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**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**Velo Holdings, Inc.,**  
**(f/k/a Kentile Floors, Inc.),**

**Debtors.**

**Chapter 11**

**Case No. 12-11384 (MG)**

**Obj. deadline: 3/21/2014**

**Hearing: 4/8/2014 @ 11:00 a.m.**

**Response of Illinois Department of Revenue to**  
**Debtor's Seventh Omnibus Objection to Claims [Docket 956]**  
**(Re: Claim 360)**

**and**

**Request for Payment of Administrative Tax Claim**

**Response of Illinois Department of Revenue to**  
**Debtor's Seventh Omnibus Objection to Claims [Docket 956]**  
**(Re: Claim 360)**

The Illinois Department of Revenue ("IDOR"), by its attorney, Lisa Madigan, Illinois Attorney General, responds to the Debtor's objection to its claim number 360 as follows:

1. IDOR filed claim no. 360 in the amount of \$632,895.67 for Illinois corporate income/replacement taxes (IL-1120) owed by the Debtor for taxable year ending December 31, 2010. The claim listed taxable year 2011 as "unfiled."

2. The objection states that "Debtors are not liable to claimant for any amount claimed and the claimant owes the Debtor a refund of \$286,490.00 (plus interest, if any)." See Ex. 1 to Objection.

3. With respect to the 2010 tax liability, IDOR audited the return and determined

that errors were made; namely that according to IDOR's records, the Debtor did not have Illinois net loss deductions available in the amount listed on the return. IDOR therefore issued to the Debtor a Return Correction Notice describing the problem and asking the Debtor to either provide documentation and other information or pay the deficiency. It simultaneously issued an Account Notice showing the amount due based on the filing error as determined by IDOR. Copies of the Return Correction Notice and Account Notice are attached as Exhibits A and B.

4. The Debtor did not provide IDOR with the requested information so on June 22, 2012, IDOR issued a formal Notice of Deficiency. A copy of the Notice of Deficiency is attached as Exhibit C.

5. As set forth in the Notice of Deficiency, the Debtor had the option to (1) pay the deficiency, or (2) file a protest and ask for an administrative hearing, or (3) pay the amount set forth in the notice of Deficiency and bring a timely refund suit in state court. See Exhibit C.

6. The Debtor did not exercise any of these option so, on September 6, 2012, IDOR issued its Final Notice of Tax Due. A copy is attached as Exhibit D. This is the liability set out in claim no. 360 (interest and penalties have been calculated to the petition date) and is a valid claim against the Debtor.

7. With respect to the 2011 taxable year, the Debtor eventually filed its Illinois tax return (IL-1120). Because the Debtor made estimated deposits in an amount greater than the liability listed on the return, there is a credit balance of approximately \$286,490.

8. Under 35 ILCS 5/909(a), a taxpayer is entitled to a refund only to the extent that the credit amount exceeds the taxpayer's liability to IDOR. As noted above, the credit amount due the Debtor for the 2011 tax year is significantly less than the liability for the 2010 taxes and therefore no net refund is due. Obviously the Debtor is entitled to have the 2010 taxes reduced by the 2011 credit.

9. If the credit for 2011 is netted against the 2010 liability, the remaining balance is \$346,405.67.

10. The Debtor's objection contains a discussion of the burdens of proof generally applicable to claims objection litigation, See Objection at ¶¶12-13. With respect to taxes, however, the Supreme Court has ruled that state law presumptions of validity apply. See *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20-21 (2000).

11. Under Illinois law, a notice of deficiency issued by IDOR setting out the amount of underreported tax is *prima facie* correct and *prima facie* evidence of the amount due. See 35 ILCS 5/904. Therefore, the burden is on the Debtor to establish that the Notice of deficiency (Exhibit C) is incorrect.

Wherefore, IDOR requests that the objection asserting that IDOR's claim for 2010 taxes be denied and that IDOR be allowed a pre-petition priority claim for the 2010 liability less the 2012 credit for a total allowed claim of \$346,405.67.

#### **Request for Payment of Administrative Tax Claim**

IDOR also requests that the Court allow it an administrative expense for taxes for the 2012 tax year in the amount of \$13, 337.83 and order that the taxes be paid for the reasons set forth hereafter:

12. For the 2012 tax year, the Debtor filed a return showing tax liability of \$716,801 and paid that amount. IDOR audited the return and determined that the Debtor had miscalculated the apportionment factor (per the return the apportionment factor was .164885 whereas it should have been .164884) and had overstated the available Illinois net loss deductions available by \$100,000. It therefore determined that the proper amount of taxes due totaled \$726,500.

13. Based on this determination it calculated the tax deficiency at \$9,699 and the related penalties and interest at \$3,576.65 and \$62.18 respectively. The following is a chart

showing these calculations:

	AMOUNT	OFFSET	BALANCE
Tax	726,500.00	-716,801.00	9,699.00
Penalty	3,576.65	0.00	3,576.65
Interest	62.18	0.00	62.18
Total			13,337.83

14. This return was filed in October 2013 and IDOR is in the process of preparing a notice of deficiency to be issued with respect to this liability. Unless the Debtor can demonstrate why IDOR's corrections to the 2012 return are incorrect, IDOR should be allowed an administrative expense in this amount.

15. Under 11 U.S.C. §503(b)(1)(B) and (C), taxes incurred by the bankruptcy estate are entitled to administrative expense priority and under 28 U.S.C. §960 taxes incurred by a debtor in possession or trustee are to be paid when due.

WHEREFORE, IDOR requests that the Court enter an order allowing it an administrative expense for 2012 Illinois income/replacement taxes in the amount of \$13,337.83 and order that the taxes be immediately paid.

ILLINOIS DEPARTMENT OF REVENUE

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**Certificate of Service**

The undersigned, an attorney, certifies that all parties registered to receive notice through the Court's ECF system received electronic notice of this response on March 20, 2014.

/s/ James D. Newbold