

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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TOMAS J. ZANZOLA,	)	
Petitioner,	)	
	)	
v.	)	15 TT 81
	)	Judge Brian F. Barov
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Respondent.	)	

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**ORDER**

The parties appeared at a June 9, 2015, status conference, at which the Department’s motion to dismiss was heard. The motion to dismiss is DENIED for the reasons set forth below.

The Petitioner is challenging a Notice of Penalty Liability (“NPL”) issued for unpaid Illinois withholding tax, as responsible officer of Geez Enterprises, Inc. (“Geez”). The NPL covers four tax periods ending June 30, 2012, September 30, 2012, December 31, 2012, and December 31 2013. The total amount at issue for the 2012 tax periods is approximately \$10,412. For the 2013 tax period, the amount at issue is about \$17,633.

The Department has filed a motion to dismiss for lack of subject matter jurisdiction under section 2-619(a)(1) of the Code of Civil Procedure, 735 ILCS 5/2-619(a)(1). It contends that the Tribunal lacks jurisdiction because the case is moot. The case is moot, the Department argues, because in February 2015, after Geez went out of business, the Petitioner agreed to a payment plan for the \$10,361 assessed for the 2012 tax periods. The Department notes that after the NPL was issued but before filing the Petition, it reduced Petitioner’s tax liability for the 2013

tax period to zero. And the Department stresses that when registering the business, Petitioner signed an REG-1 form agreeing to be personally responsible for withholding taxes. As a result, according to the Department, there is nothing left to this case.

The problem with the Department's argument is that if the petition is dismissed and the NPL is then finalized, the Petitioner could be subject to a collection action—such as a lien or levy of his assets—regardless of whether he continues to perform under the agreed upon payment plan. *See* 35 ILCS 5/11-1109. Thus, the parties' rights and remedies under the NPL differ from their contractual rights and remedies under the payment plan, and a decision in the current case will have a direct impact on those NPL rights and remedies. The case is not moot. *See Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63-64 (2006); *Washington v. Civil Serv. Comm'n*, 146 Ill. App. 3d 73, 76-77 (1st Dist. 1986).

As the motion to dismiss is denied, the matter is reset for a telephone status conference on August 11, 2015, at 10:00 a.m.

s/ Brian Barov  
BRIAN F. BAROV  
Administrative Law Judge

Date: June 10, 2015