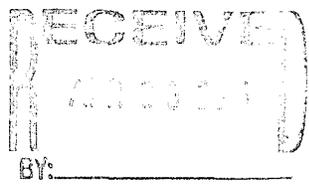


**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

BHAVESH C. GANDHI )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS DEPARTMENT )  
 OF REVENUE, )  
 )  
 Respondent, )

No.



15TT64

**PETITION**

Petitioner, Bhavesh C. Gandhi ("Petitioner") by and through his attorneys, The Fish Law Firm, P.C., complains of the Defendants, the Illinois Department of Revenue ("Department") and alleges as follows:

**PARTIES**

1. Petitioner is an individual who lives at 206 W Streamwood Boulevard, Streamwood, Illinois 60107, and can be reached at 630-518-6032.
2. Petitioner is represented by The Fish Law Firm, P.C. attorney David J. Fish, located at 200 E 5<sup>th</sup> Ave Suite 123, Naperville, Illinois 60563 and can be reached at 630-355-7590 or [dfish@fishlawfirm.com](mailto:dfish@fishlawfirm.com).
3. Petitioner's Taxpayer ID is XXX-XX-9041.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

## **NOTICE**

5. On March 4, 2015, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty and NPL Penalty ID of 1740539 in the amount of \$657,087.69, which covers the tax periods ending June 30, 2009 and October 31, 2009, and which is comprised of \$460,825.00 dollars in tax due, \$9262.50.00 in penalties, and \$103,638.59 in interest. The Notice is attached hereto as Exhibit A.

## **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

## **BACKGROUND**

8. Petitioner was the President of a corporation named AMI Oil Corporation ("AMI Oil").

9. Petitioner relied upon an outside accounting for the filing, preparation, and payment of Illinois sales tax for AMI Oil. Furthermore, the evidence in this case shows that there was no intent to defraud and that Administrative Law Judge John White previously ruled that the Department "disregarded evidence that may have provided a more innocent explanation. \*\*\* The record does not include clear and convincing evidence that Taxpayer filed returns with an intent to defraud." See Recommended Disposition, attached as Exhibit B. Issue preclusion and *res judicata* preclude the re-litigation of this issue.

10. As of the date of the issuance of the Notice, AMI Oil allegedly owed \$657,087.69

to the Department for the tax periods ending June 30, 2009 and October 31, 2009, and that amount is comprised \$657,087.69, which covers the tax periods ending June 30, 2009 and October 31, 2009, and which is comprised of \$460,825.00 dollars in tax due, \$9,262.50.00 in penalties, and \$103,638.59 in interest.

**COUNT I**

**Petitioner was not a responsible officer who failed to pay the sales tax penalties and interest of AMI Oil**

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. A corporate officer who does not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 35 ILCS 735/3-7.

13. Petitioner is a corporate officer of AMI Oil who relied upon the advise of outside accounting expertise in preparing the tax returns and therefore is not personally liable for the corporation's unpaid sales tax penalties and interest.

14. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax penalties and interest of AMI Oil.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of AMI Oil;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;

(c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and

(d) grants such further relief as the Tribunal deems appropriate.

## COUNT II

### Petitioner did not willfully fail to Pay the sales tax Penalties

15. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 14, inclusive, hereinabove.

16. A corporate officer who does not willfully fail to pay the corporation's sales tax is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 35 ILCS 735/3-7.

17. Petitioner is a corporate officer of AMI Oil who did not willfully fail to pay the sales tax penalties and interest and therefore is not personally liable for such amounts.

18. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the sales tax penalties and interest of AMI Oil.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of AMI Oil because Petitioner did not willfully fail to pay such amounts;

(b) enjoins the Department from taking any action to assess, lien, levy, offset or any other way prosecute and collect the amount due on the Notice;

(c) enters judgment in favor of Petitioner and against the Defendants and/ cancels the Notice; and

(d) grants such further relief as the Tribunal deems appropriate under the circumstances.

Dated: April 1, 2015

Respectfully submitted,  
**Bhavesh C. Gandhi**

By: \_\_\_\_\_



One of his Attorneys

David J. Fish  
Sarmistha (Buri) Banerjee  
THE FISH LAW FIRM, P.C.  
200 E 5<sup>th</sup> Ave Suite 123  
Naperville, IL 60563  
T: 630-355-7590  
F: 630-778-0400

# Collection Action

## Assessment and Notice of Intent



March 4, 2015



Letter ID: L1491145696

BHAVESH C. GANDHI  
206 W STREAMWOOD BLVD  
STREAMWOOD IL 60107-1348

Taxpayer ID: XXX-XX-9041  
NPL Penalty ID: 1740539



AMI OIL CORPORATION  
206 W STREAMWOOD BLVD  
STREAMWOOD IL 60107-1348

### We have determined you are personally liable for a penalty of \$657,087.69.

The penalty is equal to the amount of unpaid liability of AMI OIL CORPORATION, due to your status as a responsible officer, partner, or individual of AMI OIL CORPORATION.

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

**Pay us \$657,087.69.** Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

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

- **If the amount of this liability is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal**, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **May 3, 2015**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

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

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

217 782-9904 ext. 31613  
217 785-2635 fax

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



## To avoid this collection action

### **Pay**

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

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

Send us written proof, documents, or testimony for review. You may provide one or all of the following:

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

## Collection action information

### ***Applicable Illinois law***

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

More information is on our website at [tax.illinois.gov](http://tax.illinois.gov).

### ***Federal Bankruptcy Court***

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

### ***Correct our records***

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

### ***What other collection actions may we take?***

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
  - Professional license,
  - Certificate of Registration,
  - Liquor license,
  - Corporate Charter with the Secretary of State, or
  - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

# Collection Action

## Assessment and Notice of Intent



March 4, 2015



Letter ID: L1491145696

BHAVESH C. GANDHI  
206 W STREAMWOOD BLVD  
STREAMWOOD IL 60107-1348

Taxpayer ID: XXX-XX-9041  
NPL Penalty ID: 1740539



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

### Sales/Use Tax & E911 Surcharge

Account ID: 5525-5264

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	445,960.00	89,502.00	101,487.64	-	(0.05)	636,949.59
31-Oct-2009	14,865.00	3,123.00	2,150.95	-	(0.85)	20,138.10

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

Retain this portion for your records.  
Fold and detach on perforation. Return bottom portion with your payment.

### Collection Action

(R-12/08) (136)



Letter ID: L1491145696  
BHAVESH C. GANDHI

**Total amount due: \$657,087.69**

Write the amount you are paying below.

\$ \_\_\_\_\_

Write your Account ID on your check.

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

000 006 001404848722 731 123199 0 0000065708769

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket Nos.	10-ST-0475
<b>OF THE STATE OF ILLINOIS</b>	)	IBT No.	5525-5264
	)	NTL Nos.	L 05285 68000,
v.	)		L 04795 08160
<b>AMI OIL CORPORATION,</b>	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** David Fish, The Fish Law Firm, P.C., appeared for Ami Oil Corporation; Michael Coveny, Special Assistants Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

Following an audit, the Illinois Department of Revenue (Department) issued two Notices of Tax Liability (NTLs) to Ami Oil Corporation (Taxpayer). The NTLs assessed tax, penalties, and interest for the months of January 2007 through June 2009, and for October 2009. Taxpayer protested the NTLs, and requested a hearing.

At hearing, Taxpayer challenged only the fraud penalty assessed in the NTLs. I have reviewed the evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the NTLs be revised to eliminate the fraud penalty, and that they be finalized as so revised.

**Findings of Fact:**

1. Taxpayer operated a gas station in Aurora, Illinois. Department Ex. 2 (copies of certain audit workpapers regarding the Department's audit of Taxpayer), p. 1 (copy of first page of report titled, Auditor's Comments).
2. The Department audited Taxpayer's business and returns for the period from January 2009 through October 2009. Department Ex. 2, p. 2. The auditor created schedules when conducting the audit. *See* Department Ex. 2, pp. 1-6 (referring to schedules not included within exhibit), 7 (copy of Schedule 3).
3. Taxpayer timely filed monthly retailers' occupation tax (ROT) returns for the months in the audit period. Department Ex. 2, pp. 1-2. Taxpayer's ROT returns were prepared by its accountant, and signed by Taxpayer's owner. *Id.*, p. 4.
4. Taxpayer ceased doing business at the end of October 2009. Department Ex. 2, p. 1.
5. Taxpayer did not have available for audit all of the books and records Illinois law requires retailers to keep. Department Ex. 2, p. 1; *see also, generally*, 86 Ill. Admin. Code § 130.805 (What Records Constitute Minimum Requirement).
6. Taxpayer provided the auditor with copies of the following books and records: PST-2 (pre-paid sales tax) returns; ROT returns; and bank statements. Department Ex. 2, p. 1.
7. Since Taxpayer did not have documentary support for the receipts reported on its monthly ROT returns, the auditor had to use an alternate method of verifying Taxpayer's sales. Department Ex. 2, p. 2.
8. The auditor noted that Taxpayer's federal income tax returns reported revenues that were greater than the sum of the total receipts Taxpayer reported on its monthly ROT

returns. Department Ex. 2, pp. 1-2, 7.

9. The auditor determined that the revenues reported on Taxpayer's federal income tax returns were a better indicator of Taxpayer's total receipts from selling at retail than the amounts reported on its ROT returns. Department Ex. 2, pp. 2, 7. She treated the difference between the revenues reported on Taxpayer's income tax returns and the receipts reported on its ROT returns as unreported receipts. *Id.*
10. Prior to the completion of the audit, Taxpayer filed amended ROT returns for all of the months in the audit period. Department Ex. 2, p. 2. On those amended returns, Taxpayer reported more tax due than it had on its original returns. *Id.*
11. When correcting Taxpayer's original monthly ROT returns, the auditor did not take into account any of the changes Taxpayer reported on its amended returns. Department Ex. 2, p. 2.
12. Following audit, the Department issued two NTLs to Taxpayer. Department Ex. 1.
13. The NTLs assessed the following amounts of tax, penalties and interest to Taxpayer, for the following periods:

NTL No.	Reporting periods	Tax	Late-payment penalty	Fraud Penalty	Interest	Total
L 05285 68000	1/07—6/09	445,960.00	89,192.00	222,980.00	39,897.66	*798,239.61
L 04795 08160	10/09	14,865.00	2,973.00	7,433.00	136.11	**25,406.26
<b>Totals</b>		460,825.00	92,165.00	230,413.00	40,033.77	<b>\$ 823,645.87</b>

Department Ex. 1, pp. 1-2. \* On the first NTL, the Department gave Taxpayer a credit against tax in the amount of 5 cents. *Id.*, p. 1. \*\* On the second NTL, the Department gave Taxpayer a credit against tax in the amount of 85 cents. *Id.*, p. 2.

## **Conclusions of Law:**

### **Issue and Arguments**

Taxpayer does not contest any amounts of tax assessed. Tr. pp. 15-16. Instead, it argues that the Department failed to offer clear and convincing evidence that it filed returns during the audit period with an intent to defraud. Tr. pp. 9-12. I agree.

Section 3-6 of the Uniform Penalty and Interest Act (UPIA) provides, in pertinent part, “[i]f any return or amended return is filed with intent to defraud, in addition to any penalty imposed under Section 3-3 of this Act, ... a penalty shall be imposed in an amount equal to 50% of any resulting deficiency.” 35 ILCS 735/3-6. The Department bears the burden to show fraud by clear and convincing evidence. Brown Specialty Co. v. Allphin, 75 Ill. App. 3d 845, 851, 394 N.E.2d 659, 663 (3<sup>rd</sup> Dist. 1979). Clear and convincing evidence of a taxpayer’s intent to defraud can be circumstantial in nature. Puleo v. Department of Revenue, 117 Ill. App. 3d 260, 268, 453 N.E.2d 48, 53 (4<sup>th</sup> Dist. 1983); Vitale v. Department of Revenue, 118 Ill. App. 3d 210, 213, 454 N.E.2d 799, 802 (3<sup>rd</sup> Dist. 1983).

In this case, the sole basis for the Department’s determination that Taxpayer filed returns with an intent to defraud is that there was a significant difference between the revenues reported on Taxpayer’s income tax returns and the receipts reported on its ROT returns. Department Ex. 2, p. 1 (“There was big difference of sales amount between ST 1 return and income tax return.”). The auditor treated the difference between those amounts as unreported receipts. *Id.* (“The under reported sales was over 100% (See schedule 11). A request to assess 50% Civil Fraud Penalty has been approv[ed].”). Had there been any evidence which showed that the only revenues Taxpayer realized during a given year

were the receipts realized from its Illinois-based retailing business, the auditor's treatment of the difference as being the result of fraud would have been fully supported. But no such evidence is to be found within this record.

Further, the evidence shows that, prior to the time the audit was concluded, Taxpayer filed amended returns for every single month in the audit period. Department Ex. 2, p. 2. The Department requires taxpayers to file an amended return when the taxpayer determines that it has filed a return containing errors. ST-1-X Instructions, p. 1 (the instructions for preparing an amended ROT return are available to view at the Department's website at: <http://tax.illinois.gov/taxforms/Sales/ST-1-X-Instr-2011.pdf>) (last viewed on February 27, 2014). More specifically, the Department's instruction form for amended ROT returns provides, in part:

**Who must file Form ST-1-X?**

You must file Form ST-1-X if you are a registered retailer who files Form ST-1, Sales and Use Tax Return, and you need to

- correct your Form ST-1 to pay more tax;
- request a credit for tax you overpaid. Do not use the credit until we notify you that your credit has been approved;
- respond to a notice or bill;
- make corrections to line items but there is no change in the amount of tax due.

ST-1-X Instructions, p. 1. If an error made on an original return caused the taxpayer to report and pay too little tax, it must pay the amount of tax properly due, plus interest, plus penalties. *See id.*, p. 2. Penalties may be abated if taxpayer can show that it exercised good faith and ordinary business care when attempting timely to report and pay the correct amount of tax due. 35 ILCS 735/3-8; 86 Ill. Admin. Code § 700.400(b)-(c). If an error made on an original return caused the taxpayer to report and pay more than the correct amount of tax due, it may request a credit or refund of the tax overpaid in error.

35 ILCS 120/6a; 86 Ill. Admin. Code § 130.1501; ST-1-X Instructions, p. 1.

The evidence shows that the auditor was aware that Taxpayer filed amended returns for the period under audit, yet she either refused or failed to take into account the changes reported on them. Department Ex. 2, p. 2. The evidence also shows that Taxpayer filed its amended returns after its owner had a discussion with the auditor and her supervisor about the audit, and before the audit was concluded. *Id.*, pp. 1 -2. Finally, Taxpayer's amended returns reported additional amounts of tax due. *Id.* p. 2. Given the Department's own evidence describing the circumstances occurring at and about the time Taxpayer filed its amended returns, the natural and logical inference to draw is that Taxpayer filed its amended returns in order to report errors it realized had been made on its original returns. *Id.*; *see also* ST-1-X Instructions, p. 1. When taking into account the evidence the Department offered to support its assessment of a fraud penalty (Department Ex. 2, p. 2), I cannot ignore the fact that Taxpayer filed amended returns for the audit period, or the inference reasonably drawn from that fact.

There is a difference between a return that contains erroneous or mistaken entries, and one that contains knowingly false entries — that is, entries that the filer knew were untrue when the return was filed. *See State ex rel. Beeler Schad and Diamond, P.C. v. Ritz Camera Centers, Inc.*, 377 Ill. App. 3d 990, 997-98, 878 N.E.2d 1152, 1158-59 (1<sup>st</sup> Dist. 2007); 37 Am. Jur. 2d Fraud and Deceit § 488 (“Evidence that a representation was made with knowledge of its falsity is regarded as proof of an intent to deceive.”). Generally, a fraud penalty would properly be imposed for the latter, but not for the former. 35 ILCS 735/3-6; Puleo, 117 Ill. App. 3d at 268, 453 N.E.2d at 53 (“the record is uncontradicted that the plaintiff admitted to the fraud agents that he had not filed correct

returns ...”).

It is possible that, had the record included more audit schedules, or had the Auditor’s Comments more specifically described the content of the books and records the auditor reviewed prior to correcting Taxpayer’s original returns, there would have been sufficient evidence to support an inference of fraudulent intent. For example, the Auditor’s Comments reflect that she reviewed Taxpayer’s filed PS2 returns, but that document does not identify the amount of gasoline (either by cost or gallons) Taxpayer reported that it purchased for later sale at retail. Department Ex. 2. Nor does the record include any schedule of Taxpayer’s gasoline purchases, from which the fact-finder, or the Director, might compare Taxpayer’s purchases with its reported sales. *See e.g., Vitale*, 118 Ill. App. 3d at 213, 454 N.E.2d at 802. Had the Audit Comments documented that Taxpayer reported spending more to purchase gasoline (as reflected on its PS2 returns) than it realized from selling gasoline at retail (as reflected on its monthly ROT returns), the record would have included clear and convincing circumstantial evidence of fraud. *See id.* Alternatively, had the record contained evidence that all of Taxpayer’s income was derived from selling at retail in Illinois, the revenues Taxpayer reported on its income tax returns might be reasonably considered evidence that Taxpayer was knowingly underreporting its receipts on its monthly ROT returns. Department Ex. 2, p. 1; 35 ILCS 735/3-6; *Vitale*, 118 Ill. App. 3d at 213, 454 N.E.2d at 802.

But here, the reasonable inferences drawn from the evidence that was admitted lead just as directly to a conclusion that Taxpayer made a mistake when preparing and filing its original returns — which Taxpayer attempted to correct — as they do to a conclusion that Taxpayer filed returns with an intent to defraud. The party claiming fraud

has the burden to prove it by clear and convincing evidence. Brown Specialty Co., 75 Ill. App. 3d at 851, 394 N.E.2d at 663. “Clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In re Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (1<sup>st</sup> Dist. 1996). Where, as here, the evidence admitted to support a fraud penalty reasonably supports a finding of mistake, the party with the burden loses. Racine Fuel Co. v. Rawlins, 377 Ill. 375, 380, 36 N.E.2d 710, 713 (1941) (“Fraud is not presumed but must be proved like any other fact by clear and convincing evidence.”).

The evidence shows that the Department presumed that Taxpayer filed returns with an intent to defraud, and disregarded evidence that may have provided a more innocent explanation. Department Ex. 2, pp. 1-2. Illinois law, however, does not allow one to presume fraud. Racine Fuel Co., 377 Ill. at 380, 36 N.E.2d at 713; Brown Specialty Co., 75 Ill. App. 3d at 851, 394 N.E.2d at 663. After a review of the evidence, I do not recommend that the Director finalize the fraud penalty assessed here.

**Conclusion:**

The record does not include clear and convincing evidence that Taxpayer filed returns with an intent to defraud. 35 ILCS 735/3-6; In re Jones, 285 Ill. App. 3d at 13, 673 N.E.2d at 706; Brown Specialty Co., 75 Ill. App. 3d at 851, 394 N.E.2d at 663. Therefore, I respectfully recommend that the Director revise the NTLs to eliminate the fraud penalty, and that the NTLs be finalized as so revised, pursuant to statute.

April 14, 2014

John E. White  
Administrative Law Judge



**Illinois Department of Revenue**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
James R. Thompson Center  
100 West Randolph Street, Level 7-900  
Chicago, Illinois 60601  
(312) 814-6114

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket Nos.	10-ST-0475
<b>OF THE STATE OF ILLINOIS</b>	)	IBT No.	5525-5264
	)	NTL Nos.	L 05285 68000,
	)		L 04795 08160
<b>v.</b>	)		
<b>AMI OIL CORPORATION,</b>	)	John E. White,	
Taxpayer	)	Administrative Law Judge	

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**NOTICE OF DECISION**

TO:

David Fish  
The Fish Law Firm, P.C.  
55 South Main Street Suite 341  
Naperville, Illinois 60540

Michael Coveny  
Illinois Department of Revenue  
100 West Randolph Street 7<sup>th</sup> Floor  
Chicago, Illinois 60601

**YOU ARE HEREBY NOTIFIED** that the attached Order or Recommendation in the above entitled cause has been accepted by the Director as dispositive of the issues therein. This is now a final administrative decision and establishes your rights or responsibilities regarding the subject matter of the hearing. Should this decision be adverse to you, you may pursue your rights to administrative review by filing a complaint in the circuit court under the requirements of **735 ILCS 5/3-101 et seq.**, within 35 days of the date of mailing of this notice. **PLEASE NOTE:** The Uniform Penalty and Interest Act, 35 ILCS 735/3-1 et seq., may impose additional penalties on any tax liability owed pursuant to this determination.

May 12, 2014

Brian A. Hamer, Director  
Illinois Department of Revenue