

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SOFTWARE SPECTRUM INC. and)	
CALENCE LLC,)	
Petitioners)	
)	No. 15-TT-40
)	
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 Petitioners’ Petition (the “Petition”) as follows:

A. Jurisdiction and Venue

1. This timely petition involves either Notices of Tax Liability (“NTLs”) that each individually 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 3 and 5 and states such documents speak for themselves.

2. The Plaintiffs accept 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, Software Spectrum

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

ANSWER: The Department admits the allegations contained in paragraph 3 as they pertain to Software Spectrum Inc. (hereafter “Software Spectrum”).

4. Software Spectrum is an information technology (“IT”) provider specializing in software and mobility solutions for medium and large-sized companies.

ANSWER: The Department admits that Software Spectrum is an information technology provider. The Department is without sufficient information or knowledge to either admit or deny that Software Spectrum specializes in software and mobility solutions for medium and large-sized companies.

5. Software Spectrum operates as a global business-to-business software services provider.

ANSWER: The Department is without sufficient information or knowledge to either admit or deny that Software Spectrum operates as a global business-to-business software services provider.

6. Software Spectrum sells personal computer software, through volume licensing and maintenance agreements or right-to-copy arrangements, and full-packaged software products.

ANSWER: The Department is without sufficient information or knowledge to either admit or deny the allegations contained within paragraph 6. Further answering, the Department admits that Software Spectrum specialized in enterprise software license sales and software asset management.

7. Insight Enterprises, Inc. purchased Software Spectrum in September 2006.

ANSWER: The Department admits the allegations contained in paragraph 7.

8. Software Spectrum was 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 8.

9. Software Spectrum merged into Insight Direct USA Inc. (“Insight Direct”) in 2009.

ANSWER: The Department admits the allegations contained in paragraph 9.

10. Prior to July 1, 2009, Software Spectrum was authorized by the Illinois Secretary of State to transact business in Illinois.

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

11. Prior to July 1, 2009, Software Spectrum was 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” or “ROT”), 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 11.

2. Plaintiff, Calence LLC

12. Calence is a corporation maintaining its principal office at 6820 South Harl Avenue, Tempe, Arizona 85283-4318.

ANSWER: The Department admits the allegations contained in paragraph 12.

13. Calence provides networking solutions in the United States.

ANSWER: The Department admits the allegations contained in paragraph 13.

14. Calence builds, manages and optimizes networks.

ANSWER: The Department admits the allegations contained in paragraph 14.

15. Calence’s solutions enable organizations to plan, build, provide and operate their network security and communications infrastructure.

ANSWER: The Department admits the allegations contained in paragraph 15.

16. Insight Enterprises, Inc. acquired Calence in January 2008.

ANSWER: The Department denies that Insight Enterprises, Inc. acquired Calence in January 2008. The Department states that Insight Enterprises, Inc. acquired Calence in April 2008.

17. Calence was 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 17.

18. Calence merged into Insight Direct on January 1, 2013.

ANSWER: The Department denies the allegations contained in paragraph 18. Further answering, Calence appears to have merged with Insight Direct in February 2013.

19. Prior to January 1, 2013, Calence was authorized by the Illinois Secretary of State to transact business in Illinois.

ANSWER: The Department denies the date “as [p]rior to January 1, 2013,” as the secretary of state’s information indicates that the date should be February 14, 2013. Otherwise, the allegations contained in paragraph 19 are admitted.

20. Prior to January 1, 2013, Calence was 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 denies the date as “[p]rior to January 1, 2013,” as the date should likely be February 14, 2013. Otherwise, the Department admits the allegations contained in paragraph 20.

3. Defendant, the Illinois Department of Revenue.

21. The Department is charged by law with administering the revenue laws of the State of Illinois, including the ROTA and the UTA.

ANSWER: The Department admits the allegations contained in paragraph 21.

22. 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 22.

C. Applicable Laws

1. The Retailers' Occupation Tax Act

23. 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 23 and states such provision speaks for itself.

24. 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 24 and states such provision speaks for itself.

25. 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 25 and states such provision speaks for itself.

26. 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 26 and states such provision speaks for itself.

2. The Use Tax Act

27. 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 27 and states such provision speaks for itself.

28. 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 28 and states such provision speaks for itself.

29. 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 29 and states such provision speaks for itself.

3. The Tax Delinquency Amnesty Act

30. 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 Departments admits the allegations contained in paragraph 30.

31. 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 31 and states such provision speaks for itself.

32. 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 32.

33. 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 33 and states such regulation speaks for itself.

34. 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 34 and states such provision speaks for itself.

35. 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) (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 35 and states such regulation speaks for itself.

36. 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 36 and states such regulation speaks for itself.

37. 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 37 and states such regulation speaks for itself.

4. The Uniform Penalty and Interest Act

38. 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 38 and states such provision speaks for itself.

39. 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 39 and states such provision speaks for itself.

40. 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 40 and states such provision speaks for itself.

D. Facts

1. Software Spectrum's Sales Tax Returns

41. 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 41.

42. For the tax periods January 1, 2007 through June 30, 2009, Software Spectrum timely filed and made payment of the amounts reported as tax due therein on all its Forms ST-1, Sales and Use Tax Returns.

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

2. The Department's Sales Tax Audit Software Spectrum

43. 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 43 and states such provision speaks for itself.

44. On March 31, 2010, the Department commenced its audit regarding Software Spectrum's taxable periods January 2007 through June 30, 2009.

ANSWER: Denied. The Department states that the Department notified Software Spectrum of the commencement of the audit on March 30, 2010, and sent Software Spectrum an Audit Initiation Letter on or about March 31, 2010. The audit commenced at a later date.

45. At no time since the commencement of the audit by the Department did Software Spectrum fail to respond to an information or document request by the Department.

ANSWER: The Department denies the allegations contained in paragraph 45.

46. 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 46.

47. More than 4 years after commencing its audit of Software Spectrum, in a letter dated October 23, 2014 but addressed to Insight Direct, the Department enclosed “Waivers of the Statute of Limitation (IDR-191) for . . . Software Spectrum extending the statutory period for audit up through June 30, 2015,” and directing the addressed to “have the necessary personnel endorse the forms and return them to my attention via email by no later than November 7, 2014)”. A copy of that letter to Insight Direct 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 47 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).

48. 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 48 and states such provision speaks for itself.

49. Software Spectrum did not request the extension of the statute of limitations.

ANSWER: The Department denies the allegations contained in paragraph 49.

50. The extension of the statute of limitations requested by the Department was not for the benefit of, nor for the convenience of, Software Spectrum.

ANSWER: The Department denies the allegations contained in paragraph 50.

51. At no time was there a court order or other legal bar to the Department's continuation and completion of the audit of Software Spectrum.

ANSWER: Paragraph 51 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).

52. On December 2, 2014, the Department issued a letter to Software Spectrum regarding "Sales/Use Tax Audit for the Period January 2007 through June 2009" in which the Department stated:

Enclosed please find copies of the audit workpapers, fastened together, for your files. Also enclosed is the EDA-104R (Audit Report) along with and [sic] EDA-143S (Notice of Audit Results) reflecting a total liability due in the amount of \$2,304,785.00. Note that penalties have been assessed at 30% to reflect the entire period falling under Amnesty. Likewise, interest associated with the tax liability has also been doubled for this period and has been calculated up through November 21, 2014.

* * *

Regarding the liability established, projections were made to determine an average monthly tax liability for both taxable and non-taxable sales, *this stemming from error rates established in performing stat sample reviews on the largest of the four related companies, Insight Direct. . . With limited information provided for this company, no real review has taken place with regards fixed assets or consumables. Likewise, only a cursory review was made with regards to tax collections.*

Letter is attached as **Exhibit 2** (emphasis added).

ANSWER: The Department admits the existence of the document attached to the Petition as Exhibit 2 and referred to in paragraph 52 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).

53. At no time did the Department request authorization from Software Spectrum to conduct a statistical audit.

ANSWER: The Department denies the allegations contained in paragraph 53.

54. At no time did Software Spectrum authorize the Department to conduct a statistical audit of Software Spectrum using the books and records of a different legal entity other than Software Spectrum.

ANSWER: The Department admits the allegations contained in paragraph 54. The Department affirmatively states that the auditor was forced to conduct such a statistical audit due to Software Spectrum denying to extend the statute of limitations for the audit and due to the lack of available and requested books and records. The auditor used his best available information and judgment in conducting the audit.

55. On December 2, 2014, the Department provided Software Spectrum with a Notice of Audit Results.

ANSWER: The Department admits the allegations contain in paragraph 55.

56. Section 2505/510 of the Civil Administrative Code provides that the Department “has the power to establish an informal assessment review process at which an impartial Department designee . . . shall review adjustments recommended by examiners and auditors”, and the General Assembly provided that “the exercise of this power to establish an informal assessment review procedure is mandatory, and the Director shall promulgate rules implementing this process” so that a taxpayer can have “availability of an informal assessment review before the issuance of a notice of tax liability or before a formal hearing.” 20 ILCS 2505/510(a) and (b) (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 56 and states such provision speaks for itself.

57. The Department’s Regulations implementing Section 2505/510 of the Civil Administrative Code are in Title 86 Part 215 Section 215.100 *et seq.* of the Illinois Administrative Code.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 57 and states such provision speaks for itself.

58. The Department's Regulations, Section 215.115 provides, in pertinent part, as follows:

Section 215.115. Procedure for Requesting Review by the Informal Conference Board

a) Notice of Proposed Audit Adjustments. Once the auditor has conducted the audit and made an examination of the taxpayer's books and records provided during the audit process, the Department **shall issue a written notice to the taxpayer** in cases in which a liability or deficiency is asserted . . . as a result of the audit. Such letter shall be referred to as a Notice of Proposed Liability . . . [and] The notice shall state the amount of the proposed liability . . . and inform the taxpayer of his or her right to an informal review by the Informal Conference Board. The taxpayer shall have 60 days after the date of the Notice of Proposed Liability . . . is issued to file a request with the Informal Conference Board for review of the proposed audit adjustment.

b) Situations When the Taxpayer Will Not Be Issued a Notice of Proposed Audit Adjustment. The Department will not issue a Notice of Proposed Liability . . . when the taxpayer refuses to extend the statute of limitations **when those statutes will expire prior to the expiration of the 60-day period for seeking Informal Conference Review.**

86 Ill. Admin. Code § 215.115 (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 58 and states such provision speaks for itself.

59. Pursuant to Regulation Section 215.115, the Department sends to a taxpayer a Notice of Proposed Liability after the Audit has closed and after the Department has sent the Notice of Audit Results.

ANSWER: The Department denies that a Notice of Proposed Liability is sent after an audit is closed. The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 59 and states such provision 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).

60. A general Notice of Proposed Liability reads as follows:

. . . If you do not agree with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). ***To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice*** and mail it, along with a copy of the auditor's work papers and a copy of this notice . . . ***If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.***

ANSWER: The Department denies that a Notice of Proposed Liability includes only the excerpt included by the Petitioners. The Department admits that the cited excerpt is accurate.

61. The Department did not provide Software Spectrum with a Notice of Proposed Liability for the audit period.

ANSWER: The Department admits the factual allegations contained within Paragraph 61.

62. In fact, only 20 days after providing the Notice of Audit Results to Software Spectrum, on December 22, 2014, the Department issued a Notice of Tax Liability ("NTL") in the total tax, penalty and interest deficiency combined amount of \$2,444,123.11, for the tax periods from January 1, 2007 through June 30, 2009, (the "Deficiency"). A copy of Notice of Tax Liability is attached hereto as **Exhibit 3**.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 3 and referred to in paragraph 62 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).

63. The liability proposed for Software Spectrum, resulted from the Department's computation of an "error ratio" based on adjustments to another legal entity, Insight Direct.

ANSWER: The Department admits the allegations contained in paragraph 63.

64. On information and belief, Insight Direct's reported sales tax was adjusted for the following reasons:

- (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 large 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 64 below, in response to the first sentence of paragraph 64.

- (i) **ANSWER:** Paragraph 64(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 with Insight Direct. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).
- (ii) **ANSWER:** Paragraph 64(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 with Insight Direct. 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 Insight Direct 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 Insight Direct 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.
- (vi) **ANSWER:** The Department admits that it disallowed certain sales that Insight Direct 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, Insight Direct was deemed to be a primary serviceman, and it was presumed 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 Insight Direct did not provide adequate supporting documentation to show that such items were properly exempt as resale items. See 86 Ill. Admin. Code 130.1405.

65. On information and belief, the penalty proposed in the NTL issued to Software Spectrum 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 65.

3. Calence's Sales Tax Returns

66. For the tax periods January 1, 2007 through September 30, 2012, Calence timely filed and made payment of the amounts reported as tax due therein on all its Forms ST-1, Sales and Use Tax Returns.

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

4. The Department's Sales Tax Audit of Calence

67. As previously noted, 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 67 and states such provision speaks for itself.

68. On March 31, 2010, the Department commenced its audit regarding Calence's taxable periods January 2007 through February 2010.

ANSWER: Denied. The Department states that the Department notified Calence of the commencement of the audit on March 30, 2010, and sent Calence an Audit Initiation Letter on or about March 31, 2010. The audit commenced at a later date.

69. At no time since the commencement of the audit by the Department did Calence fail to respond to an information or document request.

ANSWER: The Department denies the allegations contained in paragraph 69.

70. More than 4 years after commencing its audit of Calence, in a letter dated October 23, 2014 but addressed to Insight Direct, the Department enclosed "Waivers of the Statute of Limitation (IDR-191) for . . . Calence LLC extending the statutory period for audit up through June 30, 2015," and directing the addressed to "have the necessary personnel

endorse the forms and return them to my attention via email by no later than November 7, 2014)". See **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 70 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).

71. As previously noted, 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 71 and states such provision speaks for itself. The Department also states that the excerpt is inaccurate, as it states "with the taxpayer's consent" and not "with the consent of the taxpayer."

72. Calence did not request the extension of the statute of limitations.

ANSWER: The Department denies the allegations contained in paragraph 72.

73. The extension of the statute of limitations requested by the Department was not for the benefit of, nor for the convenience of, Calence.

ANSWER: The Department denies the allegations contained in paragraph 73.

74. At no time was there a court order or other legal bar to the Department's continuation and completion of the audit of Calence.

ANSWER: Paragraph 74 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).

75. On December 8, 2014, the Department issued a letter to Calence regarding “Sales/Use Tax Audit for the Period January 2007 through September 2012” in which the

Department stated:

Enclosed please find copies of the audit workpapers, fastened together, for your files. Also enclosed are two EDA-105R ROT Audit Reports along with and [sic] EDA-143S Notice of Audit Results reflecting a total liability due in the amount of \$808,465.00. Note that penalties have been assessed at 30% to reflect the entire period falling under Amnesty. Likewise, interest associated with the tax liability has also been doubled for this period and has been calculated up through November 21, 2014.

* * *

. . . Interest and penalty calculations will be found on the Supplement 2 schedule while the Tax Supplement schedule *will reflect the 28% error established from IDUI [Insight Direct USA Inc.] to apply to non-taxable sales reported for Calence. . . With limited information provided for this company, no real projection was put together with regards to taxable sales and no attempt was made to complete a tax accrual reconciliation. As for use tax liability, no review was conducted regarding fixed assets or consumable supplies.*

Letter is attached as **Exhibit 4** (emphasis added).

ANSWER: The Department 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 75 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).

76. At no time did the Department request authorization from Calence to conduct a statistical audit.

ANSWER: The Department denies the allegations contained in paragraph 76.

77. At no time did Calence authorize the Department to conduct a statistical audit of Calence using the books and records of a different legal entity other than Calence.

ANSWER: The Department admits the allegations contained in paragraph 77. The Department affirmatively states that the auditor was forced to conduct such a statistical audit due to Calence denying to extend the statute of limitations for the

audit and due to the lack of available and requested books and records. The auditor used his best available information and judgment in conducting the audit.

78. On December 8, 2014, the Department provided Calence with a Notice of Audit Results.

ANSWER: The Department admits that it provided a letter, dated December 8, 2014, to Calence, which was a Notice of Audit Results.

79. Pursuant to Regulation Section 215.115, the Department sends to a taxpayer a Notice of Proposed Liability after the Audit has closed and after the Department has sent the Notice of Audit Results.

ANSWER: The Department denies that a Notice of Proposed Liability is sent after an audit is closed. The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 79 and states such provision 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).

80. A general Notice of Proposed Liability reads as follows:

. . . If you do not agree with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). ***To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice*** and mail it, along with a copy of the auditor's work papers and a copy of this notice . . . ***If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.***

ANSWER: The Department denies that a Notice of Proposed Liability includes only the excerpt included by the Petitioners. The Department admits that the cited excerpt is accurate.

81. The Department did not provide Calence with a Notice of Proposed Liability for the audit period.

ANSWER: The Department admits the allegations contained in paragraph 81. However, as conceded by the Petitioners in paragraph 58, a Notice of Proposed Liability will not be issued if statutes of limitations will expire prior to the 60-day period available for ICB review. 86 Ill. Admin. Code §215.115(b).

82. In fact, only 14 days after providing the Notice of Audit Results to Calence, on December 22, 2014, the Department issued two Notices of Tax Liability in the total tax, penalty and interest deficiency combined amounts of \$581,969.06 and \$271,253.06, for the tax periods January 1, 2007 through June 30, 2009, and July 1, 2009 through September 30, 2012, respectively. Copies of Notices of Tax Liability are attached hereto as **Exhibit 5**.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit 5 and referred to in paragraph 82 and states that such documents speaks 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).

83. The liability proposed for Calence resulted from the Department's computation of an "error ratio" based on adjustments to another legal entity, Insight Direct.

ANSWER: The Department admits the allegations contained in paragraph 83.

84. On information and belief, Insight Direct's reported sales tax was adjusted for the following reasons:

- (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 large 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: The Department incorporates its answers to paragraph 84 below, in response to the first sentence of paragraph 84. Due to a lack of books and records, the auditor used his best judgment and information.

(i) **ANSWER:** Paragraph 84(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 with Insight Direct. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

- (ii) **ANSWER:** Paragraph 84(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 with Insight Direct. 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 Insight Direct 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 Insight Direct 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.
- (vi) **ANSWER:** The Department admits that it disallowed certain sales that Insight Direct 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, Insight Direct was deemed to be a primary serviceman, and it was presumed 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 Insight Direct did not provide adequate supporting documentation to show that such items were properly exempt as resale items. See 86 Ill. Admin. Code 130.1405.

85. On information and belief, the penalty proposed in the NTLs issued to Calence 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 85.

E. The Notices of Tax Liability

86. 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 86 and states such provision speaks for itself.

87. Despite the admonition of the Taxpayers' Bill of Rights, the NTLs were issued to Software Spectrum and Calence on December 22, 2014, without any "explanation of tax liabilities and penalties."

ANSWER: The Department states that paragraph 87 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 3 and 5 and states such documents speak for themselves.

88. 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 88 and states such provision speaks for itself.

89. The NTLs issued to Software Spectrum and Calence included the additional late-payment penalty, along with applicable Amnesty Sanction penalties and interest (*i.e.* the doubling of otherwise applicable penalties and interest), even though no Notices of Proposed Liability were ever issued to Software Spectrum and Calence.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 3 and 5 and states such documents speak for themselves.

90. The NTL issued by the Department to Software Spectrum, dated December 22, 2014 and based on an error rate calculated from the business actions of a different entity, for the tax periods January 1, 2007 through June 30, 2009 and assessing a total liability in the amount of \$2,444,123.11 is:

- (i) not the result of the statutorily required “best judgment and information” of the Department;
- (ii) directly contrary to published regulations of the Illinois Department of Revenue in effect at all times relevant hereto;

(iii) 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 flagrant administrative irregularities and abuses of discretion and 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 NTL attached to the Petition as Exhibit 3, and states this document speak for itself. Otherwise, the Department incorporates by reference all of the answers to the subparts of paragraph 90.

- (i) 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.
- (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) 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.

91. The NTLs issued by the Department to Calence, dated December 22, 2014 and based on an error rate calculated from the business actions of a different entity, for the tax periods January 1, 2007 through June 30, 2009 and July 1, 2009 through September 30, 2013,

assessing total liabilities in the amounts of \$581,969.06 and \$271,253.06, respectively, are:

- (i) not the result of the statutorily required “best judgment and information” of the Department;
- (ii) directly contrary to published regulations of the Illinois Department of Revenue in effect at all times relevant hereto;
- (iii) 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 flagrant administrative irregularities and abuses of discretion and 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 Exhibit 5, and states such documents speak for themselves. Otherwise, the Department incorporates by reference all of the answers to the subparts of paragraph 91.

- (i) 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.
- (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) 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.

COUNT I

The presumption of “administrative regularity”, which undergirds the statutory presumption of “correctness” accorded to the NTLs issued to Software Spectrum and Calence, is burst by the averred facts and administrative abuses, 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 it purports to assess.

92. The Plaintiffs incorporate by this reference and reallege as though fully set forth herein, paragraphs 1 through 91.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 91 within the answer to paragraph 92.

93. At no time did the Department request authorization from the Plaintiffs to conduct statistical audits.

ANSWER: The Department denies the allegations contained in paragraph 93.

94. In the December 2, 2014 letter to Software Spectrum and the December 8, 2014 letter to Calence, the Department advised that it would use an error rate calculated based on the business activities of Insight Direct and apply it to the Plaintiffs’ unrelated business activities to project liabilities for the Plaintiffs.

ANSWER: The Department admits that it used Insight Direct’s error rate rather than an error rate for Software Spectrum, but denies that Software Spectrum’s business activities are unrelated to Insight Direct’s business activities. The Department further affirmatively states that it was forced to rely on the error rate for Insight Direct because Petitioner Software Spectrum refused to provide or make available its books and records for examination. Consequently, Insight Direct’s error rate was the best available information.

95. At no time did the Plaintiffs authorize the Department to conduct such statistical audits using the books and records of a *different legal entity* other than the Plaintiffs.

ANSWER: The Department admits the allegations contained in paragraph 95. The Department affirmatively states that the auditor was forced to conduct such a statistical audit due to Software Spectrum denying to extend the statute of limitations for the audit and due to the lack of available and requested books and records. The auditor used his best available information and judgment in conducting the audit.

96. At no time did the Department inquire if the Plaintiffs conducted the same business activities as Insight Direct.

ANSWER: The Department denies the allegations contained in paragraph 96.

97. In early December, the Department provided Notices of Audit Results to the Plaintiffs.

ANSWER: The Department admits the allegations contained in paragraph 97.

98. Pursuant to regulation Section 215.115, the Department sends to a taxpayer a Notice of Proposed Liability after the Audit has closed and after the Department has sent the Notice of Audit Results.

ANSWER: The Department denies that a Notice of Proposed Liability is sent after an audit is closed. The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 98 and states such provision 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).

99. A general Notice of Proposed Liability reads as follows:

. . . If you do not agree with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). ***To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice*** and mail it, along with a copy of the auditor's work papers and a copy of this notice . . . ***If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.***

ANSWER: The Department denies that a Notice of Proposed Liability includes only the excerpt included by the Petitioners. The Department admits that the cited excerpt contained within paragraph 99 is accurate.

100. The Department did not provide the Plaintiffs with a Notice of Proposed Liability for the audit periods.

ANSWER: The Department admits the factual allegations contained within Paragraph 100. However, as conceded by the Petitioners in paragraph 58, a Notice of Proposed Liability will not be issued if statutes of limitations will expire prior to the 60-day period available for ICB review. 86 Ill. Admin. Code §215.115(b).

101. In fact, only days after providing the Notices of Audit Results to the Plaintiffs did the Department issue the NTLs to the Plaintiffs.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibits 3 and 5 and referred to in paragraph 101 and states that such documents speaks 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).

102. The liabilities proposed for the Plaintiffs resulted from the Department's computation of an "error ratio" based on adjustments to another legal entity, Insight Direct.

ANSWER: The Department admits the allegations contained in paragraph 102.

103. At no time during the periods at issue for the Plaintiffs, was there a court order or other legal bar preventing the Department from conducting and completing its alleged audits of Software Spectrum and Calence.

ANSWER: Paragraph 103 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).

104. At numerous times prior to October 23, 2014, the Plaintiffs communicated with the Department to continue with and conclude the pending audits.

ANSWER: The Department denies the factual allegations contained within Paragraph 104.

105. Notwithstanding the Department's inaction in continuing to conduct its audits and bring them to completion prior to October 23, 2014, the Department requested that the Plaintiffs execute waivers of the statute of limitations for assessments "for the benefit" of the Plaintiffs 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 audits and bring them to completion prior to October 23, 2014." Otherwise, the Department admits the factual allegations contained in paragraph 105.

106. Acceding to the Department's request of waivers would have had the effect of continuing to accrue interest against the Plaintiffs at both the single rate and 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 106 and states such provision speaks for itself.

107. The Department's request of waivers, 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 the Plaintiffs 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 107 and states such provision speaks for itself.

108. The Department refused the Plaintiffs' requests that the waivers be submitted to them by the Department as being denominated to be for the benefit of the Department.

ANSWER: Paragraph 108 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).

109. The Department's conduct of the audits of the Plaintiffs was highly irregular, arbitrary and capricious, in addition to violating regulations, and statutes.

ANSWER: Although paragraph 109 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions

contained in paragraph 109. Due to lack of records, the auditor used his best information and judgment.

110. The Department's conduct of the audits has failed to clothe the NTLs with a presumption of administrative regularity.

ANSWER: Although paragraph 110 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 110. Due to lack of records, the auditor used his best information and judgment.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioners 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 on Petitioners' outbound shipping charges for website sales as indicated in the October 20, 2014 Settlement Agreement with Insight Direct, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT II

The presumption of "administrative regularity", which undergirds the statutory presumption of "correctness" accorded to the NTLs issued to Software Spectrum and Calence is burst because the "error ratio", based on adjustments to another legal entity, Insight Direct, in and of itself is an incorrect error ratio, as will be proven in a sister matter before this Court.

111. The Plaintiffs incorporate by this reference and reallege paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 91 within the answer to paragraph 111.

112. In the December 2, 2014 letter to Software Spectrum and the December 8, 2014 letter to Calence, the Department advised that it would use an error rate calculated based on the business activities of Insight Direct and apply it to project liabilities for the Plaintiffs.

ANSWER: The Department admits that it used Insight Direct's error rate rather than an error rate for Software Spectrum. The Department further affirmatively states that it was forced to rely on the error rate for Insight Direct because

Petitioner Software Spectrum refused to provide or make available its books and records for examination. Consequently, Insight Direct's error rate was the best available information.

113. The alleged error rate from Insight Direct that was used to project the liabilities of the Plaintiffs was in and of itself incorrect.

ANSWER: Although paragraph 113 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 113.

114. The error rate from Insight Direct was incorrect because:

a. To the extent the error rate was based on tax liabilities resulting from 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 error rate is a violation 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;

b. To the extent the error rate was based on tax liabilities resulting from shipping charges on Internet orders of tangible personal property, such error rate is directly contrary to the Department's regulation;

c. To the extent the error rate was based on tax liabilities resulting from the profit separately negotiated for on shipping and transportation contracts entered into prior to, and not in connection with any given retail sale of any item of tangible personal property, the error rate is incorrect because the basis for the error rate exceeds the scope of the ROTA by applying the ROT to a sale of services, rather than a sale of tangible personal property;

d. To the extent the error rate was based on tax liabilities resulting from the disallowance of Insight Direct's claimed resale exemptions, Insight Direct has provided the necessary evidence to establish the claimed exemptions;

e. To the extent the error rate was based on tax liabilities resulting from the denial of claimed tax credits, Insight Direct has provided the necessary evidence to support such credits;

f. To the extent the error rate was based on tax liabilities resulting from the projection over several tax periods and different sample populations of a denial of tax credits that only applied to a specific tax period or sample population, the Department's assessed liabilities were incorrect;

g. To the extent the error rate was based on tax liabilities resulting from the application of the Service Occupation Tax to 50% of Insight Direct's invoiced amounts for sales of hardware maintenance agreements, the Department's assessed liabilities were incorrect;

h. To the extent the error rate was established by the Department's Auditor's use of statistical samples and inappropriate error rates, such application was incorrect and resulted in incorrect sales tax assessments for unrelated sample populations and years that were not included in the initial audit period;

i. To the extent the error rate was established based on the Department's denial of resale exemptions because the Department viewed the transactions as leases, Illinois law provides that such transactions were sales and the resale exemption was applicable;

j. To the extent the error rate was based on tax liabilities resulting from sales of SMARTnet hardware maintenance agreements and hardware and software agreements sold on behalf of third-party service providers, the Department's assessed liabilities were incorrect; and

k. To the extent the error rate was based on tax liabilities resulting from sales of client-owned inventory that was temporarily stored in Illinois and subsequently shipped out of Illinois for use exclusively outside Illinois, the Department's assessed liabilities were incorrect.

See Insight Direct USA Inc.'s Tax Tribunal Petition attached as **Exhibit 6**.

ANSWER: The Department incorporates its answers to paragraph 114 below, in response to the first sentence of paragraph 114. The Department states that in alleging that the error rate from Insight Direct was incorrect, Paragraph 114 contains legal conclusions, not material allegations of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

a. **ANSWER:** Paragraph 114(a) 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 with Insight Direct. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

b. **ANSWER:** Paragraph 114(b) 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 with Insight Direct. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill.Adm.Code §5000.310(b).

c. **ANSWER:** Paragraph 114(c) 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 with Insight Direct. This paragraph does not require an answer pursuant to Tribunal Rule 86 Ill. Adm. Code §5000.310(b).

- d. **ANSWER:** Although subparagraph (d) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (d). The Department further affirmatively states that Insight Direct did not provide adequate supporting documentation to show that such items were properly exempt as resale items. See 86 Ill. Admin. Code 130.1405.
- e. **ANSWER:** Although subparagraph (e) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (e). 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.
- f. **ANSWER:** Although subparagraph (f) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (f).
- g. **ANSWER:** Although subparagraph (g) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (g). The Department further affirmatively states that due to a lack of documentation stating otherwise, Insight Direct was deemed to be a primary serviceman, and it was presumed 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).
- h. **ANSWER:** Although subparagraph (h) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (h).
- i. Although subparagraph (i) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (i).
- j. **ANSWER:** Although subparagraph (j) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (j). The Department further affirmatively states that due to a lack of documentation stating otherwise, Insight Direct was deemed to be a primary serviceman, and it was presumed 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).

- k. ANSWER:** Although subparagraph (k) is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in subparagraph (k).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the document attached to the Petition as Exhibit 6 referred to in paragraph 114 and states that such document speaks for itself. Further, due to a lack of books and records, the auditor used his best information and judgment in conducting the Insight Direct audit.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioners 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 on Petitioners' outbound shipping charges for website sales as indicated in the October 20, 2014 Settlement Agreement with Insight Direct, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT III

Taxpayers' Bill of Rights

115. The Plaintiffs incorporate by this reference and reallege paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts III, V, VI, and VII for lack of jurisdiction and therefore is not answering these four counts at this time.

COUNT IV

The Plaintiffs had "reasonable cause" for their failure to participate in the Amnesty Program and thus, the Amnesty Sanction should not apply to the Plaintiffs' alleged liabilities.

119. The Plaintiffs incorporate by this reference and reallege paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department incorporates by reference all of its answers to paragraphs 1 through 91 within the answer to paragraph 119.

120. 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 120 and states such regulation speaks for itself.

121. The Department, prior to the Amnesty Period, commenced its audits of Software Spectrum and Calence for the taxable periods January 2007 through June 2009 and January 2007 through February 2010, respectively.

ANSWER: The Department admits the factual allegations contained in Paragraph 121.

122. On December 22, 2014, more than four (4) years after the Department’s audits of Software Spectrum and Calence had commenced, the Department issued Notices of Tax Liability to the Plaintiffs.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the NTLs attached to the Petition as Exhibits 3 and 5 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).

123. During the audits of Software Spectrum and Calence, the Department’s Auditor deliberately ignored the Plaintiffs’ requests to go forward with the audits of the Plaintiffs

even though no court order existed that would have stopped the auditor from continuing and concluding the audits.

ANSWER: The Department denies the allegations contained in paragraph 123.

124. Software Spectrum and Calence filed their Forms ST-1, Sales and Use Tax Returns, under penalties of perjury.

ANSWER: The Department admits the factual allegations contained within Paragraph 124.

125. 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 125 and states such regulation speaks for itself.

126. 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 126 and states such regulation speaks for itself.

127. Section 520.105(b)(2)(B) of the Department’s Regulations would require Software Spectrum and Calence to file two contradicting documents under penalties of perjury, without any factual circumstances changing.

ANSWER: Although paragraph 127 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 127.

128. 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 128 and states such regulation speaks for itself.

129. The Department's auditor not only did not assist the Plaintiffs in calculating an estimated amount to be paid under the Amnesty Program, but the Department's auditor deliberately ignored the Plaintiffs' requests to go forward with the audits.

ANSWER: The Department denies the allegations contained in paragraph 129.

130. 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 130 and states such provision speaks for itself.

131. The Department commenced its audits of Software Spectrum and Calence prior to the Amnesty Period and did not complete its audits until four (4) years later, well after the Amnesty Period had closed.

ANSWER: The Department denies the characterization contained within Paragraph 131 of the phrase: “until four (4) years later,” and denies that phrase on that basis. Otherwise, the Department admits that audits were initiated on Software Spectrum and Calence in March 2010, but the Petitioners decided in November 2011 to put those audits on hold until the audit of Insight Direct was completed. To the extent there are other factual allegations in paragraph 131, they are denied.

132. 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 3 and 5 and referred to in paragraph 132 and states such documents speak for themselves. Although the remaining allegations in paragraph 132 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 Petitioners 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 on Petitioners’ outbound shipping charges for website sales as indicated in the October 20, 2014 Settlement Agreement with Insight Direct, be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper.

COUNT V

The Plaintiffs are entitled to costs and attorney’s fees under the Administrative Procedure Act as the error ratio that has led to their assessed liabilities results from

application of a Department Regulation that exceeds the scope of the enabling statute – the ROTA.

133. The Plaintiffs incorporate by this reference and realleges paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts III, V, VI, and VII for lack of jurisdiction and therefore is not answering these four counts at this time.

COUNT VI

The Plaintiffs are 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 Plaintiffs is a “rule” under the purview of the Administrative Procedure Act.

139. The Plaintiffs incorporate by this reference and reallege paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts III, V, VI, and VII for lack of jurisdiction and therefore is not answering these four counts at this time.

COUNT VII

The Plaintiffs are entitled to costs and attorney’s fees under the Administrative Procedure Act because the regulation upon which the Department must rely to justify its issuance of a Notice of Tax Liability prior to, or without the issuance of a Notice of Proposed Liability altogether, exceeds the scope of the enabling statute – the ROTA.

146. The Plaintiffs incorporate by this reference and reallege paragraphs 1 through 91 as though fully-set forth herein.

ANSWER: The Department has filed contemporaneously with this answer a Motion to Dismiss Counts III, V, VI, and VII for lack of jurisdiction and therefore is not answering these four counts at this time.

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

Michael Coveny
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-6697
michael.coveny@illinois.gov

Seth J. Schriftman
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
312-814-1591
seth.schriftman@illinois.gov

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SOFTWARE SPECTRUM INC. and CALENCE LLC,)	
)	
Petitioners)	
)	No. 15-TT-40
)	
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)**

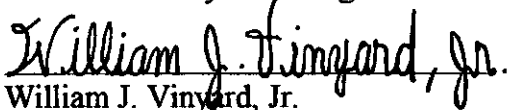
STATE OF ILLINOIS

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 4-6 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