ILLINOIS INDEPENDENT
TAX TRIBUNAL

ZAHEER ALAM	)	
Petitioner	)	
V	)	**No. 14 TT 36**
ILLINOIS DEPARTMENT OF REVENUE	)	**Judge Brian F. Barov**
Respondent	)	

ANSWER

Now comes the Department of Revenue of the State of Illinois ("the Department") by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer's Petition states as follows:

PETITIONER:

Zaheer Alam
813 Chaucer Way
Buffalo Grove, IL 60089
773-251-1713

Taxpayer ID: XXX-XX-4195

ANSWER: The Department admits that the Petitioner is as stated.

PETITIONER'S ATTORNEYS:

Gust W. Dickett and James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)
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ANSWER: The Department admits that the Petitioner's Attorneys are as stated.

STATUTORY NOTICE AT ISSUE INCLUDING TAX PERIODS AT ISSUE:

NPL Penalty ID: 2560067
Personal Liability Assessment dated February 3, 2014 (copy attached)
For Unpaid Corporate Sales Taxes of AZL Inc. (IBT No. 3513-6995)
Amount = $58,387.15 (tax = $20,472.00; penalty = $23,816.00; interest = $13,829.15)
Tax periods at issue: March 2009

ANSWER: The Department admits that the statutory notice at issue including tax periods at issue is as stated except that the Department denies that the tax periods at issue are March 2009, and states affirmatively that the tax periods at issue are January 2007 to March 2009.

1. The Statutory Notice at issue is a personal liability assessment (a.k.a. NPL) issued to the Petitioner on February 3, 2014 for the tax periods ending March 2009 (copy attached) ("Statutory Notice").

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. The underlying corporation (AZL Inc.) closed in March 2009.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. The underlying corporation was audited by the Department in 2010 (during the amnesty program) for the tax periods January 2007 to March 2009.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. A payment of $97,590 was made during the amnesty program in 2010.

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. The Department issued a final assessment against the underlying corporation for the audit on August 1, 2013, and the tax periods and amounts contained in that final assessment are the exact same tax periods and amounts at issue in the Statutory Notice.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

6. The Statutory Notice is erroneous because the legal elements of responsibility and willfulness (35 ILCS 735/3-7) are not supported by the facts. In particular, the Department initiated an audit more than one year after the underlying corporation closed, and then the Department issued the final audit assessment to the underlying corporation more than 4 years after the corporation closed. Therefore, the Petitioner did not and could not prefer other creditors over the Department (i.e., no willfulness) because the audit liability was not established until after the corporation closed. Moreover, the audit liability is based on estimates (i.e., no willfulness) because the underlying corporation was unable to produce adequate books and records to the Department since it was already closed when the audit was initiated.

ANSWER: The Department denies that the Statutory Notice is erroneous because the legal elements of responsibility and willfulness (35 ILCS 735/3-7) are not supported by the facts. The Department admits that it initiated an audit more than one year after the underlying corporation closed, and that it issued the final audit assessment to the underlying corporation more than 4 years after the corporation closed. The Department also admits that as a result of the failure of the underlying corporation to keep adequate records for the audit period, that the Department used alternative means to determine its taxable receipts. The Department denies any and all remaining allegations in paragraph 6 of the petition.

7. Alternatively, even if the Petitioner is determined to be responsible and willful under 35 ILCS 735/3-7, the Statutory Notice is overstated because the statute allows the Department to issue a personal liability assessment only for the unpaid TAXES of the underlying corporation and not for the unpaid penalties and interest of the underlying corporation since only the TAXES were collected (or should have been collected) "in trust" for the state.

ANSWER: Paragraph 7 of the petition consists of legal or other conclusions and is denied.

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

a. denying the prayer for relief in the Petitioner's Petition;

b. finding that the Notice of Penalty Liability at issue is correct as issued;

c. ordering judgment in favor of the Department and against the Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____

George Foster
Special Assistant Attorney General

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CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on April 9, 2014 a copy of the Department's ANSWER was served on James E. Dickett, Romanoff & Dickett Ltd., by causing a copy to be sent by electronic mail to jdickett@aol.com.