

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

STANLEY KOWALSKI)	
& CATHERINE KOWALSKI,)	
Petitioners)	
)	
V)	No. 15 TT 98
ILLINOIS DEPARTMENT)	Judge Brian Barov
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to the Petition states as follows:

1. The NPLs was issued by the IDOR on March 23, 2015 in the aggregate amount of \$69,107, consisting of 42,010 in tax, \$20,535 in penalties and \$6,562 in accrued interest against Petitioners alleging that they are responsible officers of Stako Investments, Inc. d/b/a Fatty McGees Pub & Grill (“Corporation”). The NPLs represents penalty liability for Retailers Occupation Tax (ROT) of Corporation due to the IDOR for the taxable periods of June 2009 through June 2013.

ANSWER: The Department admits that the NPLs were issued on March 23, 2015. The Department further states that the NPLs speak for themselves and therefore denies the remaining allegations in paragraph 1 of the petition.

2. Petitioner are individuals, owners and listed as principal officers of the corporation, which is an Illinois corporation with its former place of business located at 4846 E. State Street, Rockford, IL 61108-2209. The Petitioners current address, as listed on the notices, is 10438 S. 82nd Ct., Palos Hills IL, 60465 and the phone number for which inquiries can be directed is 630-661-1120. The Corporation's IBT Account number is 2999-7240. Shortly after the audit was completed, the Corporation closed its doors due to financial insolvency. Shortly thereafter, the Illinois Secretary of State involuntarily dissolved the Corporate Charter for nonpayment of the Illinois Franchise Tax/Annual Report Fee. Further, IDOR revoked the Corporation's license to do business on or about August 15, 2013 due to non-payment of the ROT deficiency, penalties and accrued interest.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. Under 35 ILCS 735/3-7 of the Uniform Penalty and Interest Act, the Petitioners are not liable for the taxes assessed in the NPL because, despite their title of owner and principal officer, they never had control, supervision or the responsibility of filing returns and making payment thereon; and therefore did not willfully fail to file said returns or attempt to evade/defeat the taxes resulting from said returns.

ANSWER: The allegations in paragraph 3 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

4. On or about March 1, 1999, Petitioners desired to assist their son by providing start up funds to incorporate the Corporation, which was duly incorporated pursuant to Illinois law. Since Petitioners provided funding, Mr. Stanley Kowalski was listed as President, and his wife Catherine was listed as Secretary. Further, on or about August 8, 2014 the Illinois Secretary of State issued a "Certificate of Dissolution of Domestic Corporation" effectively dissolving the

corporation for failure to file and Illinois annual report and failure to pay the Illinois annual franchise tax.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the petition and therefore neither admits or denies said allegations.

5. Petitioner's son, Gregory Kowalski, who is the General Manager of the corporation, has always acknowledged that he wrote and signed all the checks on behalf of the corporation, hired and fired employees, and otherwise was totally responsible for the day to day affairs of the corporation.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the petition and therefore neither admits or denies said allegations.

6. Petitioners were never involved in the business in any manner whatsoever, as evidenced by the following facts: (set forth in subparagraphs a-s of the petition but not specifically repeated here)

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the petition and therefore neither admits or denies said allegations.

APPLICABLE LAW

7. ANSWER: The allegations in paragraph 7 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

8. ANSWER: The allegations in paragraph 8 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

9. ANSWER: The allegations in paragraph 9 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

10. ANSWER: The allegations in paragraph 10 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

11. ANSWER: The allegations in paragraph 11 of the petition consist not of material allegations of fact, but primarily of legal and / or other conclusions and are denied.

CASE LAW

12. ANSWER: The allegations in paragraph 12 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

13. ANSWER: The allegations in paragraph 13 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

14. ANSWER: The allegations in paragraph 14 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

15. ANSWER: The allegations in paragraph 15 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

16. ANSWER: The allegations in paragraph 16 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

17. ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

18. ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

19. ANSWER: The allegations in paragraph 19 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

20. ANSWER: The allegations in paragraph 20 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

21. ANSWER: The allegations in paragraph 21 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

22. ANSWER: The allegations in paragraph 22 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

23. ANSWER: The allegations in paragraph 23 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

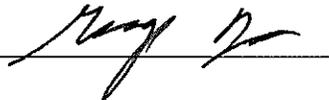
24. ANSWER: The allegations in paragraph 24 of the petition consist not of material allegations of fact, but primarily of a recitation of case law and of legal and / or other conclusions and are denied.

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
granting such further relief as this Tribunal deems appropriate under the
circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: 

George Foster
Special Assistant Attorney General

George Foster
Illinois Department Of Revenue
100 W. Randolph Street, Level 7
Chicago, Illinois 60601
312-814-3493
george.foster@illinois.gov

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

STANLEY E. KOWALSKI &)	
CATHERINE KOWALSKI)	
v.)	15-TT-98
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

**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 4, 5 and 6.

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: 6-18-15