

ILLINOIS INDEPENDENT
TAX TRIBUNAL

ANTO)
)
Stuart A. Swezey)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT OF REVENUE)
)
)
)
Respondent.)
_____)

RECEIVED
JUL 07 2014
BY: _____

14 TT 123

PETITION

PRELIMINARY INFORMATION

- 1. Taxpayer: Stuart A. Swezey
2975 Groveland Avenue
North Riverside, IL 60546

- 2. Attorney: Al Giudice
Giudice Law Offices Ltd.
211 N. Clinton, Suite 3S
Chicago, IL 60661
312-287-2500

- 3. Social Security #: omitted

- 4. Statutory Notice: Attached as Exhibit A

- 5. Tax Years Involved: 2011, 2012

PRELIMINARY STATEMENT

6. Petitioner is an individual taxpayer who is a shareholder in an automotive parts establishment located in Illinois.
7. The establishment is Gabriel Sales Co of Oak Park, Inc. (“GSC”).
8. GSC filed its sales tax return.
9. GSC utilized a payroll tax company to prepare and file its payroll returns.
10. It is alleged that GSC did not pay all of its sales taxes and payroll taxes for the periods 2011-2012.
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
12. The amounts assessed for additional tax, penalties and interest under the NODs are \$81,839.98.

JURISDICTION

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

QUESTIONS PRESENTED

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

FACTS

15. GSC filed its sales tax returns for the tax years 2011 and 2012.
16. GSC filed its payroll tax returns for 2011 and 2012.
17. GSC utilized a payroll tax company to prepare and file its payroll tax returns for 2011 and 2012.

18. The Respondent issued the NODs on March 10, 2014. (Exhibit A).
19. GSC factored its receivables its receivables to Great Lakes Business Credit.
20. The Petitioner did not intentional and knowing fail to pay sales taxes or withholding taxes.
21. The Petitioner relied on third parties to pay the sales tax and withholding taxes.

ARGUMENT

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.

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.
24. The statute does not define the concept of willful failure.
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 (7th 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.
26. The Petitioner did not willfully fail to pay the sales tax or withholding taxes.

CONCLUSION

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.

Dated: July 7, 2014.



Al Giudice
Giudice Law Offices Ltd.
211 N Clinton, Suite 3S
Chicago, Illinois 60661
(312) 287-2500 telephone
(847) 832-0500 facsimile
al827@aol.com
Attorney for Petitioner

Collection Action
Assessment and Notice of Intent



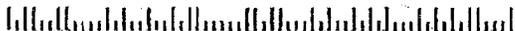
May 6, 2014



Letter ID: L0804438496

STUART A. SWEZEY
2975 GROVELAND AVE
N RIVERSIDE IL 60546-1655

Taxpayer ID: XXX-XX-0317
NPL Penalty ID: 1420850



GABRIEL SALES CO OF OAK PARK I
2040 N HAWTHORNE AVE
MELROSE PARK, IL 60160-1106

**We have determined you are personally liable
for a penalty of \$76,413.23.**

The penalty is equal to the amount of unpaid liability of GABRIEL SALES CO OF OAK PARK I, due to your status as a responsible officer, partner, or individual of GABRIEL SALES CO OF OAK PARK I.

Illinois law (35 ILCS 735/3-7) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$76,413.23. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this liability is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal**, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **July 5, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax
IDOR-SP-NPL (R-11/13)

For information about
› how to pay
› submitting proof
› collection actions



Exhibit A

Collection Action
Assessment and Notice of Intent



May 6, 2014



Letter ID: L0804438496

STUART A. SWEZEY
 2975 GROVELAND AVE
 N RIVERSIDE IL 60546-1655

Taxpayer ID: XXX-XX-0317
 NPL Penalty ID: 1420850



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge

Account ID: 0423-8214

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2011	18,933.00	2,243.30	1,255.15	-	-	22,431.45
30-Apr-2011	15,361.00	1,886.10	980.78	-	-	18,227.88
31-May-2011	9,620.00	462.80	-	-	(9,620.00)	462.80
30-Jun-2011	10,024.00	400.00	3.00	-	(10,024.00)	434.81
31-Jul-2011	10,451.00	448.04	6.59	-	(10,451.00)	454.63
31-Aug-2011	10,449.00	1,353.88	12.31	-	(10,449.00)	1,366.19
30-Sep-2011	14,257.00	565.14	5.08	-	(14,257.00)	570.22
31-Oct-2011	8,210.00	1,085.20	367.21	-	-	9,662.41
30-Nov-2011	937.00	212.44	38.95	-	-	1,188.39
31-Dec-2011	3,096.00	409.60	119.85	-	-	3,625.45
31-Jan-2012	2,712.00	371.20	97.89	-	-	3,181.09
29-Feb-2012	1,237.00	223.70	41.91	-	-	1,502.61
31-Mar-2012	2,276.00	327.60	71.26	-	-	2,674.86
30-Apr-2012	2,134.00	356.08	61.39	-	-	2,551.47
31-May-2012	471.00	136.52	12.40	-	-	619.92

IDOR-SP-NPL (R-11/13)

Statement continues on the following page(s).

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action (R-12/08) (136)



Letter ID: L0804438496
 STUART A. SWEZEY

Total amount due: \$76,413.23

Write the amount you are paying below.

\$ _____

Write your Taxpayer ID on your check.

Mail this voucher and your payment to:
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19035
 SPRINGFIELD IL 62794-9035

000 006 004821196965 731 123199 4 0000007641323

Collection Action

Assessment and Notice of Intent



STUART A. SWEZEY
2975 GROVELAND AVE
N RIVERSIDE IL 60546-1655

May 6, 2014



Letter ID: L0055608544

Taxpayer ID: XXX-XX-0317
1002D Penalty ID: 960563



GABRIEL SALES CO OF OAK PARK I
2040 N HAWTHORNE AVE
MELROSE PARK, IL 60160-1106

We have determined you are personally liable for a penalty of \$5,426.75.

The penalty is equal to the amount of unpaid liability of GABRIEL SALES CO OF OAK PARK I, due to your status as a responsible officer, partner, or individual of GABRIEL SALES CO OF OAK PARK I.

Illinois law (35 ILCS 5/1002(d)) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

Pay us \$5,426.75. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this liability is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal**, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **July 5, 2014**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

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ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31614
217 785-2635 fax

IDOR-5P-NPL (R-11/13)

For information about
› how to pay
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› collection actions



Collection Action
Assessment and Notice of Intent



May 6, 2014



Letter ID: L0055608544

STUART A. SWEZEY
2975 GROVELAND AVE
N RIVERSIDE IL 60546-1655

Taxpayer ID: XXX-XX-0317
1002D Penalty ID: 960563



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

IL Withholding Income Tax

Account ID: 36-3028313-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2011	3,271.91	66.10	13.69	-	(2,910.89)	440.81
31-Mar-2012	2,163.78	227.85	32.51	-	(1,098.37)	1,325.77
30-Jun-2012	2,067.55	231.75	47.43	-	-	2,346.73
31-Dec-2012	1,606.75	209.29	11.31	-	(513.91)	1,313.44

IDOR-5P-NPL (R-11/13)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L0055608544
STUART A. SWEZEY

Total amount due: \$5,426.75

Write the amount you are paying below.

\$ _____

Write your Taxpayer ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

000 006 000685335208 731 123199 8 0000000542675

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to:

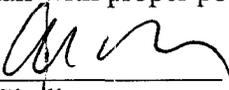
Traci Skeeters
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO Box 19035
Springfield, Illinois 62794-9035
(217)782-9904 ext 31614 telephone

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900 (7th floor of the Thompson Center)
Chicago, IL 60601

PROOF OF SERVICE

I, Al Giudice, the attorney certify that on July 7, 2014, I served this Petition from Chicago, Illinois by:

 x mailing a copy to the party to whom it is directed at the address indicated above by depositing same in U.S. mail with proper postage prepaid,



Al Giudice