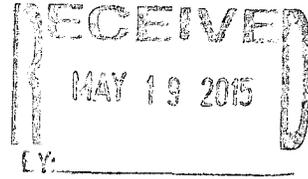


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

FRANK D. SOTTREL,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



1577100

PETITION

Petitioner, Frank D. Sottrel (“Petitioner”), by and through his attorneys, The Law Office of James E. Dickett, Ltd, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges 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.
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.
3. Petitioner’s NPL Penalty ID is 820764.
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.

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.

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.

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.

BACKGROUND

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

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.

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.

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.

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.

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

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds that Petitioner is not personally liable for the unpaid liability of the corporation because Petitioner did not have control, supervision, or responsibility for filing tax returns or making tax payments; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and cancels the Notice.

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.

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.

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.

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.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds that Petitioner is not personally liable for the unpaid liability of the corporation because Petitioner did not willfully fail to pay such amounts;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;

- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems 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.

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

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.

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

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

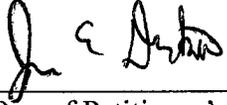
WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds that Petitioner is not personally liable for the unpaid penalties and interest of the corporation because they were not collected “in trust”;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and against the Defendant.

Thank you for considering this Petition.

Respectfully submitted,

Frank D. Sottrel,
Petitioner

By: 
One of Petitioner's Attorneys

Date: 5-7-15

James E. Dickett
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)

Collection Action
Assessment and Notice of Intent

Exhibit 1



March 10, 2015



Letter ID: L0821852640

FRANK D. SOTTREL
2955 MANNHEIM RD
FRANKLIN PARK IL 60131-2223

Taxpayer ID: XXX-XX-
NPL Penalty ID: 820764



FRANKLIN PARK HOSPITALITY INC
2955 MANNHEIM RD
FRANKLIN PARK IL 60131-2223

**We have determined you are personally liable
for a penalty of \$250,712.16.**

The penalty is equal to the amount of unpaid liability of FRANKLIN PARK HOSPITALITY INC, due to your status as a responsible officer, partner, or individual of FRANKLIN PARK HOSPITALITY INC.

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 \$250,712.16. 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 **May 9, 2015**. 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.

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

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



217 782-9904 ext. 31613
217 785-2635 fax

Collection Action
Assessment and Notice of Intent



March 10, 2015



Letter ID: L0821852640

FRANK D. SOTTREL
2955 MANNHEIM RD
FRANKLIN PARK IL 60131-2223

Taxpayer ID: XXX-XX-
NPL Penalty ID: 820764



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.

Hotel Operators Occupation Tax

License No.: HM-10596

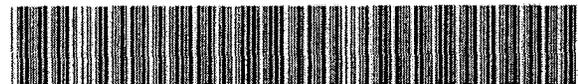
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	34,673.00	15,356.00	11,455.61	-	-	61,484.61
31-Dec-2010	140,718.00	30,941.00	17,568.55	-	-	189,227.55

IDOR-5P-NPL (N-03/07)

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: L0821852640
FRANK D. SOTTREL

Total amount due: \$250,712.16

Write the amount you are paying below.

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

\$ _____
Write your Account ID on your check.

000 006 000857531048 731 123199 8 0000025071216