

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

STUART A. SWEZEY v. STATE OF ILLINOIS DEPARTMENT OF REVENUE	14-TT-123
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FINAL PRETRIAL ORDER

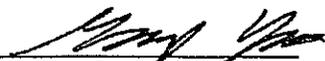
This matter having come before the court at a pretrial conference and Al Giudice having appeared as counsel for Petitioner and George Foster, Special Assistant Attorney General, having appeared as counsel for the Department, the Court orders and finds as follows:

1. This matter involves a Notice of Penalty Liability issued against the Petitioner for Retailers Occupation /Use Tax in the amount of \$76,413.23, as well as a Notice of Penalty Liability issued against the Petitioner for payroll withholding taxes in the amount of \$5,426.75. The Illinois Independent Tax Tribunal has jurisdiction over this matter pursuant to 35 ILCS 1010/1 -45. Jurisdiction is not disputed.
2. The trial is not expected to take more than one day.
3. There are no motions in limine.
4. Relevant statutory law, stipulations of fact, witness lists, and exhibit lists are included on the Addendum attached to and made a part of this order.

Administrative Law Judge



Attorney for the Petitioner



Attorney for the Respondent

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

STUART A. SWEZEY

v.

14-TT-123

STATE OF ILLINOIS

DEPARTMENT OF REVENUE

PROPOSED FINAL PRETRIAL ORDER

ADDENDUM

RELEVANT STATUTORY LAW

The relevant statutory law is 35 ILCS 735/3-7 which provides in relevant part that;
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.

STIPULATION OF FACTS

The unpaid taxes were with respect to a corporation known as Gabriel Sales of Oak Park Inc. Gabriel Sales was in the business of selling auto parts. The liability stems from the fact that returns were submitted without payment of the tax shown as due thereon for the period between March 2011 and December 2012. Gabriel Sales of Oak Park Inc. filed bankruptcy in 2012. The Petitioner, Stuart A. Swezey, who was the President of Gabriel Sales, does not dispute that he was a responsible officer (other than the during when Gabriel Sales was under bankruptcy protection) within the meaning of 35 ILCS 735/3-7, but disputes the Department's position that he willfully failed to pay the taxes at issue.

Petitioner's Witness List

The Petitioner intends to call, Stuart Swezey as a witness to testify as to his role in within Gabriel Sales and his involvement with and responsibility for the payment of taxes.

Respondent's Witness List

The Department intends to call the Petitioner, Stuart Swezey, as an adverse witness to testify as to his role in Gabriel Sales, and his involvement with, and responsibility for the payment of taxes.

Petitioner's Exhibits

Group Exhibit #1 consists of Gabriel Sales Bankruptcy Filings. It is not objected to.

Respondent's Exhibits

Group Exhibit # 1 consists of the notices of penalty liability at issue. It is not objected to.

Exhibit #2

Exhibit #2 is a copy of a Forbearance Agreement and Amendment to Loan Documents effective as of February 25, 2012. Its relevance is that it addresses the nonpayment of sales taxes. It is not objected to,

Exhibit #3

Exhibit #3 is a copy of a Forbearance Agreement and Amendment to Loan Documents effective as of July 2, 2012. Its relevance is that it addresses the nonpayment of sales taxes. It is not objected to.