ILLINOIS INDEPENDENT
TAX TRIBUBAL

DONALD J. McNEIL, an Individual,	)		
	).		
Petitioner,	)		
	)	No.	
v.	)		
	)		
ILLINOIS DEPARTMENT OF REVENUE,	)		
	)		
	)		
Respondent	)		

RECEIVED
MAR 28 2014
BY: 14 11 48

PETITION

Pursuant to the Illinois Independent Tax Tribunal Act (the "Act"), 35 ILCS 1010/1-1 *et seq.*, taxpayer Donald J. McNeil ("Taxpayer") submits this Petition and the exhibits attached hereto to contest the Notice of Deficiency ("Notice") issued by the Illinois Department of Revenue ("IDOR" or the "Department") on January 27, 2014 (copy attached as Exhibit A). For the reasons stated herein, Taxpayer does not currently owe any of the amounts set forth in the Notice.

INTRODUCTION AND BACKGROUND

1. On or about January 27, 2014, IDOR mailed to Taxpayer the Notice and an EDA-131 Examiner's Report (the "Report") (copy attached as Exhibit B).

2. The Notice alleged a deficiency for the 2009 tax year of $22,883.00 and interest of $1,918.00, for a total amount allegedly due of $24,801.00.

3. In the column entitled "Current Figures," the Report listed "0" on every line, thus indicating that IDOR had never received Taxpayer's 2009 return.

4. Taxpayer is without information or knowledge sufficient to form a belief as to why IDOR did not receive the return.

5. The 2009 return (attached as Exhibit C) was prepared and sent in May 2012.

6. Taxpayer's tax preparer died on June 22, 2012.

7. To the best of Taxpayer's knowledge and belief, the 2009 return did not contain any factual or legal errors at the time it was prepared.

8. On Line 17 of the 2009 return, there is a credit of $16,437.00 for income tax paid to other states, principally Indiana (see Schedule CR).

9. The total amount owed to Illinois after the credit for income tax paid to other states was $3,388.00.

10. However, in December 2013, I received Notices of Levy from my bank stating that the Indiana Department of Revenue ("Indiana") had tax judgments entered against me effective December 31, 2008, for unspecified tax years.

11. Prior to receiving these notices from my bank, I was unaware of any claim by Indiana that I owed any Indiana income tax.

12. I subsequently received a Proposed Assessment (copy attached as Exhibit D) claiming I owed $8,008.33 in taxes, penalty, and interest for the 2009 tax year).

13. On January 21, 2014, I sent Indiana a letter protesting the Proposed Assessment (copy attached as Exhibit E (exhibits to protest omitted)).

14. I have not received a response to the protest.

ARGUMENT

15. The attached 2009 Illinois return (Exhibit C) is free of factual or legal error and thus establishes the amount I would owe ($3,388.00) but for the amounts Indiana has proposed to assess.

16. The amount proposed by Indiana would increase the credit on Line 17 of the return to an amount greater than $3,388.00.

17. IDOR will not suffer any material prejudice if this proceeding is stayed pending resolution of the Indiana protest.

WHEREFORE, Taxpayer requests that the Tribunal enter an order staying these proceedings pending resolution of Taxpayer's Indiana protest.

Dated: March 28, 2014

DONALD J. McNEIL

Pro Se

Donald J. McNeil, Esq. [redacted]
The Law Office of Donald J. McNeil
617 West Fulton Street
Chicago, Illinois 60661
(312) 207-5677
(312) 704-4500 (FAX)
donald.mcneil@sbcglobal.net

EXHIBIT

A

Notice of Deficiency

for Individual Income Tax

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX XX68 2681 6965#
DONALD J MCNEIL
617 W FULTON ST
CHICAGO IL 60661-1109

January 27, 2014

Letter ID: CNXXXX6826816965

Taxpayer ID: [redacted]
Reporting Period: December 2009

Deficiency: $22,883.00
Interest: $1,918.00
Amount Due: $24,801.00
Amount to be Paid: $24,801.00

Based on information we received from the Internal Revenue Service, under authorization of the Internal Revenue Code, Section 6103 (d), we are proposing the deficiency identified in this notice for the reporting period listed above. The attached EDA-131, Examiner's Report, shows the computation of your deficiency and the "amount to be paid." **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, you must pay the total balance as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your social security number or taxpayer ID on your check, and mail a copy of this notice along with your payment.

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

- **If the amount of this tax deficiency, exclusive of penalty and interest is more than $15,000,** *or* **if no tax deficiency is assessed but the total penalties and interest 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,** file a protest with us, the Illinois Department of Revenue, within **60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at **tax.illinois.gov**). If we do not receive your protest within **60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, *or* other action.

If you have questions, call us weekdays between 8 a.m. and 5 p.m. Our contact information is listed below.

Sincerely,

Brian Hamer
Director

FEDERAL STATE EXCHANGE UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19026
SPRINGFIELD IL 62794-9026

217 782-7962
217 785-6003 fax

Enclosures: EDA-131, Examiner's Report
Return Envelope

EXHIBIT

B

EXHIBIT

C

EXHIBIT

D

AR-80
SF 43430 (Rev. 7/2011)

PROPOSED ASSESSMENT
INDIANA DEPARTMENT OF REVENUE

REFER TO THIS NUMBER ON ANY CONTACT WITH THE DEPARTMENT →

Liability Number: 2009-03816986
Notice Number: 13043674174
Date Issued: 12/02/2013

Taxpayer TID: 0113788851 - 000
Form Number: IT-40PNR
DLN: 12K0556501001
Account ID: 110983402
Liability Period: December 31, 2009
Tax Type: Individual Income

1300105880528

[redacted]

IMMEDIATE ACTION REQUIRED: A review of your Indiana Individual Income tax for the tax period December 31, 2009 shows you may owe $ 8,008.33, including penalty and interest. YOU MUST TAKE ACTION IMMEDIATELY TO RESOLVE THIS TAX DEBT. You must pay the amount owed no later than January 31, 2014, or you may protest this tax assessment within 60 days (by the due date listed here and below). If you fail to do either, this tax debt will continue to accrue interest and could ultimately convert into a tax warrant for collection action.
To make a payment arrangement online or pay your tax bill in full, please visit: www.intaxpay.in.gov today. Or you may call our office at (317)232-2240. Thank you for your immediate attention to this matter. ***SEE REVERSE SIDE FOR IMPORTANT DETAILS AND MAILING ADDRESSES.***

EXPLANATION OF TAX DUE FOR PERIOD ENDING December 31, 2009

Original Tax (Individual Income)	$	17,885.00
Credits	$	11,682.00
Penalty	$	620.30
Interest - Daily Amount $0.51	$	1,185.03
Amount you owe - Due Date: January 31, 2014	$	8,008.33

Please place your **CASE NUMBER 2866898** on your check (made payable to Indiana Department of Revenue) and mail with the form provided below:

DONALD J MCNEIL
[redacted]

Due Date: January 31, 2014

AMOUNT
PAID $

Indiana Dept. of Revenue
PO Box 1028
Indianapolis, IN 46206-1028

AMOUNT YOU OWE: 8008.33

0101137888510020090381698600000000008008 33

Continued from previous page.
Notice Number: 13043674174

Issued 12/02/2013
DONALD J MCNEIL

EXPLANATION OF TAX DUE FOR : December 31, 2009

THE AMOUNT OF CREDIT FOR INDIANA STATE TAX WITHHELD HAS BEEN CORRECTED TO AGREE WITH THE INDIANA STATE TAX WITHHELD AS SHOWN ON YOUR W-2G'S, SUBMITTED WITH YOUR RETURN.

If you have any questions about **WHY** this tax is due, you may call between 8:00 AM and 4:30 PM Monday through Friday Eastern Standard Time or write to:

CUSTOMER CONTACT
PO BOX 1028
INDIANAPOLIS, IN 46206-1028
(317)232-2240

EXHIBIT

E

The Law Office of Donald J. McNeil

[redacted]

Donald J. McNeil
[redacted]

January 21, 2014

VIA FEDEX STANDARD OVERNIGHT

Indiana Department of Revenue
100 North Senate Avenue
Indianapolis, IN 46204
Attn: Shannon

Re: Protest of Proposed Assessments
Liability Numbers 2008-03816996, 2008-03816997, 2009-03816986
Notice Numbers 13043674173, 13043674171, 13043674174
Warrant No. 09269450 (Marion County)
[redacted]
Case Number 2866898

Dear Shannon:

During our telephone conversation last month, we discussed the Notices of Levy my bank, JP Morgan Chase, N.A. ("Chase"), sent me stating that the Indiana Department of Revenue ("IDOR") had tax judgments entered against me effective December 31, 2008, for unspecified tax years. Prior to receiving these notices from my bank, I was unaware of any claim by IDOR that I owed any Indiana income tax. I had never received the demand notice required by Indiana Code 6-8.1-8-2 or any other communication from IDOR or any agent of IDOR regarding this alleged liability.

In telephone conversations, employees of IDOR and its collection agency, Premiere Credit of North America, LLC ("Premiere"), acknowledged that none of the notices allegedly mailed to me was sent to the address on my returns (copies of my 2008 and 2009 Indiana returns are enclosed as Exhibit 1), where I resided during the relevant tax years and for several years before that, and where I have resided continuously since then. I have been told that some correspondence was returned stamped "Moved, Left No Address." This mistake by the Postal Service does not excuse IDOR's failure to give me notice of the claimed underpayments. If I had been given such notice, this matter could have been resolved quickly and efficiently, as was a similar dispute involving my return for the tax year ending December 31, 2006 (copies of relevant correspondence are enclosed as Exhibit 2).

I now have received the above-referenced Proposed Assessments issued by IDOR on December 2, 2013. I understand that IDOR, by issuing these notices, is going back to square one

and giving me the opportunity to protest the assessments that were the subject of the Notices of Levy. I appreciate IDOR's effort to afford me the statutory, common law, and constitutional rights to which I am entitled, but nothing herein should be construed as a waiver of any claims for damages or other relief I might have arising out of acts or omissions by the State of Indiana; IDOR; the Sheriff of Marion County, Indiana; Premiere; Chase; or any other entity in any way responsible for the wrongful assessment and collection of Indiana income taxes, penalties, and interest from me for the tax years ending December 31, 2008, and December 31, 2009.

Here are my responses to the proposed assessments, not a penny of which do I owe to the State of Indiana:

Liability Number 2008-03816997 (Notice Number 13043674171)

In the Proposed Assessment, IDOR says, "The amount of credit for Indiana state tax withheld has been corrected to agree with the Indiana state tax withheld as shown on [my] W-2G's submitted with [my] return." That amount, I agree, is $1,835. The total amount of Indiana state tax withheld that was reported on the return is $8,707. Throughout my tenure as a partner at Barnes & Thornburg LLP ("B&T"), the firm withheld Indiana income tax from partners' semimonthly distribution payments (copies of typical check stubs are enclosed as Exhibit 3) and from an annual distribution made by BT Building Company, LLP ("BTB"), a B&T subsidiary. In 2008, the total amount withheld by B&T was $6,606 and by BTB was $266. (Enclosed as Exhibit 4 are excerpts from my 2008 federal return reflecting these amounts. IDOR also should have received WH-18 forms reporting the amounts withheld). So the total amount of Indiana income tax withheld was

B&T	$6,606
BTB	266
W-2G	1,835
Total	$8,707

That is the amount reported on Line19 of my 2008 return. Nothing more is due.

Liability Number 2008-03816996 (Notice Number 13043674173)

In the Proposed Assessment, IDOR asserts that a penalty is due because "at least 90% of [my] current tax liability [was not] paid throughout the year by withholding credits, estimated taxpayments [sic], or other credits." That is incorrect. As set forth in my response to Liability Number 2008-03816997 and supported by Exhibits 1, 3 and 4, the entire $8,707 of credits reported on Line 31 of my 2008 Indiana return was "paid throughout the year by withholding credits": $6.606 withheld by B&T from my semimonthly distributions, $266 withheld by BTB from my annual distribution; and $1,835 withheld from payments by Indiana casinos. Since $8,707 is 95.86% of the total tax on Lines 18 and 30 of my 2008 return, I am not liable for any penalty under the provisions relied upon by IDOR in the Proposed Assessment.

Liability Number 2009-03816986 (Notice Number13043674174)

In this Proposed Assessment, IDOR omits the same categories of credits it omitted in Liability Number 2008-03816997. IDOR says, "The amount of credit for Indiana state tax withheld as been corrected to agree with the Indiana state tax withheld as shown on [my] W-2G's submitted with [my] return." That amount, I agree, is $11,682. But IDOR omitted from the Proposed Assessment the amounts withheld by B&T from my semimonthly distributions and by BTB from my annual distribution.

The total amount of Indiana state tax withheld that was reported on the return is $18,927. The total amount withheld by B&T from my semimonthly distribution payments was $7,211 (copy of B&T letter confirming this amount is enclosed as Exhibit 5), and the total amount withheld by BTB from my annual distribution payments was $34 (copy of WH-18 is enclosed as Exhibit 6). So the total amount of Indiana income tax withheld was

W-2G	$11,682
B&T	7,211
BTB	34
Total	$18,927

That is the amount reported on Line 14 of my 2009 return. Nothing more is due.

Relief Requested

Based on the information set forth herein and in the attached exhibits, IDOR should do the following as soon as possible:

- issue a written determination that I do not owe any Indiana income tax for the years ending December 31, 2008, and December 31, 2009, and that the issuance of a tax warrant was in error;
- pursuant to Indiana Code 6-8.1-8-2(g)(2)-(h), mail to me and to the circuit court clerk of each county where the above-referenced warrants were filed releases of the judgments entered and orders that the warrants be expunged;
- refund to me any amount collected by Premiere or IDOR from Chase pursuant to the Notices of Levy;
- refund to me the income tax overpayment stated on Line 18 of my 2009 return;
- send me the form prescribed by IDOR pursuant to Indiana Code 6-8.1-8-11(2) for reimbursement of bank charges (as defined in Indiana Code 6-8.1-8-10) I incurred as a result of the erroneous levy.

Thank you for your assistance in this matter.

Very truly yours,

Donald J. McNeil

DJM:ab
Enclosures