



ANSWER: The Department admits that the tax period involved is March 2011 to December 2012. The Department denies any remaining allegations in paragraph 5 of the petition.

6. Petitioner is an individual taxpayer who is a shareholder in an automotive parts establishment located in Illinois.

ANSWER: The Department admits the allegations in paragraph 6 of the petition.

7. The establishment is Gabriel Sales Co of Oak Park, Inc. (“GSC”).

ANSWER: The Department admits the allegations in paragraph 7 of the petition.

8. GSC filed its sales tax return.

ANSWER: The Department admits that GSC filed its sales tax returns for the periods at issue herein. The Department further states that the allegations in paragraph are vague and deny any other allegations stated in paragraph 8 of the petition.

9. GSC utilized a payroll tax company to prepare and file its payroll returns.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. It is alleged that GSC did not pay all of its sales taxes and payroll taxes for the periods 2011-2012.

ANSWER: The Department admits that GSC did not pay all of its sales taxes and payroll taxes for the period March 2011 to December 2012.

11. The Respondent issued a two Assessments and Notice of Intent (“NOD”) to assess a penalty against the tax payer due to his alleged status as a responsible officer of GSC for the tax years 2011-2012 on May 6, 2014

ANSWER: The Department admits that it issued two Assessments and Notice of Intent (“NOD”) to assess a penalty against the tax payer due to his status as a responsible officer of GSC for the period March 2011 to December 2012.

12. The amounts assessed for additional tax, penalties and interest under the NODs are \$81,839.98.

ANSWER: The Department states that the notices speak for themselves and therefore deny the allegations in paragraph 12 of the petition.

13. Jurisdiction is based on the fact that the amount in controversy exceeds \$15,000.00 pursuant to 35 ILCS1010/1.

ANSWER: The allegations in paragraph 13 of the petition consist of legal conclusions and are therefore denied.

14. Is the taxpayer a responsible officer of GSC under Illinois Law?

ANSWER: No answer is required.

15. GSC filed its sales tax returns for the tax years 2011 and 2012

ANSWER: The Department admits that GSC filed its sales tax returns for the periods at issue herein. The Department denies any remaining allegations in paragraph 15 of the answer as not being material allegations of fact.

16. GSC filed its payroll tax returns for 2011 and 2012.

ANSWER: The Department admits that GSC filed its payroll tax returns for the periods at issue herein. The Department denies any remaining allegations in paragraph 16 of the answer as not being material allegations of fact.

17. GSC utilized a payroll tax company to prepare and file its payroll tax returns for 2011 and 2012.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 17 of the petition and therefore neither admits or denies said allegations.

18. The Respondent issued the NODs on March 10, 2014. (Exhibit A).

ANSWER: The Department denies the allegations in paragraph 18 of the petition and states that the notices were issued on May 6, 2014.

19. GSC factored its receivables its receivables to Great Lakes Business Credit.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 of the petition and therefore neither admits or denies said allegations.

20. The Petitioner did not intentional and knowing fail to pay sales taxes or withholding taxes.

ANSWER: The allegations in paragraph 20 of the petition are vague and conclusionary and are denied.

21. The Petitioner relied on third parties to pay the sales tax and withholding taxes.

ANSWER: The allegations in paragraph 21 of the petition are vague and conclusionary and are denied.

22. The statute imposes personal liability for paying to the state unpaid corporate Retailers' Occupation Tax, Use Tax and Withholding Tax obligations provides as follows:

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. 35 ILCS 735/3-7.

ANSWER: The Department states that the cited statute speaks for itself and therefore denies the allegations in paragraph 22 of the petition.

23. This section of the statute sets forth two tests for determining whether a person has personal liability for unpaid sales and withholding taxes incurred by a corporation. First, the person must be responsible for accounting for and paying the tax due. Second, the individual must willfully have failed to file for and/or pay the corporate taxes due.

ANSWER: The allegations in paragraph 23 of the petition consist not of material statements of fact, but of legal conclusions and are denied.

24. The statute does not define the concept of willful failure.

ANSWER: The allegations in paragraph 24 of the petition consist not of material statements of fact, but of legal conclusions and are denied.

25. The issue of willfulness is concerned with the state of the responsible person's state of mind. *Sawyer v. U.S.*, 831 F.2d 755 (7<sup>th</sup> Cir. 1987) "Willful failure to pay taxes has generally been defined as involving intentional, knowing and voluntary acts or, alternatively, reckless disregard for obvious or known risks." *Branson*, 168 Ill. 2d at 255.

ANSWER: The allegations in paragraph 25 of the petition consist not of material statements of fact, but of legal conclusions and are denied.

26. The Petitioner did not willfully fail to pay the sales tax or withholding taxes.

ANSWER: The allegations in paragraph 26 of the petition consist of legal and / or factual conclusions and are denied.

27. Since the Petitioner relied upon the payroll tax company and others to handle the sales tax and withholding taxes and he did not willful fail to payover the required taxes, he is not a responsible party under Illinois law and the petitioner should not be found to be personally liable for the sales taxes or withholding taxes of GSC.

ANSWER: The allegations in paragraph 27 of the petition consist of legal and / or factual conclusions and are denied.

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

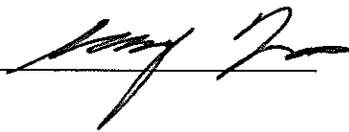
- a. denying the relief requested by the Petitioner;
- b. finding that the Notices of Penalty Liability at issue are correct as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN

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State of Illinois

By: 

George Foster

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**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>STUART A. SWEZEY</b>	)	
	)	
v.	)	<b>14-TT-123</b>
	)	
<b>STATE OF ILLINOIS</b>	)	
<b>DEPARTMENT OF REVENUE</b>	)	

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**AFFIDAVIT OF MARK DYCKMAN  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 9, 17 and 19.

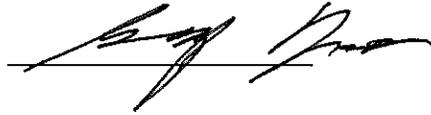
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true

  
\_\_\_\_\_  
Mark Dyckman  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 8-4-14

**CERTIFICATE OF SERVICE**

I, George Foster, an attorney, do hereby certify that on August 6, 2014 a copy of the Department's ANSWER was served on Al Giudice, Giudice Law Offices Ltd., by causing a copy to be sent by electronic mail to AL827@aol.com.

A handwritten signature in black ink, appearing to read "George Foster", written over a horizontal line.