



Petitioner a Notice of Deficiency dated February 28, 2014 for the calendar tax year ended December 31, 2009 (“2009”). A copy of the Notice of Deficiency for 2009 is attached hereto as Exhibit A. The Department also issued to Petitioner a Notice of Deficiency dated February 28, 2014 for the calendar tax year ended December 31, 2010 (“2010”). A copy of the Notice of Deficiency for 2010 is attached hereto as Exhibit B.

**ANSWER:** The information contained in paragraph 2 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 2.

3. **Jurisdiction.** The Tribunal has jurisdiction over this case pursuant to section I-45 of the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010/1-45)a). The amount at issue in each Notice of Deficiency referred to in paragraph 2 (each, a “Notice,” and collectively, the “Notices”) exceeds \$15,000, exclusive of penalties and interest. Petitioner also timely filed its petition within 60 days after the issuance of the Notices.

**ANSWER:** The information contained in paragraph 3 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 3.

4. **Amounts in Dispute.** In the Notices, the Department determined the following deficiencies in tax, penalties, and interest all of which are in dispute.

| <u>Tax Year</u> | <u>Tax</u>   | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-----------------|--------------|------------------|-----------------|--------------|
| 2009            | \$ 43,694.00 | \$ 6,804.10      | \$ 4,447.25     | \$ 54,945.35 |
| 2010            | \$138,837.00 | \$21,075.55      | \$ 8,849.95     | \$168,762.50 |
| Total           | \$182,531.00 | \$27,879.65      | \$13,297.20     | \$223,707.85 |

**ANSWER:** Department admits that these are the amounts contained in the aforementioned Notices of Deficiency referenced in Paragraph 2.

5. **Assignments of Error.** The Department’s determination of deficiencies in tax, penalties, and interest set forth in the Notices are based upon the following errors:

a. The Department erred in determining that Petitioner was required to file income and replacement tax returns for 2009 and 2010.

**ANSWER:** The Department denies Paragraph 5(a).

b. The Department erred in determining that Petitioner is liable for income and replacement tax in the amount of \$43,694.00, or any other amount, for 2009, and in the amount of \$138,837.00, or in any other amount, for 2010.

**ANSWER:** The Department denies Paragraph 5(b).

c. The Department erred in determining that Petitioner exercised “the privilege of earning or receiving income in or as a resident of this State,” within the meaning of section 201(a) and (c) of the Illinois Income Tax Act, 35 ILCS 2/210(a), (c).

**ANSWER:** The Department denies Paragraph 5(c).

d. The Department’s imposition of income and replacement tax on Petitioner violates the McCarran-Ferguson Act, 15 U.S.C.A. §§1011-15.

**ANSWER:** The Department denies Paragraph 5(d).

e. The Department's imposition of income and replacement tax on Petitioner violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, U.S. CONST. amend. XIV §1.

**ANSWER:** The Department denies Paragraph 5(e).

f. The Department erred in determining that Petitioner is liable for late-filing or non-filing penalties of \$250.00, or in any other amount, for 2009 and \$250.00, or in any other amount for 2010.

**ANSWER:** The Department denies Paragraph 5(f).

g. The Department erred in determining that Petitioner is liable for additional late-filing penalties in the amount of \$6,554.10, or in any other amount, for 2009 and in the amount of \$20,825.22, or in any other amount for 2010.

**ANSWER:** The Department denies Paragraph 5(g).

h. The Department erred in determining that Petitioner is liable for interest in the amount of \$4,447.25, or in any other amount, for 2009 and interest of \$8,849.95, or in any other amount for 2010.

**ANSWER:** The Department denies Paragraph 5(h).

i. The Department erred in failing to abate the penalties and interest that are in dispute in this case.

**ANSWER:** The Department denies Paragraph 5(i).

6. **Supporting Facts.** The facts upon which Petitioner relies to establish the errors Identified in paragraph 5 are as follows:

a. Petitioner is a captive insurance company and wholly owned subsidiary of

Republic Services, Inc. (“Republic”).

**ANSWER:** The Department admits Paragraph 6(a).

b. Petitioner is incorporated under the laws of the Cayman Islands and has a Class “B” insurance license under the Cayman Islands’ Insurance Law.

**ANSWER:** The Department admits Paragraph 6(b).

c. Republic is a publicly traded company incorporated under the laws of the State of Delaware and the parent of an affiliated group of companies.

**ANSWER:** The Department admits the factual allegations contained in Paragraph 6(c).

d. During 2009 and 2010, Republic’s corporate office, including its treasury, risk management, and other corporate functions was located in Phoenix, Arizona.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(d).

e. During 2009 and 2010, Republic and its affiliates provided non-hazardous solid waste collection and disposal services in 40 states and Puerto Rico.

**ANSWER:** The Department admits Paragraph 6(e).

f. During 2009 and 2010, Zurich American Insurance Company (“Zurich”), a third party insurance company, provided high deductible insurance coverage to Republic for workers compensation, automobile, and general liabilities. Under the Zurich policies, Republic’s deductibles for each occurrence ranged from \$1 million to \$5 million.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to

the truth or falsity for the remaining allegations contained in Paragraph 6(f).

g. During 2009 and 2010, Petitioner provided deductible reimbursement

insurance coverage to Republic for workers compensation, automobile, and general liabilities. Under these policies (the "Policies"), Petitioner reimbursed Republic for a portion of deductibles under the Zurich policies.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(g).

h. During 2009 and 2010, Cannon Cochran Management Services, Inc. ("CCMS") served as Republic's third party administrator. CCMS handled and paid all claims relating to Republic's worker's compensation, automobile, and general liabilities. CCMS did not have any contractual or other relationship with Petitioner.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(h).

i. Petitioner was not licensed or authorized to do business in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(i).

j. Petitioner had no office or place of business in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(j).

k. Petitioner did not own or lease any property in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(k).

l. Petitioner did not advertise or solicit any business in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as

to the truth or falsity for the remaining allegations contained in Paragraph 6(l).

m. Petitioner conducted no activities in this State.

**ANSWER:** The Department denies Paragraph 6(m).

n. No correspondence between Petitioner and any person originated from, terminated in, or otherwise occurred in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(n).

o. Petitioner had no employees, agents or other representatives in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(o).

p. All of the Policies were negotiated, issued by Petitioner, and received by Republic outside of this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(p).

q. All of the premiums for the Policies were paid by Republic and received by Petitioner outside of this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(q).

r. Petitioner did not investigate or adjust any claims or losses in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(r).

s. Petitioner did not inspect any risks in this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as

to the truth or falsity for the remaining allegations contained in Paragraph 6(s).

t. All payments for claims or losses under the Policies (that is, deductible reimbursements) were made by Petitioner and received by Republic outside of this State.

**ANSWER:** The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 6(t).

u. In *State Board of Insurance v. Todd Shipyards Corp.*, 370 U.S. 451 (1962), the U.S. Supreme Court held that the State of Texas did not have the power to tax insurance transactions where such transactions took place entirely outside the State and the only connection between such transactions and the State was that the insured risks were located in the State. In so holding, the Court relied on its prior decisions under the Due Process Clause in *Connecticut General Life Ins. Co. v. Johnson*, 303 U.S. 77 (1938), *St. Louis Cotton*.

**ANSWER:** The Department denies Paragraph 6(u).

v. The insurance transactions between Petitioner and Republic took place entirely outside of this State. Therefore, *Todd Shipyards* controls the disposition of this case.

**ANSWER:** The Department denies Paragraph 6(v).

w. Even assuming that *Todd Shipyards* is not controlling, Petitioner did not have the “minimum contacts” with this State required by the Due Process Clause to impose income and replacement tax on Petitioner.

**ANSWER:** The Department denies Paragraph 6(w).

x. Petitioner exercised ordinary business care and prudence in determining whether it was subject to tax in this State.

**ANSWER:** The Department denies Paragraph 6(x).

y. Petitioner's position that it is not subject to tax in this State is supported by binding legal precedent of the United States Supreme Court.

**ANSWER:** The Department denies Paragraph 6(y).

z. By contrast, the Department's position that Petitioner is subject to tax in this State represents a novel interpretation of constitutional law in the area of state taxation of insurance.

**ANSWER:** The Department denies Paragraph 6(z).

aa. Any failure by Petitioner to file any required returns or pay any tax due at the the required time was due to reasonable cause.

**ANSWER:** The Department denies Paragraph 6(aa).

**WHEREFORE,** Department respectfully requests this Tribunal to:

- (a) deny each prayer for relief of the petition;
- (b) find that the Petitioner did not exercise ordinary business care and prudence by attempting to allocate their income for tax year ending December 31, 2009 and December 31, 2010;
- (c) find that the Notices of Deficiency correctly reflect the Petitioner's 2009 and 2010 Illinois income tax assessment, including penalties and interest;
- (d) enter judgment in favor of the Department and against the Petitioner;  
and
- (e) grant any further relief this Tribunal deems just and appropriate.

Dated: May 27, 2014

Respectfully submitted,

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ILLINOIS INDEPENDENT

TAX TRIBUNAL

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|                        |   |                    |
|------------------------|---|--------------------|
| BOM AMBIENTE INSURANCE | ) |                    |
| COMPANY,               | ) |                    |
|                        | ) | 14 TT 89           |
| Petitioner,            | ) | Judge James Conway |
| v.                     | ) |                    |
|                        | ) |                    |
| THE STATE OF ILLINOIS  | ) |                    |
| DEPARTMENT OF REVENUE, | ) |                    |
|                        | ) |                    |
| Respondent.            | ) |                    |

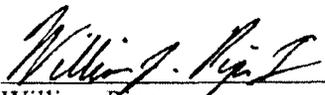
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**AFFIDAVIT OF WILLIAM PIPER  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, William Piper, 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 II.
3. I reviewed Taxpayer's Illinois income tax audit for the tax year ending December 31, 2009 and December 31, 2010.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 6(d), 6(f), 6(g), 6(h), 6(i), 6(j), 6(k), 6(l), 6(n), 6(o), 6(p), 6(q), 6(r), 6(s) and 6(t) .
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
\_\_\_\_\_  
William Piper  
Revenue Auditor II  
Illinois Department of Revenue

Date: 5/23/14