

IT 06-12

Tax Type: Income Tax

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

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

| | | | |
|----------------------------------|---|--------------------------|-----------------|
| THE DEPARTMENT OF REVENUE |) | Docket No. | 05-IT-0000 |
| OF THE STATE OF ILLINOIS |) | NOD No. | 0000-000-00-0 |
| v. |) | FEIN | 00-0000000 |
| JOHN DOE , as responsible |) | Tax Periods | 2/Q/02 & 4/Q/02 |
| officer of ABC Software, Inc., |) | John E. White | |
| Taxpayer |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: John Doe appeared *pro se*; Jessica O'Brien, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after John Doe (Doe or taxpayer) protested the Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him. The NOD proposed to assess a deficiency in the amount of the Illinois income tax that had been withheld from the wages paid to the employees of ABC Software, Inc. (ABC) during the second and fourth quarters of 2002, but not paid over to the Department. The issues are whether Doe was a responsible officer for ABC who was required to collect and pay over to the Department taxes withheld from its employees' wages during the second and last quarters of tax year ending 12/31/2002, and whether he willfully failed to pay such taxes, or willfully attempted to defeat or evade the collection of such taxes.

At hearing, taxpayer and the Department each offered documents and the testimony of a witness. I am including in this recommendation findings of fact and

conclusions of law. I recommend that the NOD be finalized, pursuant to statute.

Findings of Fact:

1. ABC was organized to manufacture, sell, install, and resell computer software only to schools. Department Ex. 2, p. 1 (copy of completed Department form NUC-1 (Illinois Business Registration form for ABC).
2. Doe was ABC' president and chief executive officer. Department Ex. 3 (copies of, respectively, ABC' completed annual report forms submitted to the Illinois Secretary of State for 2000 through 2002).
3. Doe was also a ABC employee. Department Ex. 5 (copy of Employment Agreement between ABC and Doe); *see also* Department Ex. 9 (copy of computer-generated general ledger for ABC for 1/1/02 through 2/13/03), *passim* (entries showing salary payments to Doe during 2002).
4. Doe received a bachelor's degree from Harvard University in 1963 and an M.B.A. from the University of Chicago in 1973. Hearing Transcript (Tr.) pp. 11-12 (Doe).
5. Doe was a comptroller of XYZ when working on his MBA (Tr. p. 15) and is familiar with Illinois tax form 941. Tr. p. 17 (Doe).
6. Illinois form IL-941, titled, Illinois Quarterly Withholding Income Tax Return, is the form a taxpayer uses to report to the Department, *inter alia*, the amount of income taxes withheld from the wages of employees during a given quarter. Taxpayer Ex. 11 (copy of IL-941 that Doe signed and filed for the first quarter of 2002).
7. Before becoming associated with ABC, Doe had a variety of professional jobs, including: a banker at a Bank in Chicago for 2 years, from approximately 1964 to

1966; an officer in the U.S. Navy, including service as a swift boat officer in Vietnam; in various capacities for Research; as president for a company called ABC XXX, for which he worked in Iran for several years; for XXX Corporation, where he: ran its International Logistics and Support Group; worked on the Bradley Fighting Vehicle project; worked in Saudi Arabia as president of Corp. in Saudi Arabia; was Asia-Pacific Regional Manager for Corp.'s industrial chemical group, where he oversaw the industrial chemical group's activities until approximately 1987; trading chemicals for about 3 years in the United States; consulting for different corporations including XXX, XXX, XXX; working for XXX in the Netherlands for approximately 10 years, including as a senior vice-president for Industries (I), a Management company, where he oversaw I's acquisitions in Europe. Tr. pp. 19-22 (Doe). He then set up his own company, International, where he worked as a mergers and acquisitions consultant for major French companies. *Id.*, pp. 22-24 (Doe).

8. Doe became associated with ABC XYZ, (ABC XYZ), in early 1999 through a friend from India, Jones (Jones). Tr. pp. 24-26 (Doe). Jones was a director of ABC XYZ, which developed and sold education administration software in India. Tr. pp. 24-27 (Doe). Jones also formed an Illinois corporation, ABC (Tr. pp. 26-27 (Doe)), which hired Doe as president and CEO in July 1999. Tr. pp. 35-36 (Doe); Department Exs. 3, 5.
9. Pursuant to the employment agreement, Doe's executive duties for ABC included:

... formulation and submission to the Board of such budgets as are from time to time required; establishment of personnel policies and the hiring and terminating of personnel; determination of capital improvements and

additions; establishment of business policies; establishment of pricing; determination of capital improvements and any and all other matters necessary and incidental to the daily operation of the Company, subject always to such resolutions as may be adopted from time to time by the Board, and subject to any applicable limitations imposed by creditors of the Company, for the period and upon terms and conditions set forth in this Agreement.

Department Ex. 5, p. 1 (article 3.1).

10. Beginning in approximately November of 1999, Doe wrote and updated a business plan for ABC. Department Ex. 4 (copy of ABC, Inc. Confidential Information Memorandum, dated November 2002); Tr. pp. 31-33 (Doe).
11. Part of the purpose for the business plan was to attract private investment in ABC. Department Ex. 4; Tr. p. 29 (Doe).
12. Doe hired and fired employees for ABC. Tr. pp. 47-59 (Doe).
13. The personnel who ran the day-to-day operations of ABC reported directly to Doe, or to someone who reported to Doe. *Id.*
14. In late 2000, Doe fired ABC' Chief Financial Officer (CFO) because, *inter alia*, he had not been paying ABC' payables, and he had done a poor job maintaining the corporation's financial books and records. Tr. pp. 48-54 (Doe).
15. Doe then hired Smith (Smith) to work for ABC, initially on a consulting basis, and later as an employee with the title of controller. Tr. pp. 52-58 (Doe), 83-84 (Smith). Smith reported to Doe. Tr. pp. 58-59 (Doe), 86 (Smith).
16. After September 11, 2001, Doe found it difficult to obtain loans to fund ABC' operations from capital markets. Tr. p. 62 (Doe). Doe, however, was still able to attract over \$700,000 in private investment in ABC during 2002 (Tr. p. 62 (Doe)), either through sale of common stock, or issuing notes payable. Taxpayer Ex. 5

(copy of schedule titled, Cash Flow – 2001/2002 Results and Five Year Projection).

17. Until December 2001, ABC used a payroll service to handle its payroll, including filing the applicable federal and state tax returns and paying the applicable federal and state taxes associated with payroll. Tr. p. 63 (Doe). Thereafter, Doe notified Smith that, until ABC obtained another payroll services, ABC would perform the payroll reporting and tax paying in-house. *Id.*
18. When handling ABC' tax reporting and payment responsibilities in-house, Doe would meet with Smith, who would report to Doe of ABC' gross payroll for the applicable period. Tr. p. 63 (Doe); 85, 112 (Smith).
19. Doe received a telephone call from an IRS officer on 4/26/02. Tr. p. 60 (Doe). Doe recounted the substance of that call in a memo he wrote to Smith. Taxpayer Ex. 12 (copy of memo). The body of that memo provides:

Officer Rollins (Badge No. 3608935) of the IRS called today. Her telephone number is: (312) 566-2993 and her fax number is: (312) 566-3055. Her IRS address is: 230 South Dearborn, Chicago, IL 60604.

Officer Rollins called because she had written on March 12 (per following copies which were faxed to me today) to request a meeting about missing tax returns, delinquent payments, etc. It turns out that she had the wrong address....

She specifically listed the following:

- Corporate Tax return for 2000 has not been filed
- Form 940 for the month of December has not been filed
- Penalty of \$381 due on payment of \$19,041 paid in January
- Tax plus interest and penalties in amount of \$3,973 due for December tax withholding

Give me a call — we need to get this cleaned up ASAP.

- Taxpayer Ex. 12; *see also* Tr. pp. 135-36 (Smith).
20. After receiving the call from the IRS officer, Doe personally signed the Illinois form IL-941 ABC filed for the first quarter of 2002. Taxpayer Ex. 11 (copy of completed formsheet and attached check receipt); Tr. p. 65 (Doe). ABC also paid the tax shown due on that return. Taxpayer Ex. 11; Tr. pp. 65 (Doe), 134 (Smith).
 21. Smith signed form IL-941 that ABC filed for the second quarter of 2002. Tr. p. 65 (Doe), 103, 138-39 (Smith). Doe signed ABC' IL-941 filed regarding the fourth quarter of 2002, on January 31, 2003. Department Ex. 1, p. 3; Tr. p. 77 (Doe). No payments were remitted when those returns were filed. Department Ex. 1.
 22. ABC used one checking account. Tr. pp. 66-67 (Doe), 127 (Smith). After he fired ABC' CFO in 2000, Doe kept the checkbook and wrote checks for ABC as necessary. Tr. pp. 66 (Doe).
 23. After Doe hired Smith, Doe turned over the ABC checkbook to Smith. Tr. p. 67 (Doe). During the period when Smith had ABC' checkbook, Doe had access to it, as well as access to the checking statements. Tr. p. 68 (Doe).
 24. Smith prepared and submitted to Doe statements of ABC' cash flow, profit & loss, and balance sheet. Tr. p. 69 (Doe). If Doe had questions about those statements, he would discuss them with Smith. Tr. pp. 69-70 (Doe).
 25. Doe established the priority of payments when ABC' available funds were less than its payables. Tr. pp. 80 (Doe), 94 (Smith).
 26. Approximately each week, Smith would prepare a spreadsheet that showed the amount of cash that ABC had in the bank, its anticipated collections for the week, and a list of payables. Tr. pp. 85, 112 (Smith).

27. Smith was a signatory for ABC' checking account. Tr. p. 97 (Smith).
28. Deposits into ABC' checking account came from personal loans from individuals, from software sales to schools, or from sales of stock. Tr. p. 127 (Smith); *see also* Department Ex. 4, pp. 41-43 (financial statements included within ABC' business plan); Taxpayer Ex. 3.
29. The testimony of Doe and Smith conflicted regarding different facts.
- Doe testified that ABC had a positive cash flow during the period at issue (Tr. pp. 68-69 (Doe); Taxpayer Ex. 3), whereas Smith testified that ABC had significant cash flow problems in 2002. Tr. pp. 92, 128, 134-35 (Smith).
 - Doe testified that he first learned that ABC had unpaid Illinois withholding taxes for the second quarter of 2002 in the third quarter of 2002, and of its outstanding withholding liability for the fourth quarter of 2002 in late February 2003. Tr. pp. 76-78 (Doe). Smith, however, testified that he notified Doe of its Illinois withholding liabilities for the second and fourth quarters of 2002 during weekly meetings, some of which were held at the time the taxes withheld from ABC' employees' wages during those quarters were due to be paid to Illinois. Tr. pp. 87, 92-93, 103, 164-65 (Smith).
 - Finally, when Doe testified about the order of payments he established for ABC, he said that he told Smith that payroll should receive the highest priority when Smith was paying ABC' bills, and that prioritizing payroll included paying whatever taxes were associated with ABC' payroll (Tr. pp. 62-63, 80 (Doe). Smith, on the other hand, testified that Does told him that payroll included making sure that the employees got paid, regardless whether the

taxes associated with its payroll were paid, because ABC often did not have enough money to pay both its employees and the taxes associated with its payroll. Tr. pp. 94-96, 127-28 (Smith).

30. Doe acknowledged that, during the third quarter of 2002, he could have written a ABC check to pay the Illinois taxes withheld during the second quarter of 2002. Tr. p. 79 (Doe).
31. After ABC filed its second quarter 2002 IL-941 without payment, ABC continued to pay its employees, including Doe, and other creditors. Department Ex. 9 (copy of ABC' general ledger from 1/1/2002 through February 21, 2003), pp. 12-19 (entries showing payments by check after 7/31/02).
32. After ABC filed its second quarter 2002 IL-941 without payment, Doe arranged to have monies deposited into ABC' checking account so that ABC would have funds sufficient to operate. Department Ex. 9, pp. 15-16, 18 (hand written notations of "Ked" next to entries showing deposits into ABC' account); Tr. pp. 164-65 (Smith).
33. Doe arranged to have monies deposited into ABC' checking account to pay employees, including himself, and creditors after the third quarter of 2002, which is when he conceded he knew of ABC' second quarter 2002 Illinois withholding delinquency. Department Ex. 9, pp. 15-16, 18.
34. After the third quarter of 2002, Doe received checks from ABC on the following dates and in the following amounts:

| Date | Check No. | Amount |
|-------|-----------|----------|
| 11/8 | 1625 | 677.34 |
| 11/8 | 1627 | 4,000.00 |
| 12/19 | 1650 | 125.23 |

| | | |
|-------------------------------------|------|------------|
| 12/19 | 1673 | 1,000.00 |
| 12/23 | 1696 | 1,000.00 |
| 12/24 | 1707 | 1,000.00 |
| 12/27 | 1716 | 1,000.00 |
| Third Quarter Check Payments to Doe | | \$8,802.57 |

Department Ex. 9, pp. 12-19.

35. ABC ceased operating and Doe terminated all of ABC' employees, including himself, in February 2003. Tr. pp. 71-73 (Doe); Department Ex. 7 (copy of letter from Doe to a ABC employee, notifying him of termination due to dissolution of business).
36. When ABC' second quarter 2002 IL-941 was due, which showed that ABC had withheld and owed \$7,920.83 regarding that quarter, ABC' general ledger showed that it had \$4,670.35 in its checking account. Department Ex. 9, p. 12 (entries for 7/31/02); Tr. pp. 161-62 (Smith).
37. When ABC' fourth quarter 2002 IL-941 was due, which showed that ABC had withheld and owed \$2,096.86 regarding that quarter, ABC' general ledger showed that its checking account was overdrawn. Department Ex. 9, p. 18 (entries for 1/31/03); Tr. pp. 162-63 (Smith).

Conclusions of Law:

Section 1002(d) of the Illinois Income Tax Act (IITA) provides:

Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this Act who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for the penalty imposed by Section 3-7 of the Uniform Penalty and Interest Act.

35 ILCS 5/1002(d). Section 3-7(a) of the Uniform Penalty and Interest Act (UPIA)

provides, in pertinent part:

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has 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).

When the Department introduced the NODs into evidence under the certificate of the Director, it presented *prima facie* proof of all of the elements necessary for a determination that Doe was personally responsible for ABC' unpaid withholding tax liabilities. Branson v. Department of Revenue, 68 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). The Department's *prima facie* case is a rebuttable presumption. *Id.* 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 required for the imposition of the penalty are lacking. Raleigh v. Illinois Department of Revenue, 120 S.Ct. 1951, 1954 (2000); Branson, 168 Ill. 2d at 261-62, 659 N.E.2d at 968-69. A taxpayer cannot overcome the Department's *prima facie* case by merely denying the accuracy of Department's assessment, or by merely denying conscious awareness that the tax was due by the corporation. Branson, 168 Ill. 2d at 267, 659 N.E.2d at 971. Instead, the taxpayer must present evidence that is consistent, probable, and closely identified with its books and records. PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 48 (1st Dist. 2002); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-

97, 421 N.E.2d 236, 239 (1st Dist. 1981).

Doe contends that he was not a responsible person as contemplated by IITA § 1002(d). Tr. pp. 167-69 (Doe, closing argument). Instead, Doe contends that Smith, as the controller, was the person with the actual authority and responsibility for compliance with Illinois' withholding requirements. *See* Tr. pp. 169-72 (Doe). He further asserts that he could not have willfully failed to pay the liabilities at issue because he did not know about those delinquencies until after they came to be due. Tr. pp. 169-68 (Doe). Finally, Doe contends that he personally authorized Smith to pay the amounts of tax shown due on the IL-941's at issue, but that Smith must have spent the available funds on other things. Tr. pp. 172, 177 (Doe).

The Department responds that the evidence shows that Doe was both responsible and willful, in that he determined the order of payment of ABC' obligations, and he directed Smith to pay other creditors when Doe knew that ABC had not paid over the Illinois taxes it withheld from its employees' wages. Tr. pp. 173-76 (closing argument). It contends that the evidence supports a determination that Doe had actual knowledge, at the time the quarterly returns were due, that the tax required to be shown due on ABC' quarterly returns would not be paid. *See id.*

I begin by discussing the evidence relevant to the question whether Doe was a responsible officer pursuant to IITA § 1002(d) and UPIA § 3-7. 35 **ILCS** 5/1002(d); 86 Ill. Admin. Code 700.340(a). Doe was the president and CEO of ABC. Department Exs. 1, 5; Tr. p. 36 (Doe). The Employment Agreement between ABC and Doe expressly granted to him the authority to: establish[] ... business policies; ... and any and all other matters necessary and incidental to the daily operation of the Company" Department

Ex. 5, p. 1. Doe hired and fired employees for ABC. Tr. pp. 47-59 (Doe). The personnel who ran the day-to-day operations of ABC reported directly to Doe, or to someone who reported to him. *Id.* Doe established the priority of payments when the amount of ABC' current bills was greater than its available funds. Tr. pp. 80 (Doe), 94 (Smith). Doe actually signed two of the quarterly returns that ABC filed regarding 2002, and one of those was one of the unpaid returns at issue here. Department Ex. 1. Doe had signatory authority for ABC' one checking account, and he had a check drawn to pay the amount shown due on ABC' first quarter 2002 return. Taxpayer Ex. 11; Tr. p. 65 (Doe).

Taking into account the evidence, including Doe's own testimony, I conclude that Doe had "control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with [the IITA]" and that he was also "required to collect, truthfully account for, and pay over the tax imposed by [the IITA]" 35 ILCS 1002(d); 35 ILCS 735/3-7(a). Doe's effort to paint Smith as the true or more responsible person fails for two reasons. First, the evidence is clear that, because of his status and authority, Doe had more power over ABC' purse than did Smith. *E.g.*, Department Exs. 2, 5; Tr. pp. 58-59, 63, 80 (Doe). More importantly, the statutes at issue do not provide that a personal liability penalty may be assessed against only the "most responsible" officer, employee or person — "any" responsible officer, or "any" person required to collect and/or truthfully account for taxes will do. 35 ILCS 5/1002(d); 35 ILCS 735/3-7; *see also* Roth v. United States, 779 F.2d 1567, 1571 (11th Cir. 1986) ("There is no dispute ... that more than one person may be a 'responsible person' for an employer."); Estate of Young v. Department of Revenue, 316 Ill. App. 3d 366, 371, 734 N.E.2d 945, 948-49 (1st Dist. 2000) (three

persons determined to be personally liable for unpaid corporate taxes). The issue here, therefore, is not who was the most responsible person at ABC, but whether Doe, the person against whom a personal liability penalty was assessed, was such a responsible person. Doe was clearly a responsible officer of ABC.

I move now to the question of whether Doe acted willfully. Again, Doe argues that he could not have acted willfully because he found out about ABC's delinquencies after they were incurred. The testimonies of Doe and Smith conflict on the question of when Doe gained actual knowledge that ABC filed its second quarter 2002 Illinois withholding return without payment. Doe says he first learned that ABC had an outstanding Illinois withholding delinquency sometime during the third quarter of 2002. Tr. pp. 76-78 (Doe). Smith, however, testified that Doe must have known that ABC's second quarter 2002 return would be filed unpaid just before the return was filed, because he discussed all of ABC's upcoming payables with Doe during regular weekly meetings they had together to plan for the upcoming week's financial position. *See* Tr. pp. 87, 92-93, 103, 163-64 (Smith).

I need not resolve the conflict between the two witnesses' testimonies on this point. That is because, even if I treat Doe's version as true, the fact that he learned of the delinquency after it occurred does not absolve him of the statutory duty to see to it that the trust tax be paid. For example, Doe also offered a memo and testimony to show that he learned, after the fact, that ABC had federal tax delinquencies, during spring 2002. Taxpayer Ex. 12; Tr. pp. 63-65 (Doe). Now, it appears that Doe intended this evidence to show that Smith was the person with actual control over the payment of ABC's withholding taxes, and that Smith was the one acting irresponsibly. But the evidence also

establishes that, after receiving actual notice of ABC' federal delinquency, Doe made sure that ABC paid, in installments, the penalties related to that federal tax delinquency. Department Ex. 9, pp. 7 (check no. 1334), 8 (check no. 1397), 9 (check no. 1416), 10 (check no. 1450), 14 (check nos. 1608 & 1610). Yet after he admittedly learned of ABC' Illinois withholding delinquency, Doe did not make sure that ABC paid what he knew was ABC' outstanding Illinois withholding liability. *See* Department Ex. 9, pp. 14-19 (entries reflecting ABC' payments by check after the end of the third quarter, 2002).

Instead, the documentary evidence shows that Doe voluntarily, consciously, and intentionally decided that ABC would continue to pay its employees and other creditors at a time when he knew that it was not paying its outstanding Illinois withholding delinquency. Specifically, Doe arranged to have monies deposited into ABC' checking account after the third quarter of 2002, which is when he conceded he knew of ABC' second quarter 2002 Illinois withholding delinquency. Department Ex. 9, pp. 15-16, 18 (hand written notations of "Ked" next to entries showing deposits into ABC' account). Doe arranged to have those monies deposited into ABC' checking account so that ABC could pay its employees, including himself, or other creditors. Department Ex. 9, pp. 15-19 (entries showing ABC checks issued after the end of the third quarter 2002, and made payable to creditors and/or employees, including Doe); Tr. pp. 164-65 (Smith). After the third quarter of 2002, Doe himself received checks amounting to a little more than \$8,800 from ABC, at a time when he knew that ABC had not turned over the \$7,920 of Illinois taxes that it had withheld from its employees during the second quarter of 2002. Department Ex. 9, pp. 12-19.

Doe conceded that when money was tight, he determined which creditor ABC

would pay. Tr. p. 80 (Doe). He also testified that, after he became aware of the second quarter withholding delinquency, he could have written a check to pay the liability. Tr. pp. 78-79 (Doe). But he did not. Department Ex. 1. Doe's voluntary, conscious, and intentional decision to prefer ABC' employees and those other creditors paid after the third quarter of 2002 constituted a willful failure to pay the Illinois withholding tax he knew was due. Department of Revenue v. Joseph Publick & Sons, Inc., 68 Ill. 2d 568, 577, 369 N.E.2d 1279, 1284 (1977) ("a voluntary, conscious and intentional failure satisfies the requirements of 'willfully fail,' as those words are used in [a predecessor to UPIA § 3-7].").

This is precisely the type of situation for which the legislature created the original personal liability penalties that came to be recodified within § 3-7 of the UPIA. As the Court noted in Publick:

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. ***

Publick & Sons, Inc., 68 Ill. 2d at 575-76, 369 N.E.2d at 1283.

Here, the evidence clearly shows that Doe knowingly caused ABC to pay its employees, including himself, and other creditors at a time when he admits that he knew that the company's Illinois withholding obligations were not being paid. That is all that is necessary for me to conclude that Doe willfully failed to pay over to the Department the taxes that ABC withheld from its employees' wages during 2002. Department of Revenue v. Heartland Investments, Inc., 106 Ill. 2d 19, 30, 476 N.E.2d 413, 418 (1985) ("Preferring other creditors over the Department can constitute a wilful failure to pay a

ROT liability.”).

Conclusion:

I recommend that the Director finalize the NOD issued to Doe, pursuant to statute.

Date: 6/22/2006

John E. White
Administrative Law Judge