

**ST 10-17**

**Tax Type: Sales Tax**

**Issue: Responsible Corporate Officer – Failure to File or Pay Tax**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket No.	05-ST-0000
<b>OF THE STATE OF ILLINOIS</b>	)	IBT No.	0000-0000
v.	)	NPL Nos.	
<b>JOHN &amp; JANE DOE,</b>	)		
as responsible officers of	)		
ABC Stationery & Gifts, Ltd.,	)	John E. White,	
Taxpayers	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** John Doe appeared, *pro se*, for himself and Jane Doe; George Foster, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter arose when John and Jane Doe (Taxpayers) protested the Notice of Penalty Liability (NPL) the Illinois Department of Revenue (Department) issued to each of them as responsible officers of ABC Stationery & Gifts, Ltd. (ABC). Each NPL assessed a penalty that was equal to ABC's unpaid corporate tax liabilities.

At the hearing, John Doe (Doe) testified under oath, and also offered documents into evidence. I have reviewed the evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize each NPL as issued.

**Findings of Fact:**

**Procedural History and Facts Regarding ABC' Unpaid Tax Liability**

1. The penalty assessed against Taxpayers is derivative of ABC's unpaid tax liabilities. Department Ex. 1 (copies of NPLs); McLean v. Department of Revenue, 326 Ill. App. 3d 667, 673-74, 761 N.E.2d 226, 233 (1<sup>st</sup> Dist. 2001).
2. The Department issued NPL no. XXXX to Jane Doe and NPL no. XXXX to John Doe. Department Group Ex. 1.
3. There are two tax assessments identified on each NPL. Department Ex. 1. The first assessment, no. XXXXX, is based on a delinquency that ABC reported on a signed return that was received by the Department without full payment. *See id.* The outstanding liability identified on each NPL for that unpaid assessment is \$1.19. *Id.*
4. The other assessment identified on each NPL, assessment no. XXXXX, is based on an assessment of tax issued to ABC as a Notice of Tax Liability (NTL), dated August 4, 2004. Department Ex. 1; Taxpayer Exs. 5 (copy of August 4, 2004 NTL); 20 (Director's Order of Remand, dated April 14, 2008), p. 3. That NTL was issued following the Department's audit of ABC for the period from December 1994 through March 1997. Taxpayer Exs. 5, 20. The outstanding liability identified on each NPL for that assessment is \$106,178.74. Department Ex. 1.
5. For the period of December 1994 through and including March 1997 (hereafter, the audit period), the Department determined that ABC was conducting business but did not file monthly sales and use tax returns, as required by § 3 of Illinois' Retailers' Occupation Tax Act (ROTA). Department Ex. 2, p. 4 (copy of Investigative Summary

Report, dated August 5, 1997, prepared by Michael Knezevich (Knezevich), an agent of the Department's Bureau of Criminal Investigation (BCI)); Taxpayer Exs. 5, 11 (copy of Auditor's Comments, prepared by Department auditor Syed Ghazali).

6. During the audit period, ABC charged its customers for tax, and it collected such tax amounts from its customers. Taxpayer Ex. 11. ABC thereafter used the collected tax monies to operate its business. *Id.*
7. Because ABC did not file monthly returns for the audit period, it also did not mail any checks with such returns to pay the amounts of tax that ABC was required to report as being due on such returns. Department Ex. 2, *passim*; Taxpayer Ex. 11.
8. In June 2007, there was a hearing held in this matter following Taxpayers' Motion to Dismiss (Taxpayers' Motion) that part of the NPLs purporting to derive from NTL no. XXXX. Order, dated June 14, 2007. The basis for Taxpayers' Motion was that since that NTL was not, in fact, properly served to ABC as ABC' last known address, it could not have become a final assessment for which Taxpayers might be held derivatively liable. Taxpayer Ex. 20; Order, dated June 14, 2007.
9. As a result of Taxpayer's Motion, on April 14, 2008, the Director issued an Order of Remand, which provided as follows:

The administrative law judge forwarded to me for my consideration a recommendation that Notice of Tax Liability # XXX, issued by the Department on August 4, 2004 ("NTL"), did not conform to provisions of section 12 of the Retailers' Occupation Tax Act, 35 ILCS 120/12, in that service of this NTL was not made to the corporate taxpayer's last known address. As such, the alj recommended that the taxpayers' motion to dismiss filed in this cause be granted as to this NTL. As part of his recommendation, the administrative law judge noted that the NTL was based upon unfiled corporate taxpayer returns, and as such, no statute of limitations applies to the issuance of an NTL for the liability.

Therefore, pursuant to my authority as Director of the Illinois Department of Revenue, 86 [Ill.] Admin. Code, ch. 1, section 200.165, and for purpose of judicial economy, I remand this matter to the office of administrative hearings as follows:

1. NTL #XXXXXX, which is attached hereto, is hereby served on the corporate taxpayer at its last known address through service of this Order by certified United States mail;
2. The statutory protest period of 60 days is waived, and the NTL is deemed to be properly protested as of the date of this Order;
3. The issue of the correctness of the NTL will be heard in proceedings in the Office of Administrative Hearings under the instant docket number 05 ST 0163;
4. The matters of NPL No. XXXX and XXXX are remanded to the Office of Administrative Hearings and shall remain open until there is a final determination in the matter of the NTL, at which time, the taxpayers herein shall be given full opportunity to litigate the issue of the correctness of the NPL's in that same forum;
5. The administrative law judge shall issue an order setting the matter regarding the NTL for a status conference, with notice of such to the parties via certified United States mail.

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Taxpayer Ex. 20.

10. The first status conference held after the Director issued the Order of Remand was set for June 18, 2008. Order, dated April 16, 2008. That status conference was set to allow ABC to contest the NTL dated August 4, 2004, which was properly served to ABC after the Director's Order of Remand was issued. *Id.* John Doe appeared on ABC' behalf at that status conference, and at every subsequent status or other conference set in the contested case against ABC. *See id.*
11. Following the June 18, 2008 status conference, ABC was directed, in writing, to submit a power of attorney form naming counsel to represent it, as required by Department regulation § 200.110. Order, dated June 18, 2008; 86 Ill. Admin. Code § 200.110.<sup>1</sup> On two separate occasions, ABC requested and was granted an extension

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<sup>1</sup> Section 200.110 of the Department's hearing regulations provides, in pertinent part:  
200.110 Appearances  
a) At hearings or pre-trial matters before the Department, a party to the

of the deadline for it to obtain counsel. Orders, dated July 30 and September 16, 2008. The requests were occasioned by ABC' inability to obtain counsel. *Id.*

12. On November 14, 2008, an order was entered in the contested case held regarding ABC' deemed protest of NTL no. XXXX. Taxpayer Ex. 22 (copy of Order, dated November 24, 2008). That Order entered a default judgment against ABC, after ABC failed to file a power of attorney form naming counsel to represent it, as required by § 200.110 of the Department's administrative hearing regulations. *Id.*; 86 Ill. Admin. Code § 200.110.

13. Thereafter, the agency decision finalizing NTL no. XXXX, issued to ABC via the Director's Order of Remand, became a final assessment. Taxpayer Ex. 23 (copy of Final Assessment notice issued to ABC, dated January 5, 2009).

14. After NTL no. XXXX became a final assessment, the contested case involving Taxpayers' protest of the NPLs previously issued, proceeded toward administrative hearing. *See* Order, dated February 4, 2009.

### **Facts Regarding Taxpayers' Status With, and Duties Regarding, ABC**

15. Prior to the audit period, John Doe had been ABC' secretary. Department Ex. 3 (copy of John Doe's written responses to the Department's Interrogatories), p. 2 (interrogatory number 3).

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proceeding may represent himself or he may be represented by any person who is admitted to practice as an attorney at law by, and is in good standing before, the Supreme Court of Illinois, or who is permitted by a circuit court granting leave to appear pro hac vice to practice law in a case before the Department. A corporation may be represented by an officer, or other authorized employee, in any matter wherein the contested tax liability or claim does not exceed \$2,500.00, exclusive of penalties and interest.

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86 Ill. Admin. Code § 200.110(a) (effective January 1, 1996).

16. During the audit period, John Doe was responsible for supervising the preparation of ABC' sales tax returns. Department Ex. 3, p. 5 (interrogatory number 15). He was also responsible for filing ABC' returns, and for paying ABC' sales tax liabilities. *Id.* (interrogatory numbers 14-15).
17. During part of the audit period, from the beginning through 1995, John Doe was ABC' office manager. Department Ex. 3, p. 3 ((interrogatory number 6). For the same period, John Doe received compensation in the amount of \$500 per week from ABC. *Id.*
18. John Doe determined the priority of ABC' debt payments based on those "payment[s] required to stay in business." Department Ex. 3, p. 5 (interrogatory number 16).
19. During the audit period and before, Jane Doe was ABC' president. Department Ex. 2, pp. 2, 18. Prior to the audit period, when ABC was filing monthly sales tax returns, Jane Doe had signed those returns. *Id.*
20. ABC prepared and submitted a form NUC-1, on which it reported information when applying for an Illinois Business Registration number. Department Ex. 4 (copy of ABC' Department form NUC-1, Illinois Business Registration). On that application, ABC was asked to identify the individual who would "accept responsibility for the filing of returns and the payment of taxes due." *Id.*, p. 2 (Section 2, question 13 of form NUC-1). In response to that request for information, Jane Doe's signature was provided, as was her home address, telephone and social security numbers, and she was identified as ABC' president. *Id.*

**Analysis:**

Section 3-7 of the Uniform Penalty and Interest Act (UPIA) provides, in pertinent part:

(a) Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. \*\*\*

35 ILCS 735/3-7(a). The UPIA was enacted to consolidate into one statute many of the penalty provisions previously included within different tax statutes administered by the Department. *See* 35 ILCS 735/3-1A.

In addition to authorizing the imposition of a tax penalty upon certain responsible corporate officers or employees, § 3-7(a) of the UPIA also provides that:

\*\*\* The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section. Proof of that determination by the Department shall be made at any hearing before it or in any legal proceeding by reproduced copy or computer printout of the Department's record relating thereto in the name of the Department under the certificate of the Director of Revenue.

35 ILCS 735/3-7(a). Thus, when the Department introduced the NPLs into evidence under the certificate of the Director, it presented prima facie proof that Taxpayers were personally responsible for ABC' unpaid tax liabilities. *Id.*; Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995) (“by operation of the statute, proof of the correctness of such penalty, including the willfulness element, is established

by the Department's penalty assessment and certified record relating thereto."'). The Department's prima facie case is a rebuttable presumption. Branson, 168 Ill. 2d at 262, 659 N.E.2d at 968. After the Department introduces its prima facie case, the burden shifts to the taxpayer to establish that one or more of the elements of the penalty are lacking. *Id.*; 35 ILCS 735/3-7(a).

At hearing, John Doe argued that the NPLs were improper, and violated their rights to due process, because of defects in the way ABC' underlying corporate tax liability — specifically, NTL no. XXXXX — was assessed and finalized. Taxpayers' Brief, pp. 1-5. In sum, Taxpayers complain that the underlying assessment against the corporation was not correct, and that neither Taxpayers nor ABC have been given the opportunity to contest that underlying liability at a hearing. *Id.*

Taxpayers' second argument, that neither they nor ABC ever had an opportunity to contest the NTL, is belied by the record in this matter. Taxpayers' first opportunity to challenge that NTL occurred in June 2007, at a hearing held regarding Taxpayers' Motion to Dismiss. At that hearing, John Doe presented evidence to demonstrate that that NTL had not been mailed to ABC' last known address. The evidence attached to that Motion caused this ALJ to recommend that the Director grant Taxpayers' request to dismiss that part of the NPLs. *See* Taxpayer's Ex. 20. It was that same presentation which caused the Director to issue the Order of Remand, and, rather than dismissing that part of the NPLs that was based on the NTL, to direct that that NTL be served to ABC, properly, and to defer the resolution of the contested case involving Taxpayers, individually, until such time as an agency determination was reached in the underlying corporate tax dispute. *Id.*

After the Director caused the NTL to be issued properly to ABC, ABC then had the full opportunity to offer whatever evidence it might have to show that the tax assessment reflected on NTL no. XXXXX was in any way improper. This included the opportunity to offer evidence sufficient to demonstrate any statutory or other defenses that might have been available to it, including any challenges to the audit, itself, or to the correctness of the amount of tax assessed. But ABC never offered any such evidence, because it failed to comply with § 200.110 of the Department's hearing regulations. That regulation requires corporations to be represented by an attorney in contested cases involving assessments or claims for the refund of tax in excess of \$2,500, excluding penalty and interest. 86 Ill. Admin. Code § 200.110 (*quoted supra*, pages 4-5, note 1). Although ABC had more than six months to secure counsel (Taxpayer Ex. 19), it failed to file a power of attorney naming counsel to represent it, and a default determination was entered against it. Taxpayer Exs. 20-21; Orders, dated June 18, July 30 and September 16, 2008. After the NTL issued to ABC became a final assessment, Taxpayers notified the Department that they would take administrative review of that agency determination. *See* Order, dated February 4, 2009. Thereafter, Taxpayers and Department counsel advised that ABC's appeal via administrative review had been resolved in favor of the Department. *See* Order, dated May 6, 2009.

Illinois law is clear that: “[i]n an action to collect the unpaid tax the issue of the amount due cannot be retried. The assessments are not subject to collateral attack in a suit to collect the tax.” People ex rel Scott v. Pintozzi, 50 Ill. 2d 115, 127, 277 N.E.2d 844, 851 (1971); Department of Revenue v. Dombrowski, 202 Ill. App. 3d 1050, 1053-54, 560 N.E.2d 881, 883-84 (1<sup>st</sup> Dist. 1990). Therefore, Taxpayers' first argument, that

the NTL issued to ABC was not correct, is not subject to collateral attack by Taxpayers here. Pintozzi, 50 Ill. 2d at 127, 277 N.E.2d at 851; Dombrowski, 202 Ill. App. 3d at 1053-54, 560 N.E.2d at 883-84. The issues, instead, are whether each of them was a responsible officer or employee of ABC, and whether each willfully failed to file its returns, or to pay its taxes, or willfully attempted to avoid the payment of such taxes. *See* 35 ILCS 735/3-7(a); Branson, 168 Ill. 2d at 262, 659 N.E.2d at 968.

The presumption of correctness that attaches to the Department's prima facie case extends to all elements necessary to establish that the penalty is due. Branson, 168 Ill. 2d at 260, 659 N.E.2d at 968. Not only have Taxpayers offered no evidence that rebuts the Department's determination that both Taxpayers were responsible officers or employees of ABC, but the evidence that was admitted corroborates that determination. First, Jane Doe was identified as ABC's president on the application form that ABC filed with the Department seeking a business registration number. Department Ex. 4, p. 2. Her name and signature are hand-written on the space provided under the form's pre-printed statement: "I accept responsibility for the filing of returns and the payment of taxes due." *Id.* Additionally, Jane Doe's name, home address, telephone and social security numbers are provided. *Id.* There was no evidence offered to show that those hand-written entries were not correct, either when made or during the period at issue.

Similarly, the evidence also supports the Department's determination that John Doe was a responsible officer or employee of ABC. Chief among such evidence is John Doe's sworn responses to the Department's interrogatories, which Department counsel offered during its rebuttal case. Department Ex. 3. Specifically, John Doe was asked the following questions and provided the following, hand-written answers:

6. With respect to your affiliation with the Corporation, indicate the following:

a. Your specific period of employment, title or position, and specific responsibilities and duties;

b. The specific type and amount of compensation you received from the Corporation during the taxable period;

c. The specific percentage of total shares in the Corporation which you owned, in which you had an interest, or over which you exercised control and the inclusive dates during which such ownership, interest or exercise of control existed or could have occurred.

ANSWER:

April 1994 – Dec 1995; office mgr.

April 1994 – 1995 500.00 per week

None

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14. Indicate the name(s) and address(es) and title(s) of the person(s) who had the responsibility for the preparation and filing of sales tax returns for the taxable period for the Corporation and the payment of taxes pursuant thereto and indicate for each person so identified, the authority under which he/she acted.

ANSWER:

XXXXXX, Il. book keeper prepared returns

John Doe, Il. ; filing & payment

15. Indicate the name(s), address(es) and title(s) of the person(s) who had the responsibility for supervising, and/or controlling the preparation, filing and payment of sales tax returns and income tax withholding for the Corporation during the taxable period and indicate for each person so identified, the authority under which he/she acted.

ANSWER:

John Doe supervising, filing and payment

16. Indicate the name(s) of the person(s) who determined the order of debt payment for the Corporation during the taxable period.

a. By what corporate authority did such person(s) determine the order of debt payment?

b. What was the order of corporate debt payment?

c. Which person(s) was/were responsible for debt payment?

d. Was/were the Tax(es) paid by the Corporation during the taxable period and, if not, who were the person(s) responsible for nonpayment?

ANSWER:

None

Payment required to stay in business

John Doe

To the best of my memory & knowledge taxes were paid. If not John Doe

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Department Ex. 3, pp. 3, 5-6.

Here, John Doe concedes that he was employed and paid by ABC for parts of the audit period. Department Ex. 2, p. 3. He also admits that he was personally responsible for supervising the preparation of ABC' monthly returns during the audit period, as well as being personally responsible for filing those returns and paying the corporation's taxes. *Id.*, pp. 5-6.

Additionally, the evidence shows that, prior to the audit period, both Jane and John had been personally involved with filing ABC' monthly sales and use tax returns. John personally supervised the preparation of those returns and filed them, and Jane signed them. Department Ex. 2, pp. 2, 18; Department Ex. 3, pp. 3, 5-6. Based on the evidence, I conclude that both John and Jane Doe had the "control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act ...." 35 ILCS 735/3-7(a).

The second issue is willfulness. The Department's prima facie case presumes willfulness. Branson, 168 Ill. 2d at 262, 659 N.E.2d at 968. To rebut the presumption, the person defending against the penalty must adduce sufficient evidence to disprove willful failure to file returns and pay taxes. *Id.* Whether a responsible officer acts willfully is a mixed question of law and fact. *Id.* at 265, 659 N.E.2d at 970. A responsible officer cannot prove his lack of willfulness simply by denying conscious awareness of a tax deficiency that could have been easily investigated by an inspection of corporate records. *Id.* at 267, 659 N.E.2d at 971. In McLean v. Department of Revenue, 326 Ill. App. 3d

667, 761 N.E.2d 226 (1<sup>st</sup> Dist. 2001), the appellate court provided a further, concise description of Illinois law regarding willful conduct by a responsible officer:

Under Illinois law, if a responsible officer uses collected retailers' occupation taxes to pay other creditors of the corporation, while knowing that he or she was obligated to file the returns and remit the taxes, the "willful" element of section 13½ is satisfied. *Branson*, 168 Ill. 2d at 259, 213 Ill.Dec. 615, 659 N.E.2d at 967; *Estate of Young*, 316 Ill. App. 3d at 378, 248 Ill.Dec. 654, 734 N.E.2d at 953. "A finding of willfulness under section 13½ does not require a showing of actual knowledge of nonpayment. Reckless disregard for obvious or known risks will suffice. [Citation.] If a responsible person in a position to easily discover nonpayment clearly ought to have known of a grave risk of nonpayment but did nothing, a finding of willfulness is justified." *Estate of Young*, 316 Ill. App. 3d at 375, 248 Ill.Dec. 654, 734 N.E.2d at 952. A corporate officer who is responsible for filing retailers' occupation tax returns and remitting the collected taxes may not avoid personal liability for tax penalties for nonpayment of such taxes merely by delegating bookkeeping duties to third parties and failing to inspect corporate records or otherwise failing to keep informed of the status of retailers' occupation tax returns and payments. See *Branson*, 168 Ill. 2d at 267, 213 Ill.Dec. 615, 659 N.E.2d at 971.

McLean, 326 Ill. App. 3d at 675-76, 761 N.E.2d at 234-35; *see also* Estate of Young v. Department of Revenue, 316 Ill. App. 3d 366, 375, 734 N.E.2d 945, 952 (1<sup>st</sup> Dist. 2000).

A penalty may be imposed upon a corporation's responsible persons who act willfully regarding any of the following behaviors: (1) failing to file a corporate return; or (2) failing to make a corporate tax payment to the Department; or (3) attempting in any other manner to evade or defeat the tax. 35 ILCS 735/3-7(a). Here, ABC's underlying corporate tax liability consists of the debt it owed to the State of Illinois that was created when it collected use tax from its customers during the audit period (35 ILCS 105/8), or its corresponding unpaid retailers' occupation tax liability, as measured as a percentage of the gross receipts ABC received from making sales at retail during the audit period. Department Ex. 2; 35 ILCS 120/2; Weber-Stephen Products, Inc. v. Department of

Revenue, 324 Ill. App. 3d 893, 898-99, 756 N.E.2d 321, 324-25 (1<sup>st</sup> Dist. 2001) (describing the nature of Illinois' "sales tax"); Sweis v. Sweet, 269 Ill. App. 3d 1, 6, 645 N.E.2d 972, 976 (1<sup>st</sup> Dist. 1995) ("The exact amount of ... [a § 13½ penalty] liability is based on either (1) the final or revised final assessment, or (2) the corporate taxpayer's return filed with the Department."). The Department determined that ABC used the tax monies it collected from customers during the audit period to operate its business. Taxpayer Ex. 11; Department Ex. 2, pp. 6-7. That determination is supported by evidence.

Again, prior to the audit period, both Jane and John had been personally involved with filing ABC' monthly sales and use tax returns. Department Ex. 2, pp. 2, 18; Department Ex. 3, pp. 5-6. Thus, they both had actual knowledge that ABC was required to file such returns, on a monthly basis, to report and to pay ABC' monthly tax sales and use liabilities. Department of Revenue v. Corrosion Systems, Inc., 185 Ill. App. 3d 580, 584-85, 541 N.E.2d 858, 861 (4<sup>th</sup> Dist. 1989). During the audit period, however, they stopped doing so. Department Ex. 2, pp. 2, 18; Taxpayer Ex. 11. That is, John stopped filing ABC' sales and use tax returns and making tax payments, and Jane, presumably, stopped signing ABC' returns.<sup>2</sup> Given that they both had actual knowledge that ABC was required to file monthly returns, as well as actual knowledge that ABC was required

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<sup>2</sup> I acknowledge that it might have been possible that Jane continued to sign a monthly sales and use tax return for ABC during each and every month in the audit period, and that it was John who, acting alone and secretly, deliberately chose not to file them. But no evidence was offered to that effect, and the argument was never even advanced. Moreover, given Jane's status with the corporation and her personal involvement with ABC' tax filings, I would consider her failure to discover ABC' delinquent filings, itself, as the type of reckless behavior that Illinois courts have described as constituting willfulness. See McLean, 326 Ill. App. 3d at 675-76, 761 N.E.2d at 234-35; Estate of Young, 316 Ill. App. 3d at 375, 734 N.E.2d at 952.

to make tax payments with those monthly returns, I conclude that their failure to file returns and make such tax payments, during the audit period, was willful.

Finally, the evidence shows that, instead of turning over the tax monies ABC collected from customers when making sales of tangible personal property during the audit period, John Doe chose to use such funds to operate ABC' business. Taxpayer Ex. 11; Department Ex. 2, pp. 6-7. Some of those funds, in fact, went directly to John Doe. Specifically, John Doe admitted that he received compensation from ABC in the amount of \$500 per week for the period from April 1994 through 1995, and he also admitted that he was the individual who determined the order of ABC' debt payments. Department Ex. 3, pp. 3, 5-6. Thus, John chose to pay himself rather than pay over to the State the monies he knew that ABC collected from customers during the audit period. Illinois courts have consistently considered a responsible person's decision to use already collected tax monies to pay certain creditors, instead of turning such funds over to the State, as constituting a willful failure to pay the corporation's tax obligations. *E.g.*, Branson, 168 Ill. 2d at 258, 659 N.E.2d at 967 (“ ‘The reason for passing on the tax liability to the responsible officers is obvious. The corporate officers could employ the funds collected for the State to pay corporate obligations as well as salaries and bonuses to employees, and thus make recovery of the funds from a defunct corporation an impossibility. There, of course, has to be some responsibility for the stewardship of the funds collected from the public for the State.’ ”) (*quoting* Department of Revenue v. Joseph Bublick & Sons, Inc., 68 Ill. 2d 568, 576, 369 N.E.2d 1279, 1283 (1977)).

I conclude that both John and Jane Doe willfully failed to make ABC' retailers' occupation tax payments, and willfully failed to turn over to the Department the amounts

of use tax it collected from customers when making retail sales during the audit period. Department Exs. 3-4; Taxpayer Ex. 11; Joseph Bublick & Sons, Inc., 68 Ill. 2d at 576, 369 N.E.2d at 1283.

**Conclusion**

I recommend that the Director finalize each NPL as issued.

November 29, 2010

John White, Administrative Law Judge