

ST 12-05

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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|---|---|--------------------------|------|
| THE DEPARTMENT OF REVENUE |) | Docket No. | XXXX |
| OF THE STATE OF ILLINOIS |) | IBT No. | XXXX |
| v. |) | NPL No. | XXXX |
| JOHN DOE , as responsible officer of |) | | |
| ABC Business, |) | John E. White, | |
| Taxpayer |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

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

Synopsis:

This matter involves John Doe's (John Doe or Taxpayer) protest of the Notice of Penalty Liability (NPL) the Illinois Department of Revenue (Department) issued to him as a responsible officer of ABC Business (the Company). The NPL assessed a penalty equal to the amount of the Company's retailers' occupation and/or use tax liabilities that the Department determined were due from the Company regarding the five consecutive months from May through September 2007. The penalty assessed against Taxpayer was a personal liability penalty, issued pursuant to § 3-7 of Illinois' Uniform Penalty and Interest Act (UPIA).

The hearing¹ was held at the Department's offices in Chicago. John Doe and

¹ The hearing held in this matter also included NPLs issued to other persons initially determined to be responsible officers/employees of the Company. Department Exs. 1-2 (copies of

other witnesses testified at hearing and 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 NPL issued to John Doe be finalized as issued.

Findings of Fact:

1. The Company conducted business as ABC Business, a restaurant. Department Ex. 3 (copy of NPL issued to John Doe); Jones Ex. 5 (copies of checks bearing the Company's name, followed by "DBA ABC Business").
2. The penalty assessed against John Doe is equal to the amount of tax, penalties and interest determined to be due from the Company for the period from May 2007 through September 2007. Department Ex. 3, p. 2.
3. The Company failed to pay its Illinois sales and use tax liabilities that it reported for the months at issue. Department Ex. 3; Hearing Transcript (Tr.), pp. 80, 83-84 (testimony of John Doe).
4. On its 2007 annual report to the Illinois Secretary of State, the address of the Company's principal place of business is the same as the home address of its manager, John Doe. Jones Ex. 1 (copy of the Company's annual report, dated March 15, 2007); Department Ex. 3 (NPL showing John Doe's address). John Doe signed that annual report for the Company. Jones Ex. 1.
5. The Company held out that it was managed by its manager, and John Doe was the Company's only manager. Jones Ex. 2 (copy of the Company's Articles of Organization filed with the Illinois Secretary of State, dated April 24, 2006), p. 2.

NPLs issued to persons other than John Doe). The Department issued one NPL to a married couple who appeared at hearing, and who were represented by counsel. Department Ex. 1. At hearing, these individuals offered documentary evidence consisting of copies of the Company's books and records. For convenience and confidentiality, I will refer to those taxpayers in the singular, and will refer to pertinent items of documentary evidence they offered as Jones Exhibits.

6. John Doe purchased the assets of ABC Business in March 2006. Jones Exs. 11 (copy of Offer to Purchase Assets), 12 (copy of Closing Statement Sale of Assets, signed by John Doe, as Managing Member of the Company), 13 (copy of Dispersal Statement for the Sale of Assets of ABC Business, signed by John Doe); Tr. pp. 44-54 (John Doe).
7. The Joneses were investors in the restaurant that the Company purchased. Jones Ex. 4 (copy of cover letter, dated August 1, 2006, from the Company's attorney to the Joneses, reflecting that corporate promissory notes from the Company to the Joneses were attached); John Doe Ex. 3 (copy of the Company's balance sheet as of December 31, 2006, showing, among other things, that the Joneses made a capital contribution to the Company); Tr. pp. 48-58 (John Doe).
8. John Doe and another person, Jack Black, planned to run the restaurant the Company operated, using money invested by the Joneses and others. Tr. pp. 46-49 (John Doe); *see also* John Doe Ex. 3.
9. John Doe signed a Department form Reg-3-D, Request for Signature, regarding the Company. Department Ex. 4 (copy of completed and signed form Reg-3-D for the Company, signed and dated May 24, 2006); Tr. p. 44 (John Doe). That form contains a preprinted request to "Tell us the person(s) responsible for filing returns and paying taxes and fees due[.]" Department Ex. 4.
10. John Doe identified himself as the person who was responsible for filing the Company's withholding income tax returns, and its sales, service and use tax returns, and for paying such taxes. Department Ex. 4; Tr. p. 44 (John Doe).
11. John Doe signed Company checks drawn on the Company's bank account to pay the

Company's retailers' occupation tax (ROT) liabilities. Jones Ex. 5, pp. 1, 8, 10, 14 (copies of Company checks, bearing John Doe's signature, payable to "Illinois Department of Revenue Retailers Occupation Tax ***").

12. The Company's bookkeeper, Jane Doe, had authority to sign the Company's checks, and regularly signed and issued checks drawn on the Company's account. Jones Exs. 5, 15. John Doe acknowledged that he would review the Company's food bills with Jane Doe, when determining whether they should be paid. Tr. p. 36 (John Doe).
13. In anticipation of hearing, John Doe asked the Company's bank to provide him with some documentation to show that, at some point during the months at issue, he was no longer authorized to sign the Company's checks. Tr. pp. 17-18 (John Doe). In response, John Doe received a letter, written on the bank's letterhead, which provides:

July 14, 2010

To Whom It May Concern:

As of June 5, 2007, John Doe Jr., was no longer a signer for the account titled ABC Business DBA ABC Business here at XYZ Bank.

Sincerely,

[signature]

Mary Clary

Customer Service Representative

John Doe Ex. 1; Tr. pp. 17-18 (John Doe).

14. Prior to June 2007, John Doe signed the Company's payroll checks issued to employees. Jones Ex. 5; Tr. pp. 72, 79 (John Doe).
15. As the sole owner and manager of the Company, John Doe had the power to hire and fire all of the Company's employees. Tr. pp. 76-77 (John Doe); Jones Exs. 1-2.
16. On or about July 18, 2007, John Doe prepared a document that provided as follows:

18th July 2007

To Partners of ABC Business

I John Doe SS# As managing Partner of ABC Business, Anywhere, Illinois. Hereby Resign my duties as operating partner and chef effective August 3rd 2007. Also Surrendering my shares of ABC Business for the price of \$0.00. Made payable to John Doe Effective Immediately.

Respectfully,
John Doe

John Doe Ex. 2.

17. Approximately a day after he wrote it, John Doe handed the resignation letter he drafted to Jane Doe. Tr. pp. 43, 59-60 (John Doe).
18. During 2007, John Doe was aware that the Company was not taking in enough revenues to meet its expenses, including its tax liabilities. Tr. pp. 41-42 (John Doe).
19. John Doe acknowledged that he could have told Jane Doe not to write checks to pay the Company's tax liabilities regarding the months at issue, but that he did not do so. Tr. pp. 80-82 (John Doe).
20. ABC Business closed during the Labor Day weekend, 2007. Tr. p. 80 (John Doe).
21. John Doe never transferred his ownership of the Company to the Jones. Tr. p. 87 (John Doe).

Conclusions of Law:

When the Department introduced the NPL into evidence under the certificate of the Director, it presented prima facie proof that John Doe was personally responsible for the Company's unpaid tax liabilities. 35 ILCS 735/3-7; Branson v. Department of Revenue, 168 Ill. 2d 247, 260, 659 N.E.2d 961, 968 (1995). 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.*

Section 3-7(a) of the 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 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 wilfully fails to file the return or make the payment to the Department or wilfully 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). For purposes of a § 3-7 penalty, an “officer or employee of any taxpayer” includes a manager or member of a limited liability corporation. 35 ILCS 735/3-7(e).

The first issue is whether John Doe was a responsible officer of the Company. When interpreting the text of UPIA § 3-7’s statutory predecessor, Illinois courts have looked at how federal courts construed similar text used in § 6672 of the Internal Revenue Code (the Code). *E.g.*, Branson, 168 Ill. 2d at 254-56, 659 N.E.2d at 965-66. Section 6672 of the Code imposes a penalty against responsible persons of a corporation who have a duty to collect, truthfully account for, and pay over federal social security and withholding taxes, and who willfully fail to do so. *Id.*; McLean v. Department of Revenue, 326 Ill. App. 3d 667, 674, 761 N.E.2d 226, 233 (1st Dist. 2001). When considering whether John Doe was a responsible officer of the Company, therefore, I will take into account those factors federal courts have considered when determining whether one is a “responsible person,” under Code § 6672.

One succinct description of the factors to consider when determining whether a person is a responsible person under § 6672 is found in Williams v. United States, 931

F.2d 805 (11th Cir. 1991), in which the court explained as follows:

Generally, the courts have interpreted rather broadly who will constitute a “responsible person” under section 6672. *Jones*, 894 F.2d at 1553 (citing *Slodov v. United States*, 436 U.S. 238, 246-50, 98 S.Ct. 1778, 1784-87, 56 L.Ed.2d 251 (1978) and *Liddon v. United States*, 448 F.2d 509, 512 (5th Cir.1971), *cert. denied*, 406 U.S. 918, 92 S.Ct. 1769, 32 L.Ed.2d 117 (1972)). A person is responsible within the meaning of section 6672 if he has a duty to collect, account for or pay over taxes withheld from the wages of a company's employees. [footnotes omitted] *Thibodeau*, 828 F.2d at 1503; *George*, 819 F.2d at 1011. Responsibility is “a matter of status, duty and authority.” *Mazo v. United States*, 591 F.2d 1151, 1156 (5th Cir.), *cert. denied*, 444 U.S. 842, 100 S.Ct. 82, 62 L.Ed.2d 54 (1979). “Indicia of responsibility include the holding of corporate office, control over financial affairs, the authority to disburse corporate funds, stock ownership, and the ability to hire and fire employees.” *George*, 819 F.2d at 1011. ***

Williams, 931 F.2d at 810.

At hearing, John Doe denied being responsible for paying the Company’s bills, and said that it was the bookkeeper’s responsibility to pay the Company’s bills. Tr. pp. 34-35 (John Doe). John Doe also testified that his relationship with ABC Business was being its chef, and that he “was not a signer, nor did [he] know anything about the taxes, nor was [he] ever told about taxes.” Tr. pp. 24-25 (John Doe). During cross-examination by Department counsel, John Doe was asked the following questions, and gave the following answers:

Q: At some point in time, did you receive an ownership interest in ABC Business doing business [as] ABC Business?

A: On a piece of paper saying that I owned something, no.

Q: So is it your testimony that you never were an owner of — in ABC Business?

A: Right. Yes.

Tr. p. 31 (John Doe).

After John Doe offered that direct and cross-examination testimony, however, the

other parties at hearing offered documentary evidence to show that the Company was a manager-managed LLC, and John Doe was its sole manager and member. Jones Ex. 2. John Doe, moreover, signed the Company's annual report that the Company filed for 2007, which identified him as the Company's manager. Jones Ex. 1. John Doe also signed Company checks drawn to pay the Company's monthly ROT liabilities to the Department. Jones Ex. 5. John Doe's name was included on the Company's application to the Department for a personal identification number to use when making electronic filings of the Company's monthly sales and use tax returns. Jones Ex. 3. Finally, John Doe signed the Department form on which he named himself as the person who was personally responsible for filing tax returns and paying taxes on behalf of the Company. Department Ex. 4.

After considering John Doe's testimony, several of the documents just referred to, and one that John Doe, himself, offered into evidence, are prior written statements by John Doe that are inconsistent with his position at hearing. Those documents, therefore, are admissions by John Doe. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379, 519 N.E.2d 1010, 1014 (1st Dist. 1988) *aff'd* 131 Ill. 2d 541 (1989). Specifically, Department Exhibit 4 constitutes substantive evidence that John Doe was the individual who was personally responsible for filing the Company's tax returns and for paying such taxes. Department Ex. 4. John Doe prepared that form, and he signed it. *Id.*; Tr. p. 44 (John Doe). Next, since John Doe wrote the resignation letter admitted as John Doe Exhibit 2, the part of that letter in which John Doe says that he was "[s]urrendering my shares of ABC Business" constitutes substantive evidence that John Doe did, in fact, have an ownership interest in the Company. John Doe Ex. 2. Finally, Jones Exhibits 1 and 2

constitute substantive evidence to show that, not only was John Doe *an* owner of the Company, he was its only owner. Jones Exs. 1-2; Department Ex. 4, Tr. pp. 24-25 (John Doe); Tully v. McLean, 409 Ill. App. 3d 659, 948 N.E.2d 714 (1st Dist. 2011) (an LLC is owned by its members). After taking into account John Doe's written admissions, John Doe's initial testimony was wholly incredible. See Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333-34, 155 N.E.2d 3, 7 (1958).

John Doe also offered documentary evidence to support his argument that, at some time during the months at issue, he was no longer a responsible officer of the Company. I first note that, while John Doe offered three documents, I consider only the first two to be material to this argument. Specifically, John Doe Ex. 3, the Company's balance sheet as of December 31, 2006, cannot be probative of anything that might have happened during the period from May through September, 2007.

The first document is an original letter written on the letterhead of the Company's bank. John Doe Ex. 1. That letter provides, in pertinent part:

July 14, 2010

To Whom It May Concern:

As of June 5, 2007, John Doe Jr., was no longer a signer for the account titled ABC Business DBA ABC Business here at XYZ Bank.

Sincerely,

[signature]

Mary Clary

Customer Service Representative

John Doe Ex. 1.

The other document is a copy of a resignation letter that John Doe testified he wrote and then personally delivered either to Jane Doe, the Company's bookkeeper, or to Jane Doe and Mrs. Jones, an investor in the Company. John Doe Ex. 2; Tr. pp. 43, 59-60

(John Doe); *but see* Tr. p. 114 (testimony of Mrs. Jones, denying that she received John Doe's resignation letter). That letter provides:

18th July 2007

To Partners of ABC Business

I John Doe Jr, SS# [] As managing Partner of ABC Business, Anywhere, Illinois. Hereby Resign my duties as operating partner and chef effective August 3rd 2007. Also Surrendering my shares of ABC Business for the price of \$0.00. Made payable to John Doe Effective Immediately.

Respectfully,
John Doe

John Doe Ex. 2 (all punctuation and capitalizations original).

As to the first document, it does not describe the circumstances that caused John Doe to be no longer listed on the bank's records as an authorized signer of the Company's checks. John Doe. Ex. 1. There are certainly situations in which someone with a superior amount of authority within a corporation might decide to reduce or eliminate a subordinate's authority to perform certain acts. But John Doe was the Company's sole manager and member. Jones Exs. 1-2. No one had more authority in the Company than he did. *Id.* Since John Doe might well have been the individual who notified the Company's bank to remove his name as a signer of the Company's checks, I am not persuaded that, after his name was removed, he no longer had "the control, supervision or responsibility of ... making payment of the amount of any trust tax imposed in accordance with that Act" 35 ILCS 735/3-7(a). As John Doe acknowledged at hearing, when the Company stopped paying its ROT liabilities, he still had the authority to hire or fire Jane Doe, the Company's bookkeeper, or to direct her to not pay taxes due. Tr. pp. 75-76, 81 (John Doe). And since he had the authority to direct a Company subordinate *not* to draw and sign a check to pay the Company's taxes (*id.*), he

had the authority to direct some Company employee to pay whatever taxes were due. Department Ex. 4; Jones Exs. 1-2.

John Doe's status as the Company's sole member and manager also cautions against accepting his resignation letter as probative evidence that, during some part of the applicable period, he was no longer a responsible officer of the Company. What John Doe wants me to infer from this evidence is that, after he tendered John Doe Exhibit 2 to Jane Doe, he had divested himself of whatever legal duties or responsibilities he previously had regarding the Company's tax obligations. *See* John Doe Ex. 2; Tr. pp. 130-31 (John Doe's closing argument). Members who are managers of a manager-managed LLC owe fiduciary duties to the company. 805 ILCS 180/15-3(g); Katris v. Carroll, 362 Ill. App. 3d 1140, 842 N.E.2d 221 (1st Dist. 2002). Illinois law provides statutory procedures for members and managers of an LLC who wish to dissociate from it. 805 ILCS 180/35-1 to 35-70. But John Doe offered no evidence that he followed any such procedures. Similarly, under UPIA § 3-7, responsible officers of a corporation have a fiduciary role regarding the trust taxes that the corporation collects from customers when making retail sales of tangible personal property. 35 ILCS 735/3-7(a), (f), (h); *see also* 35 ILCS 105/8 (use taxes a retailer collects from customers becomes a debt the retailer owes to the state). While it is easy to abandon rights (*see, e.g. Pieszchalski v. Oslager*, 128 Ill. App. 3d 437, 470 N.E.2d 1083 (5th Dist. 1984)), one cannot simply walk away from statutory duties or responsibilities. Branson, 168 Ill. 2d at 267, 659 N.E.2d at 971 ("we do not intend to imply that a corporate officer who is responsible for filing retailers' occupation tax returns and remitting the collected taxes may avoid personal liability under section 13½ merely by delegating bookkeeping duties to third parties and

failing to inspect corporate records or otherwise failing to keep informed of the status of the retailers' occupation tax returns and payments.”).

Again, during the periods at issue, John Doe remained the sole manager and the sole member of a manager-managed LLC. Jones Exs. 1-2; Tr. pp. 75-76 (John Doe). Jones's counsel's cross-examination question to John Doe was particularly germane, “[h]ow *does* one resign as an owner ...? Tr. p. 60 (emphasis added). John Doe's answer, that he tendered the letter to the Company's investors (*id.*), does not explain how that act has any effect on his obligation to perform the duties imposed by Illinois law (35 ILCS 105/8; 35 ILCS 120/3; 35 ILCS 735/3-7(h)), and which he had previously and voluntarily agreed to perform. Department Ex. 4.

So long as the Company was operating, it presumably continued to charge and collect use tax from its customers when selling food and drink at retail. That was how John Doe was previously able to pay the Company's ROT liabilities to the Department. *See* Jones Ex. 5. In other words, so long as the Company was operating, it should have had funds available to pay its monthly Illinois ROT liabilities. John Doe could have stopped operating the restaurant, and wound down the Company's business (805 ILCS 180/35-1 to 35-70), but that is not what happened. *See* Department Ex. 3. Instead, it is apparent that the Company continued to operate the restaurant, during the time John Doe was still its sole member and manager, and after he notified at least one other Company employee that he would stop managing the Company. John Doe Ex. 2; Department Ex. 3; Jones Exs. 1-2. John Doe's Exhibit 2 simply does not prove that, after August 3, 2007, he had been divested of his former status, duty or authority over the Company's affairs. Jones Exs. 1-2. Rather, that evidence shows that he intentionally attempted to abandon

his duties and responsibilities as the sole manager of the Company. John Doe Ex. 2.

This is a good place to address the second issue, 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.

The federal court of claim's reasoning in Ghandour v. United States, 36 Fed. Cl. 53 (1996), offers particularly helpful guidance on the question of willfulness:

B. *Willfulness*

[A]fter it has been determined that an individual was a "responsible person," the court must next ascertain whether that person acted "willfully" in failing to collect, truthfully account for, and pay over the withheld payroll taxes. I.R.C. § 6672(a). The Supreme Court has construed § 6672 as requiring an element of "personal fault" before an individual can be held liable for the penalty. *Slodov*, 436 U.S. at 254, 98 S.Ct. at 1788. As the Court of Claims explained, however-

it is not necessary that there be present an intent to defraud or to deprive the United States of taxes due, nor need bad motives or wicked design be proved in order to constitute willfulness.

White, 372 F.2d at 521. On the other hand, "mere negligence" is insufficient to constitute willfulness under I.R.C. § 6672. *Godfrey*, 748 F.2d at 1577. Rather, the requisite "personal fault" may be shown in one of two ways: (1) "a deliberate choice voluntarily, consciously and intentionally made to pay other creditors instead of paying the Government," *White*, 372 F.2d at 521, *quoted in Godfrey*, 748 F.2d at 1577, or (2) "reckless disregard of a known or obvious risk that [the taxes] may not be remitted to the Government." *Godfrey*, 748 F.2d at 1578 (quoting *Mazo*, 591 F.2d at 1154).

1. *The "Deliberate Choice" Standard*

First, an individual has acted willfully if he made a deliberate and

intentional choice to prefer other creditors over the government. Because the required preference of other creditors over the government must have been deliberate, *i.e.*, voluntary and intentional, it follows that the deliberate choice standard of willfulness can only be met if the responsible individual had *actual knowledge* of the specific tax delinquency for which the penalty was assessed. It is not sufficient that a responsible person knew of an earlier delinquency that was paid in full. *See Godfrey*, 748 F.2d at 1577. Moreover, if the choice by a corporate official to pay others instead of the taxes is to be found to have been deliberate, it follows that there must have been unencumbered funds available to pay the taxes at the time the taxes came due. If, on the other hand, when a responsible person learns of the taxes due, there are no funds available to pay over said owing taxes to the IRS, he need not “order the impossible,” and the failure to pay the taxes will not be deemed willful under the deliberate choice standard. *Id.*

In assessing willfulness under I.R.C. § 6672, the focus is on “the taxpayer's diligence in attending to the duty to pay employment taxes.” *Hammon*, 21 Cl.Ct. at 27. In this connection, the use of “available corporate money for other business purposes,” *Powell v. United States*, 9 Cl.Ct. 58, 62 (1985) (emphasis added), when a responsible person has knowledge of a current tax liability, will constitute a “willful” failure to collect, account for, and pay over the due employment taxes, under the deliberate choice standard.

2. The “Reckless Disregard” Standard

Second, where a responsible person recklessly disregards a known or obvious risk that the taxes will not be paid to the IRS, and the taxes are in fact not paid, he has been “willful” as that term is used in I.R.C. § 6672, and may be assessed a penalty under that section. In *Hammon*, 21 Cl.Ct. at 29-30, the Claims Court laid out the test for recklessness under § 6672, delineating the following three elements:

- (1) the responsible person's knowledge (or reason to know) of a risk that taxes will not be paid, (2) a reasonable opportunity to discover and remedy the problem, and (3) a failure to undertake the reasonable efforts to ensure payment.

See also Whiteside, 26 Cl.Ct. at 573-74. The Seventh Circuit, in *Wright v. United States*, 809 F.2d 425, 427 (7th Cir. 1987), expounded a very similar test, holding that the “responsible person” is liable if he (1) clearly ought to have known that (2) there was a grave risk that withholding taxes were not being paid and if (3) he was in a position to find out for certain very easily.

Under either formulation, it is clear that the responsible individual must have had at least constructive knowledge of a *risk* that the employment taxes would not be paid, and must have had an opportunity to act on that knowledge to discover any problems in payment.

Ghandour, 36 Fed. Cl. at 62-63 (emphases original).

Based on the evidence, I conclude that John Doe has not rebutted the Department's presumptively correct determination that he acted willfully. While there is no direct evidence proving that John Doe preferred some other, identifiable, creditor during the time the Company was not paying its Illinois taxes, the evidence does show that he intentionally decided to stop managing the Company. John Doe Ex. 2; Jones Exs. 1-2; Department Ex. 4. By doing so, he also intentionally stopped exercising personal responsibility for paying the Company's monthly Illinois ROT liabilities. Department Ex. 4. Given this willful conduct, it is not surprising that, at about or the time John Doe acted on his decision to stop managing the Company, the Company began to put the trust tax monies it had been collecting from customers to its own use, instead of paying such monies over to the Department. *See* Department Exs. 3-4; John Doe Ex. 2; 35 ILCS 735/3-7(h). By willfully deciding to stop managing the Company, John Doe also recklessly disregarded the very grave risk that, in his absence, the Company would stop paying its monthly tax liabilities. John Doe Ex. 2; Department Exs. 3-4. That is precisely what happened. Department Ex. 3.

Conclusion:

Based on the evidence, I conclude that John Doe was a responsible officer who acted willfully by abandoning his responsibilities for managing the Company, including his personal responsibility to see to it that the Company paid its monthly Illinois tax liabilities for the months of May through September of 2007. I respectfully recommend that NPL number 1131 8171 be finalized as issued.

Date: April 17, 2012

John E. White, Administrative Law Judge