

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

FRANK D. SOTTREL,)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-100
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian F. Barov
)	
Defendant.)	

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:

PARTIES

1. Petitioner is an individual who lives at 2955 Mannheim Road, Franklin Park, Illinois, 60131 and can be reached at 847-455-4073.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(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 within Paragraph 1.

2. Petitioner is represented by The Law Office of James E. 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) (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 within Paragraph 2.

3. Petitioner's NPL Penalty ID is 820764.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(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 within Paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement of Illinois tax laws. 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.

NOTICE

5. On March 10, 2015, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) ("Notice") in the amount of \$250,712.16 for the unpaid Hotel Operators Occupation Tax liability of Franklin Park Hospitality Group Inc. for the tax periods ending June 30, 2009 and December 31, 2010. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department denies the factual allegations, as it believes that the Petitioner

meant to state “Franklin Park Hospitality Inc.,” as opposed to “Franklin Park Hospitality Group Inc.” Additionally, the underlying liability for the Notice is not only for tax, but is for tax, penalty, and interest. Otherwise, to the extent that the Department can answer, the Department admits the factual allegations contained within Paragraph 5.

JURISDICTION

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.

BACKGROUND

8. Petitioner was a partial owner of Franklin Park Hospitality Inc. (now defunct) formerly located in Franklin Park, Illinois (near O’Hare Airport).

ANSWER: The Department objects to Paragraph 8 as vague and ambiguous as to the Petitioner being a partial owner of Franklin Park Hospitality Inc., as opposed to Sottrel Hotel Group Inc. Otherwise, to the extent the Department can answer, the Department admits the factual allegations contained within Paragraph 8.

9. The underlying corporate tax liability is based on an audit whereby the Department assessed Hotel tax even though the corporation operated as a private club (and never collected Hotel tax) and even though the Department's issued an on-point letter ruling indicating that an identical business was not subject to Hotel tax and even though the corporation retained an outside CPA who agreed with the Department's letter ruling and advised the corporation to not collect the Hotel tax from its customers.

ANSWER: Paragraph 9 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. To the extent an answer is required for this Petition, denied.

COUNT I

Petitioner is not a responsible officer who failed to pay the tax, penalties, and interest of Franklin Park Hospitality Inc.

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 9 as though fully set forth herein.

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

ANSWER: Paragraph 11 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 Act speaks for itself. To the extent an answer is required for this Petition, denied.

12. Petitioner did not have control, supervision, or responsibility for filing Hotel tax returns or making Hotel tax payments and therefore is not personally liable for the corporation's unpaid tax, penalties, and interest because he believed that Hotel Tax was not due based on the advice from the Department and the corporation's outside accountant.

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. To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 13 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. To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

COUNT II

Petitioner did not willfully fail to pay the tax, penalties, and interest of Franklin Park Hospitality Inc.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 13 as though fully set forth herein.

15. 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 35 ILCS 735/3-7.

ANSWER: Paragraph 15 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 Act speaks for itself. To the extent an answer is required for this Petition, denied.

16. Petitioner did not willfully fail to pay the tax, penalties, and interest of the underlying corporation and therefore is not personally liable for such amounts because the underlying corporate tax liability is based on an audit whereby the Department assessed Hotel tax even though the corporation operated as a private club (and never collected Hotel tax) and even though the Department's issued an on-point letter ruling indicating that an identical business was not subject to Hotel tax and even though the corporation retained an outside CPA

who agreed with the Department's letter ruling and advised the corporation to not collect the Hotel tax from its customers.

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.

To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 17 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.

To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

COUNT III

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

18. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 17, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 17 as though fully set forth herein.

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

ANSWER: Paragraph 19 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 Act speaks for itself. To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 20 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. To the extent an answer is required for this Petition, denied.

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

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. To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 22 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. To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: June 8, 2015

Respectfully submitted,
Illinois Department of Revenue

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