

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

MUSTAKAHMED I. HIRA,)	
Petitioner,)	
)	
v.)	Case No. 14-TT-103
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

1. Petitioner is an individual who lives at 5404 N. Kimball Avenue, Chicago, Illinois 60625, and can be reached at 773-524-8825.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by Romanoff & Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Tax ID is XXX-XX-7875.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax law. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

5. On April 25, 2014, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) ("Notice") in the amount of \$775,851.58, which covers the tax period ending March 31, 2012 and which is comprised of \$525,056.00 in tax due, \$211,122.00 in penalties, \$39,681.23 in interest, and \$7.65 in payments/credits. The Notice is attached hereto as Exhibit A.

ANSWER: The Department admits the factual allegations in Paragraph 5.

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

ANSWER: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

8. Petitioner was a corporate officer of Ahmed Inc., which is now closed/defunct.

ANSWER: The Department admits the factual allegations in Paragraph 8.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales tax for Ahmed Inc. during the tax periods at issue because he had nothing to do with the day-to-day operations of the business and the corporation also retained and reasonably relied on an outside accountant to prepare the sales tax returns.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore demands strict proof thereof.

10. The amounts contained on the Notice are based on a sales tax audit of the underlying corporation, Ahmed Inc., that occurred after the business was closed and defunct and that was estimated by the Department which did not review any of the corporation's books and records.

ANSWER: The Department admits it audited Ahmed Inc. after the business was sold. Ahmed Inc. nor Petitioner provided any books and records to the Department so the auditor was unable to review them as part of the audit and was forced to estimate the liability.

COUNT I

Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of Ahmed Inc.

11. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 10, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. A corporate officer who does not have control or supervision for filing or paying sales tax is not personally liable for the corporation's debt. 35 ILCS 735/3-7.

ANSWER: Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

13. Petitioner was a corporate officer of Ahmed Inc. who did not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments and therefore is not personally liable for the corporation's unpaid sales tax, penalties, and interest because he had nothing to do with the day-to-day operations of the business and also because the corporation retained an outside accountant to prepare the sales tax returns.

ANSWER: The Department admits Petitioner was a corporate officer of Ahmed Inc. The remainder of the allegations in Paragraph 13 contain legal conclusions, not material allegations of fact, do not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations and are therefore denied.

14. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax of the corporation.

ANSWER: Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal

Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 14.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

Petitioner did not willfully fail to pay the sales tax, penalties, and interest of Ahmed Inc.

15. Petitioner realleges and incorporates by reference the allegations made in Paragraph 1 through 14, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 14 as though fully set forth herein.

16. A corporate officer who does not willfully fail to pay the corporation's sales tax is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 735/3-7.

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

17. Petitioner was a corporate officer of Ahmed Inc. who did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because he

had nothing to do with the day-to-day operations of the business and also because the Department's audit occurred after the business was closed and defunct.

ANSWER: The Department admits Petitioner was a corporate officer of Ahmed Inc. and that the audit occurred after the business had been sold but that the periods audited were periods when Petitioner was still a corporate officer. The assertion that Petitioner did not act willfully is a legal conclusion, not a material allegation of fact, does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is therefore denied. The Department lacks sufficient information to either admit or deny whether the corporation retained and reasonably relied on an outside accountant to prepare the sales tax returns and therefore demands strict proof thereof.

18. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the sales tax, penalties, and interest of the corporation.

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 18.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

The Department's estimated liabilities for the corporate sales tax audit for tax period ending March 31, 2012 is erroneous.

19. Petitioner realleges and incorporates by reference the allegation made in Paragraphs 1 through 18, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 18 as though fully set forth herein.

20. The Notice includes an estimated audit liability for the tax period ending March 31, 2012 which is erroneous because the underlying corporation had very few walk-in customers due to the small mini-mart.

ANSWER: The Department denies all factual allegations in Paragraph 20.

21. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the estimated sales tax, penalties, and interest of the corporation.

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 21.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IV

The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate sales taxes.

22. Petitioner realleges and incorporates by reference the allegations made in Paragraphs 1 through 21, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 21 as though fully set forth herein.

23. The Illinois statute regarding personal assessments improperly defines unpaid corporate sales tax to include penalties and interest. 35 ILCS 735/3-7.

ANSWER: Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 23.

24. The intent of the Illinois statute regarding personal liability assessments for unpaid corporate sales tax is to allow the state to pursue responsible, willful corporate officers for unpaid corporate sales taxes that were collected “in trust” for the state.

ANSWER: Paragraph 24 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 24.

25. The unpaid corporate sales tax penalties and interest contained in the Notice at issue were not collected “in trust” for the state.

ANSWER: The allegations in Paragraph 25 of the petition contain a legal conclusion, not a material allegation of fact, do not require an answer under Section 310(b)(2) of the Tax

Tribunal Regulations and are therefore denied.

26. The Department's determination that Petitioner personally owes the unpaid penalties and interest of Ahmed Inc. is not supported by law.

ANSWER: Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 26.

WHEREFORE, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully submitted,
Illinois Department of Revenue

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