period, the liability determined by the Department is an Established Liability so that failure to pay the full

amount of the Eligible Liability during the Amnesty Program Period will subject the taxpayer to the 200% sanction on the entire liability under subsection (j)(2) and no refund with respect to an Amnesty Issue will be allowed.

- (2) Prior to the issuance of an amended return or waiver of restrictions on assessment after the conclusion of an audit, a taxpayer may participate in the Amnesty Program by reporting the amount of Eligible Liability that it estimates will result from the audit on an original or amended return, and paying that amount during the Amnesty Program Period. The Department will continue with the audit (including any proceedings before the Informal Conference Board) in the same manner as if no amnesty payment had been made, except that the interest and penalties related to the amnesty payment will be abated.
- (3) Examples. The principles of participating in the Amnesty Program for an Eligible Liability that is currently under audit may be illustrated as follows:
 - (A) **EXAMPLE 1.** As of the beginning of the Amnesty Program Period, the Department is auditing Taxpayer for occupation and use taxes due for the periods July 1, 2005 through June 30, 2007. The audit will not be completed before the end of the Amnesty Program Period. *After consulting with the Department's auditor*, Taxpayer estimates that it owes an additional Use Tax obligation of \$300 for each of the months of July, August and September of 2006. . .

86 Ill. Admin. Code §520.105(f) (emphasis added).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 27 and states such regulation speaks for itself.

28. Section 520.105(m) of the Department's Regulations provides, in pertinent part, as follows:

- (m) Reasonable Cause.

- (1) Nothing in the ITDAA or this Section is intended to change the meaning of “reasonable cause” as that term is used in the Uniform Penalty and Interest Act [35 ILCS 735/3-8]. Taxpayers needing clarification of “reasonable cause” should consult 86 Ill. Adm. Code 700.400.
- (2) A taxpayer who would be entitled to abatement of a penalty due to “reasonable cause” for its delinquency remains entitled to abatement of that penalty even if it failed to participate in the Amnesty Program with respect to any unpaid liability associated with that penalty.
- (3) A taxpayer who has “reasonable cause” for its failure to participate in the Amnesty Program with respect to an Eligible Liability will remain subject to any penalties otherwise applicable to that liability, but not to the doubled rates for the penalties that would otherwise apply. “Reasonable cause” abatement under Section 3-8 of the Uniform Penalty and Interest Act does not apply to interest, so any underpayment interest on the Eligible Liability will accrue at doubled rates even in the taxpayer had reasonable cause for failing to participate in the amnesty. . . Failure of the Department to notify a taxpayer of its eligibility to participate in the Amnesty program or of the correct amount of its Eligible Liability does not constitute reasonable cause for the taxpayer’s failure to participate in the Amnesty Program.

86 Ill. Admin. Code §520.105(m).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 28 and states such regulation speaks for itself.

4. The Uniform Penalty and Interest Act

29. Section 3-2(c-5) of the Uniform Penalty and Interest Act (the “UPIA”) provides that:

This subsection (c-5) is applicable to returns due on and after January 1, 2001. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

35 ILCS 735/3-2(c-5).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 29 and states such provision speaks for itself.

30. The TDAA, as amended by Public Act 96-1435, amended the UPIA to provide as follows in Section 3-2(g) thereof:

Sec. 3-2. Interest

* * *

(g) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the interest charged by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

35 ILCS 735/3-2(g).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 30 and states such provision speaks for itself.

31. Further, Section 3-3(j) of the UPIA provides as follows:

Sec. 3-3. Penalty for failure to file or pay

* * *

(j) If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act, except for any tax liability reported pursuant to Section 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that is not final, and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

35 ILCS 735/3-3(j).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 31 and states such provision speaks for itself.

D. Facts Common to all Counts

1. The Returns, Audit & Related Litigation

(a) Insight Direct's Sales Tax Returns

32. The ST-1 is the designation given by the Illinois Department of Revenue to the monthly sales tax return required to be filed by retailers registered under the Retailers' Occupation Tax Act and the Use Tax Act.

ANSWER: The Department admits the factual allegations contained within Paragraph 32.

33. Insight Direct timely filed and made payment of the amounts reported as tax due therein on all its Forms ST-1, Sales and Use Tax Returns, for all relevant tax periods.

ANSWER: The Department admits that Petitioner timely filed and paid the amount of sales tax indicated due on all its Forms ST-1 for the relevant period.

(b) The Department's Sales Tax Audit

34. Section 4 of the ROTA, in pertinent part, provides:

Sec. 4. As soon as practicable after a return is filed, the Department shall examine such return and shall, if necessary, correct such return according to its best judgment and information. . .

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 34 and states such provision speaks for itself.

35. Section 5 of the ROTA provides:

If the time for making or completing an audit of a taxpayer's books and records is extended with the consent of the taxpayer, *at the request of and for the convenience of the Department*, beyond the date on which the statute of limitations upon the issuance of a notice of tax liability by the Department

otherwise would run, *no interest shall accrue during the period of such extension or until a Notice of Tax Liability is issued*, whichever occurs first.

35 ILCS 120/5 (emphasis added).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 35 and states such provision speaks for itself.

36. On August 24, 2009, the Department commenced its audit regarding Insight Direct's taxable periods July 2006 through June 2009.

ANSWER: The Department admits that its Audit Initiation Letter was dated August 24, 2009 but otherwise denies that the audit began on that date.

37. At no time since the commencement of the audit by the Department did Insight Direct fail to respond to an information or document request from the Department.

ANSWER: The Department denies the allegations contained in paragraph 37.

38. During the Audit, the Department's Auditor was at one point instructed by Audit Management not to communicate with the Taxpayer for a period of time.

ANSWER: The Department denies the allegations contained in paragraph 38.

39. Insight Direct did not request an extension of the statute of limitations.

ANSWER: The Department denies the allegations contained in paragraph 39. The Department further affirmatively states that Insight Direct executed no less than ten separate statute of limitations waivers, all of which indicated, by a checkbox, that the waivers were done for the convenience of the Petitioner, Insight Direct.

40. On October 24, 2014, more than five years after the Audit began, the Department issued a Notice of Proposed Tax Liability in the total tax, penalty and interest deficiency combined amount of \$24,032,231.00, for the tax periods from July 2006 through June 2009, and including the tax periods outside the initial scope of the audit of July 2009

through September 2012 (the “Deficiency”). A copy of Notice of Proposed Tax Liability is attached hereto as Exhibit 1.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 1 and referred to in paragraph 40 and states that such document speaks for itself. The remaining allegations are not material allegations of fact and as such require no answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

41. On December 22, 2014, more than five years after the Department’s audit had commenced, the Department issued two Notices of Tax Liability to Insight Direct (the “NTLs”). The first Notice of Tax Liability was issued regarding the tax periods July 01, 2006 through June 30, 2009 (the tax periods under audit) and assessed total tax, penalty and interest in a combined deficiency amount of \$12,823,096.90. A copy of the first Notice of Tax Liability is attached hereto as **Exhibit 2**. The second Notice of Tax Liability was issued regarding the tax periods July 01, 2009 through September 30, 2012 and assessed total tax, penalty and interest in a combined deficiency amount of \$12,489,687.05. A copy of the second Notice of Tax Liability is attached hereto as **Exhibit 3**. In the Notices of Tax Liability, the Department gave no indication or explanation as to the reasoning for the increased tax or penalties.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 2 and 3 referred to in paragraph 41 and states that such documents speak for themselves. The remaining allegations are not material allegations of fact and as such require no answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

42. On information and belief, the liabilities proposed resulted from the Department’s adjustments of Insight Direct’s reported sales tax, including among others:
- (i) to include in taxable amounts the shipping amounts charged by Insight Direct to its customers and excluded from its ST-1 returns pursuant to Regulation Section 130.415(d);

- (ii) to include in taxable amounts any profits included in shipping and handling charges to Insight Direct's customers excluded from its ST-1 returns pursuant to Regulation Section 130.415(d);
- (iii) to disallow credits (*i.e.*, lack of validation, out of statute, etc.) to which Insight Direct was entitled, and to then project an error rate, calculated from that credit disallowance, across the tax periods July 2006 through September 2012;
- (iv) to project an average error rate, which was based on results from a review of Strata 2 and 4 sample populations, over Strata 1 and 3 sample populations, thus disregarding the fact that Strata 1 and 3 sample populations would have unique error rates different than the Strata 2 and 4 populations and resulting in a much larger liability, than if the Department's Auditor would have correctly reviewed the Strata 2 and 4 populations;
- (v) to use an average monthly liability rate for both taxable and non-taxable sales that was based on results from the Department's Audit of Insight Direct's tax periods July 2006 through June 2009 to calculate the tax liability for Insight Direct's tax periods July 2009 through September 2012, without reviewing the actual books or records for Insight Direct's tax periods July 2009 through September 2012;
- (vi) to disallow exempt sales, which included sales for resale – Insight Direct's customers represented that purchases were made for resale and Insight Direct documented such resale purchases with the evidence provided to claim the exemption by its purchasers;
- (vii) to include sales of (a) SMARTnet hardware maintenance agreements, and (b) hardware and software agreements sold on behalf of third-party service providers, which sales are not taxable to Insight Direct;

- (viii) to include sales of client-owned inventory that was temporarily stored in Illinois and subsequently shipped out of Illinois for use exclusively outside Illinois; and
- (ix) to disallow exempt resale items because the Department's Auditor determined the items to be leases, however, pursuant to Illinois law such items were sales.

ANSWER: Based on a lack of books and records, the auditor used his best information and judgment based on the documentation available. The Department incorporates its answers to paragraph 42 below, in response to the first sentence of paragraph 42.

- (i) **ANSWER:** Paragraph 42(i) is not a material allegation of fact. The Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).
- (ii) **ANSWER:** Paragraph 42(ii) is not a material allegation of fact. The Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).
- (iii) **ANSWER:** The Department admits that it denied certain credits on Insight Direct's sales tax returns and further admits that it projected the results from its denial of the credits to the entire tax period, but otherwise denies that Insight Direct was entitled to the credits.
- (iv) **ANSWER:** The Department admits that its auditor employed statistical sampling in its audit but otherwise denies the allegations as not allegations of material fact but legal conclusions. The Department further affirmatively states that such statistical sampling methodology was necessary because Petitioner was unable or unwilling to provide or make available to the Department's auditor the books and records he repeatedly requested and that are required by law. See 86 Ill.Adm.Code §§ 130.801, 130.805.
- (v) **ANSWER:** The Department admits that its auditor employed statistical sampling in its audit but otherwise denies the allegations as not allegations of material fact but legal conclusions. The Department further affirmatively states that such statistical sampling was necessary because Petitioner was unable or unwilling to provide or make available to the Department's auditor with the books and records he repeatedly requested and that are required by law. See 86 Ill.Adm.Code §§ 130.801, 130.805.

- (vi) **ANSWER:** The Department admits that it disallowed certain sales that Petitioner claimed as exempt but otherwise denies the remaining allegations as legal conclusions, not material allegations of fact.
- (vii) **ANSWER:** Although subparagraph (vii) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (vii). The Department further affirmatively states that due to a lack of documentation stating otherwise, the Petitioner was deemed to be a primary serviceman, and it was presumed that that the cost price to servicemen of property transferred to it was fifty percent under the circumstance, as described in the audit file. See 86 Ill. Admin. Code §§ 140.145; 140.301(a).
- (viii) **ANSWER:** Although subparagraph (viii) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (viii).
- (ix) **ANSWER:** Although subparagraph (ix) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (ix). The Department further affirmatively states that Petitioner did not provide adequate supporting documentation to show that such items were properly exempt as resale items. See 86 Ill. Admin. Code 130.1405.

43. On information and belief, the penalties proposed in the NTLs resulted from, among other reasons, the Department's application of the TDAA to the applicable tax years.

ANSWER: The Department admits the factual allegations contained in Paragraph 43.

44. Before the 60-day period Insight Direct had to protest the two NTLs, it was discovered that although the NTLs are not final assessed liabilities, the Department began using self-help to apply Insight Direct's "available credits" resulting from overpayments on subsequently timely filed ST-1 returns to reduce the alleged liability of the tax periods covered by the NTLs.

ANSWER: Paragraph 44 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

2. The False Claims Act Litigation & Settlement

45. Unaware of the already pending Department sales tax audit of Insight Direct, on September 5, 2012, the Chicago law firm of Schad, Diamond & Shedden, P.C. filed a *qui tam* action under the Illinois False Claims Act against Insight Enterprises, Inc. regarding its sales and use tax returns and taxes paid.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 45 and therefore neither admits or denies the allegations.

46. Schad, Diamond & Shedden P.C. has filed hundreds of Illinois False Claims Act cases since the November 2009 decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351 (2009), in which the Court held, without invalidating the Department's Regulation Section 130.415, that an online sale, of necessity, includes shipping. Thus, the Court held that a charge for shipping associated with an online sale is taxable because it is inseparable from the underlying transaction for the purchase of tangible personal property.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the factual allegations contained in paragraph 46 and therefore neither admits or denies the allegations. Otherwise, the Department admits the existence, authority, and effect of the case law referenced within Paragraph 46, and states that such law or decision speaks for itself.

47. Notwithstanding the *Kean* decision, and notwithstanding that after full trials involving taxpayers who, like Insight Direct, were in the midst of a Department audit when sued by Schad Diamond & Shedden P.C., a circuit court has found that taxpayers that continued to observe Regulation Section 130.415 despite the *Kean* decision did not commit a False Claims Act violation, to this day Regulation Section 130.415 reads as it did at the time of the *Kean* decision.

ANSWER: Paragraph 47 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

48. Even after the *Kean* decision, Department auditors have made adjustments that were neither an application of the *Kean* decision nor a straight-forward application of Regulation Section 130.415. See **Exhibit 4** (An August 25, 2010 letter submitted as an Exhibit by the defendant in *State of Illinois ex rel. Schad, Diamond & Shedden, P.C. v. Saks Direct LLC*, Cir. Ct. Cook Cty., No. 2011 L 8294, wherein a Department auditor, with copies to upper level management of the Audit Bureau of the Department, says of the *Kean* decision, “[a]lthough this decision was contrary to how the Department was commonly treating such [shipping and handling] charges, no communication was made to the Audit Bureau personnel on the Illinois Supreme Court’s decision.” In that case, the auditor relates that after *Kean* “was brought to the attention of Audit Bureau Management . . . it was ultimately decided that the audit should be returned to me for assessing additional liability on the shipping and handling charges.”).

ANSWER: The Department states that paragraph 48 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department further admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 4 and referred to in paragraph 48 and states that such document speaks for itself.

49. Notwithstanding the foregoing failure by the Department and unfavorable decisions for *Schad, Diamond & Shedden, P.C.*, the Department continues to participate in and receive tax funds from settlements taxpayers have reached with the State in the False Claims Act cases brought by *Schad, Diamond & Shedden P.C.*

ANSWER: Paragraph 49 is not a material allegation of fact as to this matter but rather a statement of Petitioner’s belief regarding litigation with third parties and as such does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

50. On October 13, 2014, after extensive settlement negotiations between Schad, Diamond, Shedden P.C., the Plaintiff, Insight Direct and the Illinois Attorney General on behalf of the State of Illinois and the Illinois Department of Revenue, Insight Direct, Schad, Diamond Shedden P.C., and the Illinois Attorney General on behalf of the State of Illinois and the Illinois Department of Revenue entered into a Settlement Agreement and Release to settle the *qui tam* matter (the “Settlement Agreement”).

ANSWER: The Department denies that the Settlement Agreement is dated October 13, 2014, as it appears to be dated October 20, 2014. The Department admits the factual allegations contained within Paragraph 50.

51. Insight Direct tendered payment to the Illinois Attorney General of all amounts due under the terms of the Settlement Agreement to the State of Illinois and the Illinois Department of Revenue, and the State then deposited, processed and received full payment of the funds tendered by Insight Direct.

ANSWER: The Department admits that Insight Direct made a payment pursuant to the Settlement Agreement, but states that the disposition or distribution of such payment was controlled by the terms of the Settlement Agreement.

3. The Notices of Tax Liability

52. The Taxpayers’ Bill of Rights, in pertinent part, provides that “The Department of Revenue shall have the following powers and duties to protect the rights of taxpayers” including among them, “To include on all tax notices an explanation of tax liabilities and penalties.” 20 ILCS 2520/4.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 52 and states such provision speaks for itself.

53. Despite the admonition of the Taxpayers' Bill of Rights, two NTLs were issued to Insight Direct, dated December 22, 2014, which failed to include an "explanation of tax liabilities and penalties."

ANSWER: The Department states that Paragraph 53 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b)(2) of the Tax Tribunal Regulations. The Department also admits the existence, authority, and effect of the Taxpayers' Bill of Rights, and states that The Taxpayers' Bill of Rights speaks for itself. The Department further admits the existence, force and effect, at all relevant times of the NTLs attached to the Petition as Exhibits 2 and 3 and states such documents speak for themselves.

54. Once an Illinois audit has commenced, an additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on a Notice of Proposed Tax Liability results in an increase of the penalty to 20%. 35 ILCS 735/3-3(b-20)(2).

ANSWER: The Department denies the characterization of the afore-mentioned statutory provision. Further, the Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 54 and states such provision speaks for itself.

55. On Information and belief, the NTLs include the additional late-payment penalty, along with Amnesty Sanction penalties and interest (*i.e.* the doubling of otherwise applicable penalties and interest).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 2 and 3 and states such documents speak for themselves.

56. The NTLs issued by the Department to Insight Direct, dated December 22, 2014, for the tax periods July 2006 through September 2012 and assessing a total liability in the amount of \$25,312,783.95 are:

- (i) a direct violation and in breach of the terms of the Settlement Agreement entered into by the State and the Department to resolve the *qui tam* litigation;
- (ii) directly contrary to published regulations of the Illinois Department of Revenue in effect at all times relevant hereto;
- (iii) directly contrary to the documentation tendered by Insight Direct's purchasers to Insight Direct to claim their purchase for resale exemption and which was provided by Insight Direct to the Department during the course of the Audit in response to the Department's document and information requests;
- (iv) directly contrary to the provisions of the ROTA and the UTA applicable to sales at retail of tangible personal property;
- (v) in violation of the Taxpayers' Bill of Rights; and
- (vi) the product of such flagrant administrative irregularities and abuses of discretion that each is therefore devoid of the presumption of administrative regularity, deprived of the presumption of correctness, and incapable of satisfying the threshold requirements to be considered to be *prima facie* true and correct under the ROTA and the UTA.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the NTLs attached to the Petition as Exhibits 2 and 3, and states such documents speak for themselves. Otherwise, the Department incorporates by reference all of the answers to the subparts of Paragraph 56.

- (i) Denied.
- (ii) Contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b). Otherwise, denied.
- (iii) Denied.
- (iv) Contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b). Otherwise, denied.

- (v) Contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b). Otherwise, denied.
- (vi) Contains legal conclusions, not material allegations of fact, and therefore does not require an answer under 86 Ill. Adm. Code § 5000.310(b). Otherwise, denied.

E. Arguments

COUNT I

The presumption of “administrative regularity”, which undergirds the statutory presumption of “correctness” accorded to the NTLs, is burst by the averred facts and the NTLs are therefore rendered legally incapable of establishing, without more, a *prima facie* case with respect to any item of tax, penalty and interest liability they purport to assess.

57. Insight Direct incorporates by this reference and realleges as though fully set forth herein, paragraphs 1 through 56.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 57.

58. At no time since August of 2009, when the Department initiated the Audit of Insight Direct, was there a court order or other legal bar preventing the Department from conducting and completing its audit of Insight Direct.

ANSWER: Paragraph 58 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code § 5000.310(b).

59. At no time since September 5, 2012, when Schad, Diamond & Shedden PC filed its Illinois False Claims Act complaint, was the Department subject to any court order in that litigation preventing it from continuing to conduct and complete its audit of Insight Direct. In fact, several times Circuit Court Judge Mulroy inquired as to the progress of the Department’s audit and when it would be completed.

ANSWER: Paragraph 59 is not a material allegation of fact and as such does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code § 5000.310(b).

60. At the time of this filing and at the time the Department issued the two NTLs at issue here with respect to shipping charges on invoices for Internet sales by Insight Direct to Illinois purchasers, there was a Settlement Agreement in effect wherein the Department agreed to be barred from assessing such liability for the tax periods covered by its audit up to the date of the Settlement Agreement.

ANSWER: Paragraph 60 is not a material allegation of fact. The Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

61. At the time of this filing and at the time the Department issued the two NTLs at issue here with respect to any profit component on shipping contracts between Insight Direct and its customers for orders pursuant to master purchasing agreements, there was a Settlement Agreement in effect wherein the Department agreed to be barred from assessing such liability for the tax periods covered by its audit up to the date of the Settlement Agreement.

ANSWER: Paragraph 61 is not a material allegation of fact. The Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

62. At the time of this filing and at the time the Department issued the two NTLs at issue here with respect to disallowed sales for resale exemptions, without offset for any credit or payments by Insight Direct, there was in effect a Settlement Agreement wherein the Department agreed to apply the settlement payment made by Insight Direct to any liability the Department may propose in its then pending audit of Insight Direct.

ANSWER: The Department admits the allegations contained in paragraph 62.

63. At the time of this filing and at the time the Department issued the two NTLs at issue here with respect to disallowed sales for resale exemptions, the Department had in its possession, delivered to it by Insight Direct, documentation provided by Insight Direct's purchasers to evidence that their purchases from Insight Direct were made for resale and were therefore exempt from tax.

ANSWER: Although paragraph 63 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 63.

64. At the time of this filing and at the time the Department issued the two NTLs at issue here with respect to shipping charges on invoices for Internet sales by Insight Direct to Illinois purchasers, there was in effect a Department regulation which provides that such amounts are "deemed" to be separately contracted and invoiced and are thus not taxable.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 64 and states such regulation speaks for itself.

65. At the time of this filing, and at the time the Department issued the two NTLs at issue here with respect to the profit component of shipping contracts between Insight Direct and its customers for orders pursuant to master purchasing agreements, there was in effect a statute and a regulation imposing ROT and UT only on "sales at retail" of tangible personal property and not on separately contracted transportation services.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision and regulation set forth or referred to in paragraph 65 and states such provisions speak for themselves.

66. At numerous times prior to October 13, 2014, the date of the Settlement Agreement, Insight Direct communicated with the Department to continue with and conclude the pending audit.

ANSWER: The Department denies that the Settlement Agreement is dated October 13, 2014, as it appears to be dated October 20, 2014. The Department otherwise denies the factual allegations contained within Paragraph 66.

67. In fact, during the audit, the Department's Auditor was instructed by Audit Management not to communicate with the Taxpayer for a period of time.

ANSWER: The Department denies the allegations contained in paragraph 67.

68. Notwithstanding the Department's inaction in continuing to conduct its audit and bring it to completion prior to the date of the Settlement Agreement, after the date of the Settlement Agreement, the Department requested that Insight Direct execute a waiver of the statute of limitations for assessment "for the benefit" of Insight Direct, rather than for the benefit of the Department.

ANSWER: The Department denies the statement that it was involved in "inaction in continuing to conduct its audit and bring it to completion prior to the date of the Settlement Agreement." Otherwise, the Department admits the factual allegations contained in paragraph 68.

69. The Department's request of a waiver "for the benefit of Insight Direct" would have had the effect of continuing to accrue interest against Insight Direct at the doubled rate that the TDAA requires for tax periods prior to July 1, 2009.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 69 and states such provision speaks for itself.

70. The Department's request of a waiver, if truthfully claimed to be necessary for the benefit of the Department, would have had the effect of abating the continuing accrual of interest against Insight Direct for periods after execution of the waiver. 35 ILCS 120/5.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 70 and states such provision speaks for itself.

71. The Department refused Insight Direct's request that the waiver submitted to it by the Department be designated for the benefit of the Department.

ANSWER: Paragraph 71 is not a material allegation of fact but a statement of Petitioner's belief or position and as such does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

72. The Department's conduct of the audit of Insight Direct was highly irregular, arbitrary and capricious, in addition to violating legal agreements, regulations and statutes.

ANSWER: Although paragraph 72 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 72. Due to a lack of records, the auditor used his best information and judgment.

73. The Department's conduct of the audit has failed to clothe the NTL with a presumption of administrative regularity.

ANSWER: Although paragraph 73 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 73. Due to a lack of records, the auditor used his best information and judgment.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count I of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT II

To the extent the NTLs assess tax liability on shipping charged and separately stated on Internet orders, and on profits of Insight Direct on shipping and handling amounts authorized pursuant to master purchase agreements with its large enterprise clients, the NTLs are a breach of the Settlement Agreement executed by Insight Direct, the State of Illinois, and the Illinois Department of Revenue pursuant to which Insight Direct tendered and the Department accepted payment in full satisfaction of any and all such liabilities.

74. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 74.

75. On information and belief the NTLs contain liability for adjustments to Insight Direct's reported sales tax, including: (i) an adjustment to include in taxable amounts the shipping amounts charged by Insight Direct on invoices for sales made to its Internet customers; and (ii) an adjustment to include in taxable amounts any profits included in previously agreed shipping and handling charges to Insight Direct's enterprise customers.

ANSWER: The Department admits the allegations contained in paragraph 75.

76. The Settlement Agreement entered into on October 13, 2014, by the Plaintiff, Insight Direct, the State of Illinois and the Illinois Department of Revenue settled the litigation commenced on September 5, 2012 by the Plaintiff (the "Litigation").

ANSWER: The Department denies that the Settlement Agreement was entered into on October 13, 2014, as the date indicates that it was executed on October 20, 2014. Otherwise, the Department admits the allegations contained in paragraph 76.

77. The Litigation included "claims that could have been brought in the litigation, including but not limited to, (i) any tax liability regarding shipping, handling and freight charges for website sales of goods shipped to Illinois and (ii) any tax liability on any 'profit component' of its shipping, handling and freight charges for sales to commercial clients of goods shipped to Illinois."

ANSWER: The Department admits the allegations contained in paragraph 77.

WHEREFORE, the Department prays:

A) That Judgment be entered against the Petitioner and in favor of the Department on Count II of this matter.

- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT III

The Department's assessment of tax on shipping charges on Internet orders of tangible personal property is directly contrary to the Department's regulation and therefore tax, penalty and interest must be abated under the Taxpayers' Bill of Rights.

78. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 78.

79. To this day, Regulation Section 130.415, in pertinent part, provides as follows:

(b) The answer to the question of whether or not a seller, in computing his Retailers' Occupation Tax liability, may deduct, from his gross receipts from sales of tangible personal property at retail, amounts charged by him to his customers on account of his payment of transportation or delivery charges in order to secure delivery of the property to such customers, or on account of his incurrance of expense in making such delivery himself, depends not upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price. In addition, charges for transportation and delivery must not exceed the costs of transportation or delivery. If those charges do exceed the cost of delivery or transportation, the excess amount is subject to tax.

* * *

(d) If the seller and the buyer agree upon the transportation and delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or

delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. . . . The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

86 Ill. Admin. Code § 130.415(b) and (d) (emphasis added).

ANSWER: The Department admits the existence, authority, and effect of 86 Ill. Admin. Code § 130.415(b) and (d), and states that the regulation speaks for itself.

80. All of Insight Direct's invoices to Illinois purchasers over the Internet were in direct compliance with Regulation Section 130.415, at all relevant times, including at the time of this filing.

ANSWER: Although paragraph 80 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 80.

81. The Taxpayers' Bill of Rights provides that among the "powers and duties to protect the rights of taxpayers" that the Department possesses is the duty to "abate taxes and penalties assessed based upon erroneous written information or advice given by the Department." 20 ILCS 2520/4(c).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 81 and states such provision speaks for itself.

82. The Illinois Supreme Court has applied Section 4(c) of the Illinois Taxpayers' Bill of Rights to bar the imposition of liability on a taxpayer whose tax reporting comported with the Department's regulations notwithstanding that they did not comport with the ROTA itself as interpreted by the Court. *See Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (Nov. 21, 2013).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the case law set forth or referred to in paragraph 82 and states such case law speaks for itself.

83. Insight Direct's tax reporting for all periods prior to November 19, 2009, comported with Department Regulation Section 130.415 notwithstanding that the Court in November of 2009 construed the regulation to have too expansively interpreted the ROTA.

ANSWER: Paragraph 83 is not a material allegation of fact. The Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

84. Insight Direct's tax reporting for all relevant periods subsequent to November 19, 2009, comported with the Department's Regulation Section 130.415, which was rendered erroneous (but not invalidated) following the Court's decision in *Kean v. Walmart*, 235 Ill. 2d 351 (2009), but continues in effect as a Department Regulation which is binding on the Department and on taxpayers alike.

ANSWER: Although paragraph 84 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 84.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count III of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT IV

The Department's assessment applying Regulation Section 130.415 to the profit on separately negotiated shipping and transportation contracts entered into prior to, and not in connection with, any given retail sale of any item of tangible personal

property, exceeds the scope of the ROTA by applying the ROT to a sale of services, rather than to a sale of tangible personal property.

85. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 85.

86. Regulation Section 130.415, in pertinent part, provides as follows:

(b) The answer to the question of whether or not a seller, in computing his Retailers' Occupation Tax liability, may deduct, from his gross receipts from sales of tangible personal property at retail, amounts charged by him to his customers on account of his payment of transportation or delivery charges in order to secure delivery of the property to such customers, or on account of his incurrance of expense in making such delivery himself, depends not upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price. In addition, charges for transportation and delivery must not exceed the costs of transportation or delivery. If those charges do exceed the cost of delivery or transportation, the excess amount is subject to tax.

* * *

(d) If the seller and the buyer agree upon the transportation and delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, **but instead is a service charge**, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. . . The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

86 Ill. Admin. Code § 130.415(b) and (d) (emphasis added).

ANSWER: The Department admits the existence, authority, and effect of 86 Ill. Admin. Code § 130.415(b) and (d), and states that regulation speaks for itself.

87. As agreed to in the False Claims Act Litigation, by the Illinois Attorney General, the majority of Insight Direct's clients separately negotiate and contract for shipping or transportation services.

ANSWER: Paragraph 87 is not a material allegation of fact because the Department is conceding that portion of the NTL(s) related to outbound shipping charges on website sales, as indicated in the October 20, 2014 Settlement Agreement. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

88. A regulation that expands the scope of a taxing statute beyond the scope intended by the Legislature is invalid.

ANSWER: Paragraph 88 is not a material allegation of fact but recitation of general legal principle and as such does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

89. Regulation Section 130.415 is invalid if it renders taxable a separately negotiated and contracted agreement for shipping or transportation services.

ANSWER: Although paragraph 89 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 89.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count IV of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT V

The Department disregarded evidence provided to Insight Direct by its customers claiming sale for resale exemptions, which Insight Direct in turn provided to the Department, and which established that Insight Direct correctly deducted gross receipts from such sales as exempt sales for resale.

90. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 90.

91. The Department's Auditor made adjustments to Insight Direct's reported sales tax as a result of disallowing exemptions claimed by Insight Direct because Insight Direct claimed that such sales were sales for resale.

ANSWER: The Department admits the allegations contained in paragraph 91.

92. For purposes of the ROTA, "sale at retail" is defined by Section 1 of the ROTA as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale . . ."

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 92 and states such provision speaks for itself.

93. Section 2(c) of the ROTA, in pertinent part, provides that:

. . . Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sale for resale, or that a particular sale is a sale for resale.

35 ILCS 120/2(c).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 93 and states such provision speaks for itself.

94. Further, for purposes of the UTA, "sale at retail" is defined by Section 2 of the UTA as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, . . ."

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 94 and states such provision speaks for itself.

95. At no time since the commencement of the audit by the Department did Insight Direct fail to respond to an information or document request from the Department.

ANSWER: The Department denies the allegations contained in paragraph 95.

96. Insight Direct provided the Department's auditor with the resale evidence that was provided to it by its clients.

ANSWER: The Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 96 and therefore neither admits or denies the allegations

97. On information and belief, Insight Direct has provided the Department's Auditor with documentation that, while not containing "an active registration number or resale number and certification", otherwise sufficiently rebuts the presumption that such sales were not for resale, and in fact, such documentation proves that such sales were for resale.

ANSWER: The Department admits that Insight Direct provided some documentation to its auditor in support of Insight's resale exemption for certain transactions but otherwise denies the remainder of the allegations in paragraph 97 as legal conclusions.

98. In fact, Insight Direct requested in several electronic mail messages with the Department's Auditor explanations why certain documentation was denied or not accepted, including the Department's Auditor's inconsistent treatment of identical resale evidence. The Department's Auditor ignored the requests.

ANSWER: The Department admits receiving the emails referred to above but denies the remaining allegations contained in paragraph 98.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count V of this matter.

- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT VI

Insight Direct is entitled to the claimed credits on its sales tax returns.

99. Insight Direct by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to Paragraph 99.

100. On information and belief, the Department's Auditor made adjustments to Insight Direct's reported sales tax as a result of an adjustment resulting from a disallowance of various credits (*i.e.*, lack of validation, out of statute, etc.) to which Insight Direct was entitled.

ANSWER: The Department admits that its auditor disallowed various credits Insight Direct had taken on its sales tax returns but otherwise denies the remaining allegations of paragraph 100 as legal conclusions. Due to a lack of records, the auditor used his best information and judgment.

101. Based on past practices, Insight Direct would claim these credits on sales tax returns instead of filing amended returns seeking a refund. This practice was validated through past audit reviews.

ANSWER: The Department admits that Insight Direct claimed certain credits on sales tax returns instead of properly filing amended returns and seeking a refund but otherwise denies the remaining allegations of paragraph 101 as legal conclusions.

102. Insight Direct provided documentation to the Department's Auditor to substantiate the claimed credits.

ANSWER: The Department admits that Insight Direct provided limited documentation. Otherwise, the Department denies that the limited documentation

substantiated the claimed credits. Due to a lack of records, the auditor used his best information and judgment.

103. A disallowance of the claimed credits would result in unjust enrichment to the Department, because Insight Direct would pay the liabilities for a second time with its own money.

ANSWER: Although paragraph 103 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 103.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count VI of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT VII

Insight Direct is entitled to the claimed credits on its sales tax returns. Even if such credits are found to be invalid, to project an error ratio over all the Tax Periods at Issue and different sample populations, that resulted from a credit issue that was applicable in only a certain tax period or sample population is unreasonable and incorrect.

104. Insight Direct by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 104.

105. The Department's Auditor pulled four different review populations – Strata 1, Strata 2, Strata 3, and Strata 4.

ANSWER: The Department admits the allegations contained in paragraph 105.

106. The Department's Auditor only reviewed Strata 2 and 4 sample populations.

ANSWER: The Department admits that its auditor reviewed only data from strata 2 and 4. The Department further affirmatively states that such methodology

was necessary due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested. Therefore, the auditor used his best information and judgment.

107. The Department's Auditor then used the average error rate calculated from Stratas 2 and 4 and projected that error rate over Stratas 1 and 3.

ANSWER: The Department admits that for taxable sales a combined error rate was calculated using Stratum 2 and 4 and thereafter also applied to Stratum 1 and 3. The Department further affirmatively states that such methodology was necessary due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested. Therefore, the auditor used his best information and judgment.

108. As an example, the Department's Auditor disallowed a large credit amount in Strata 4, which was only applicable to that sample population. However, the Auditor still used the error rate that arose from such a specific disallowance in Strata 4 to project an assessed liability for Stratas 1 and 3.

ANSWER: Denied. The Department admits that it disallowed certain credits in Stratum 2 and 4 and used the combined error rate for other strata samples. The Department further affirmatively states that such methodology was necessary due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested. Therefore, the auditor used his best information and judgment.

109. The projection of an average error rate, which was based on results from a review of Stratas 2 and 4, over Strata 1 and 3 sample populations, resulted in a much larger liability, then if the Department's Auditor would have correctly reviewed the Strata 1 and 3 populations.

ANSWER: Due to Insight Direct's refusal to provide the books and records repeatedly requested by the Department's auditor, the Department is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 109 and therefore neither admits or denies the allegations

110. Further, the Department's Auditor used an average monthly liability rate for both taxable and non-taxable sales that was based on results from the Department's Audit of Insight

Direct's tax periods July 2006 through June 2009 to calculate the tax liability for Insight Direct's tax periods July 2009 through September 2012, without reviewing the actual books or records for Insight Direct's tax periods July 2009 through September 2012.

ANSWER: The Department admits the audit methodology referred to in paragraph 110. The Department further affirmatively states that the auditor used the best available information due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested. Therefore, the auditor used his best information and judgment.

111. Again, the Department's Auditor disallowed a large credit amount that was only applicable to certain tax periods within the initial audit period of July 2006 through June 2009. However, the auditor still used the average monthly liability rate that resulted from this initial period to project an alleged liability for the tax periods July 2009 through September 2012 resulting in a much larger liability, than if the Department's Auditor would have correctly reviewed the books and records for Insight Direct's tax periods July 2009 through September 2012.

ANSWER: Denied. The Department admits that it disallowed certain credits. The Department is otherwise without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 111 on account of Insight Direct's refusal to provide the books and records repeatedly requested by the Department's auditor. Therefore, the auditor used his best information and judgment.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count VII of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT VIII

Insight Direct is not a serviceman as determined by the Department's Auditor and thus, the Service Occupation Tax should not be applied to Insight Direct's hardware maintenance agreements.

112. Insight Direct by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to Paragraph 112.

113. On information and belief, the Department's Auditor applied the Service Occupation Tax to 50% of Insight Direct's invoiced amount for sales of hardware maintenance agreements.

ANSWER: The Department admits the allegations contained in paragraph 113. Due to a lack of records, the auditor used his best information and judgment.

114. Insight Direct sold but did not provide the updates or any service with regard to hardware maintenance agreements.

ANSWER: The Department admits the allegations contained in paragraph 114.

115. Insight Direct is not a serviceman for purposes of the Service Occupation Tax.

ANSWER: Although paragraph 115 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 115.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count VIII of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT IX

The Department's Auditor's use of statistical samples and inappropriate error rates has resulted in incorrect sales tax assessments for unrelated

sample populations and years that were not included in the initial audit period.

116. Insight Direct by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to paragraph 116.

117. On August 24, 2009, the Department commenced its audit regarding Insight Direct's taxable periods July 2006 through June 2009.

ANSWER: The Department admits that it sent an audit initiation letter dated August 24, 2009. The Department denies that the substantive audit began on August 24, 2009. Otherwise, the Department admits the remaining factual allegations contained within paragraph 117.

118. By letter dated December 27, 2012, the Department notified Insight Direct that its audit period had been extended for the additional tax periods from January 2010 through September 2012.

ANSWER: The Department admits the factual allegations contained within Paragraph 118.

119. The Department's Auditor used the average monthly liability rate for both taxable and non-taxable sales that was based on results from the Department's Audit of Insight Direct's tax periods July 2006 through June 2009 to calculate the tax liability for Insight Direct's tax periods July 2009 through September 2012, without reviewing the actual books or records for Insight Direct's tax periods July 2009 through September 2012, resulting in a much larger liability, than if the Department's Auditor would have correctly reviewed the books and records for Insight Direct's tax periods July 2009 through September 2012.

ANSWER: The Department admits the audit methodology referred to in paragraph 119. The Department further affirmatively states that the auditor used the best available information due to Insight Direct's refusal to provide or make

available the books and records the auditor repeatedly requested. The Department further states that it is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 119 due to the unavailability of Insight Direct's records and therefore neither admits or denies the allegations.

120. The Department's Auditor pulled four different review populations – Strata 1, Strata 2, Strata 3, and Strata 4.

ANSWER: The Department admits that it requested and reviewed data from four different sample populations.

121. The Department's Auditor only reviewed Strata 2 and 4 sample populations.

ANSWER: The Department admits the audit methodology referred to in paragraph 121. The Department further affirmatively states that the auditor used the best available information due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested.

122. The Department's Auditor then used the average error rate calculated from Stratas 2 and 4 and projected that error rate over Stratas 1 and 3.

ANSWER: The Department admits the audit methodology referred to in paragraph 122. The Department further affirmatively states that the auditor used the best available information due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested.

123. The projection of an average error rate, which was based on results from a review of Stratas 2 and 4, over Strata 1 and 3 sample populations, resulted in a much larger liability, than if the Department's Auditor would have correctly reviewed the Strata 1 and 3 populations.

ANSWER: The Department admits the audit methodology referred to in paragraph 123. The Department further affirmatively states that the auditor used the best available information due to Insight Direct's refusal to provide or make available the books and records the auditor repeatedly requested. The Department further states that it is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 123 due to the unavailability of Insight Direct's records and therefore neither admits or denies the allegations.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count IX of this matter.
- B) That the Department's Notices of Tax Liability, as adjusted for tax in Insight Direct's outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT X

Insight Direct is entitled to costs and attorney's fees under the Administrative Procedure Act because the audit manual which the Department relied upon to affect the private rights and procedures available to Insight Direct is a "rule" under the purview of the Administrative Procedure Act.

124. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts X-XII for lack of jurisdiction and therefore is not answering these three counts at this time.

COUNT XI

Insight Direct is entitled to costs and attorney's fees under the Administrative Procedure Act as the assessed liability results from application of a Department Regulation that exceeds the scope of the enabling statute – the ROTA.

131. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts X-XII for lack of jurisdiction and therefore is not answering these three counts at this time.

COUNT XII

Taxpayers' Bill of Rights

137. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts X-XII for lack of jurisdiction and therefore is not answering these three counts at this time.

COUNT XIII

Insight Direct had “reasonable cause” for its failure to participate in the Amnesty Program and thus, the Amnesty Sanction should not apply to Insight Direct’s alleged liabilities.

143. Insight Direct incorporates by this reference and realleges paragraphs 1 through 56 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 56 within the answer to Paragraph 143.

144. Section 520.105(m)(3) provides as follows:

A taxpayer who has “reasonable cause” for its failure to participate in the Amnesty Program with respect to an Eligible Liability will remain subject to any penalties otherwise applicable to that liability, but not to the doubled rates for the penalties that would otherwise apply. “Reasonable cause” abatement under Section 3-8 of the Uniform Penalty and Interest Act does not apply to interest, so any underpayment interest on the Eligible Liability will accrue at doubled rates even in the taxpayer had reasonable cause for failing to participate in the amnesty. . . Failure of the Department to notify a taxpayer of its eligibility to participate in the Amnesty program or of the correct amount of its Eligible Liability does not constitute reasonable cause for the taxpayer’s failure to participate in the Amnesty Program.

86 Ill. Admin. Code §520.105(m).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 144 and states such regulation speaks for itself.

145. Insight Direct is registered to collect and remit, respectively, the taxes imposed on purchasers and retailers of tangible personal property by the UTA and the ROTA.

ANSWER: The Department admits the factual allegations contained within Paragraph 145.

146. The ST-1 is the designation given by the Illinois Department of Revenue to the monthly sales tax return required to be filed by retailers registered under the Retailers' Occupation Tax Act and the Use Tax Act.

ANSWER: The Department admits the factual allegations contained within Paragraph 146.

147. Insight Direct timely filed and made payment of the amounts reported as tax due therein on all its Forms ST-1, Sales and Use Tax Returns for all relevant tax periods.

ANSWER: The Department admits that Petitioner timely filed and paid the amount of sales tax indicated due on all its Forms ST-1 for the relevant period.

148. On August 24, 2009, the Department, prior to the Amnesty Period, commenced its audit regarding Insight Direct's taxable periods July 2006 through June 2009.

ANSWER: The Department admits that it sent an audit initiation letter dated August 24, 2009. The Department denies that the substantive audit began on August 24, 2009. Otherwise, the Department admits the remaining factual allegations contained within Paragraph 148.

149. On December 22, 2014, more than five years after the Department's audit had commenced, the Department issued two Notices of Tax Liability to Insight Direct. The first Notice of Tax Liability was issued regarding the tax periods July 1, 2006 through June 30, 2009 (the tax periods under audit) and assessed total tax, penalty and interest in a combined deficiency amount of \$12,823,096.90. The second Notice of Tax Liability was issued regarding the tax periods July 1, 2009 through September 30, 2012 and assessed total tax, penalty and interest in a combined deficiency amount of \$12,489,687.05.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the NTLs attached to the Petition as Exhibits 2 and 3 and states such documents speak for themselves. The remaining allegations are not material allegations of fact and as such require no answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

150. During the audit, the Department's Auditor deliberately ignored Insight Direct's requests to continue the audit even though no court order existed that would have stopped the Auditor from continuing and concluding the audit.

ANSWER: The Department denies the allegations contained in paragraph 150.

151. Insight Direct filed its Forms ST-1, Sales and Use Tax Returns, under penalties of perjury.

ANSWER: The Department admits the factual allegations contained within Paragraph 151.

152. Regulation Section 520.105(b)(2)(B) requires a taxpayer, in order to participate in the Amnesty Program, to:

In the case of an Eligible Liability that has not been assessed or otherwise become subject to collection action by the Department, the taxpayer participates in the Amnesty Program by filing the appropriate return or amended tax return to report the Eligible Liability and making payment of the Eligible Liability to the Department during the Amnesty Program Period. . .

86 Ill. Admin. Code §520.105(b).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 152 and states such regulation speaks for itself.

153. The "appropriate return or amended tax return" required to be filed by Regulation Section 520.105(b)(2)(B) must be filed and sworn to under penalties of perjury.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 153 and states such regulation speaks for itself.

154. Section 520.105(b)(2)(B) of the Department's Regulations would require Insight Direct to file two contradicting documents under penalties of perjury, without any factual circumstances changing.

ANSWER: Although paragraph 154 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 154.

155. Additionally, Regulation Section 520.105(f) provides an example of how a taxpayer may participate in the Amnesty Program while under audit during the Amnesty Program.

Regulation Section 520.105(f)(3) provides, in pertinent part, as follows:

- (3) Examples. The principles of participating in the Amnesty Program for an Eligible Liability that is currently under audit may be illustrated as follows:

- (A) EXAMPLE 1. As of the beginning of the Amnesty Program Period, the Department is auditing Taxpayer for occupation and use taxes due for the periods July 1, 2005 through June 30, 2007. The audit will not be completed before the end of the Amnesty Program Period. *After consulting with the Department's auditor*, Taxpayer estimates that it owes an additional Use Tax obligation of \$300 for each of the months of July, August and September of 2006. . .

86 Ill. Admin. Code §520.105(f) (emphasis added).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 155 and states such regulation speaks for itself.

156. The Department's Auditor not only did not assist Insight Direct in calculating an estimated amount to be paid under the Amnesty Program, but the Department's Auditor deliberately ignored Insight Direct's requests to continue the audit.

ANSWER: The Department denies the allegations contained in paragraph 156.

157. Further, Section 3-2(c-5) of the Uniform Penalty and Interest Act (the "UPIA") provides that:

This subsection (c-5) is applicable to returns due on and after January 1, 2001. Interest shall be simple interest calculated on a daily basis. Interest shall accrue upon tax due. If notice and demand is made for the payment of any amount of tax due and if the amount due is paid within 30 days after the date of the notice and

demand, interest under this Section on the amount so paid shall not be imposed for the period after the date of the notice and demand.

35 ILCS 735/3-2(c-5).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 157 and states such provision speaks for itself.

158. The Department commenced its Audit prior to the Amnesty Period and did not complete its Audit until 5 years later, well after the Amnesty Period had closed.

ANSWER: The Department denies the characterization contained within Paragraph 158 of the phrase: “until five years later,” and denies that phrase on that basis. Otherwise, the Department admits the factual allegations contained within Paragraph 158.

159. The Department, at no time prior to December 22, 2014, issued notice and demand for payment of any amount of tax due. Thus, no tax could be considered due and applicable to the Amnesty Program.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 2 and 3 and referred to in paragraph 159 and state such documents speak for themselves. Although the remaining allegations in paragraph 159 are not allegations of material fact but legal conclusions, the Department denies the allegations/legal conclusions.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count XIII of this matter.
- B) That the Department’s Notices of Tax Liability, as adjusted for tax in Insight Direct’s outbound shipping charges for website sales, as indicated in the October 20, 2014 Settlement Agreement, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

Dated: July 2, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/Michael Coveny
Michael Coveny
Special Assistant Attorney General

____/s/ Seth J. Schriftman
Seth J. Schriftman
Special Assistant Attorney General

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**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

INSIGHT DIRECT USA INC.,)	
Petitioner)	
)	
)	No. 15-TT-39
v.)	
)	Chief Judge James M. Conway
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

VERIFICATION

I, Roger W. Koss, being first duly sworn upon his oath, deposes and says that I am an employee of the Illinois Department of Revenue and as such I am the duly authorized agent for the Illinois Department of Revenue, that I have read the foregoing Department of Revenue's Answer, that I am well acquainted with its contents, and under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Illinois Code of Civil Procedure, I certify that the matters and things contained in it are true to the best of my knowledge, information and belief.



Roger W. Koss
Audit Bureau
Sales and Miscellaneous Taxes Division Manager
ILLINOIS DEPARTMENT OF REVENUE

Dated: July 2, 2015

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

INSIGHT DIRECT USA INC.,)	
Petitioner)	
)	
)	No. 15-TT-39
v.)	
)	Chief Judge James M. Conway
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
Respondent)	

**AFFIDAVIT OF WILLIAM J. VINYARD, JR.
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

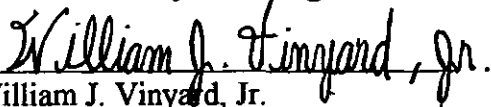
STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, William J. Vinyard, Jr., being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor.
3. I compiled the audit information regarding the taxes asserted in the Notices of Tax Liability subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some or all of the allegations contained in Paragraphs 6, 45, 46, 96, 109, 111, 119, and 123 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



William J. Vinyard, Jr.
Revenue Auditor

6/30/2015

Date