

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

ANDREW UHM,)	
Petitioner)	
)	
V)	No. 15 TT 140
ILLINOIS DEPARTMENT)	Judge Brian F. 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. Petitioner is an individual residing at 1536 Haig point Lane, Vernon Hills, Illinois.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. Petitioner's tax I.D. number is 340-72-3706 and the phone number is 773-320-6633.

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

3. Petitioner owned and operated Wireless Products Innovations, Inc. ("WPI") from December 2002 to June 2012.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. Petitioner was the sole shareholder and president of WPI.

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. On May 14, 2015, Department issued the Notice imposing penalty on Petitioner personally for willfully failing to pay WPI's Sales/Use Tax & E911 Surcharge liabilities with penalties and interest for the reporting periods of June 30, 2009, and August 31, 2011 through June 30, 2012("Reporting Period"), in total amount of \$3,125,027.69. A copy of the Notice is attached hereto as Exhibit A.

ANSWER: The Department admits that on May 14, 2015, the Department issued the Notice which is attached to the Petition as Exhibit A. The Department further states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 5 of the petition.

6. WPI was engaged in the business of selling cellular phones ("Cellular Phones") and cellular telephone services ("Service Contract or Plan") as an exclusive sales agent of USCC Distribution Co. LLC a/k/a U.S. Cellular ("U.S. Cellular").

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

7. As an exclusive U.S. Cellular retailer/agent, WPI was required to purchase all Cell Phones only from U.S. Cellular and sell them to retail customers at the retail selling price mandated by U.S. Cellular. WPI was also required to sell U.S. Cellular's Service Contracts packaged with certain models of Cell Phones ("Promotional Phone") to U.S. Cellular customers.

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

8. To promote and entice customers to sign long term Service Contracts, U.S. Cellular, like other cellular phone service carriers, also offered the Promotional Phones at free of charge or at deeply discounted price when customers sign long term Service Contracts with U.S. Cellular.

ANSWER: The Department states that the description and characterizations set forth in paragraph 8 are vague and capable of more than one interpretation and are therefore denied.

9. U.S. Cellular advertised such Service Plans nationally and mandated its exclusive retailers to offer the same to its customers, and customers were given 30 day grace period (“Grace Period”) to cancel their Service Contract if they choose to do so.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

10. So when a customer purchases such Service Plan, WPI would charge the Promotional Phone at the advertised price and collect Illinois Sales/Use Tax & E911 Surcharge (“Sales Tax”) on the advertised price and remit the Sales Tax collected to the Department.

ANSWER: The Department admits that WPI only charged and remitted sales tax on the advertised price of the promotional phones. The Department denies any conclusions and any remaining allegations in paragraph 10 of the petition.

11. If a customer does not cancel the Service Contract within the Grace Period, U.S. Cellular would give WPI a credit, an amount equal to the difference between the advertised price and the purchase price WPI paid to U.S. Cellular for the Promotional Phones (“Discount Credit Amount”), to WPI’s account offsetting its account receivable from WPI.

ANSWER: The Department admits that if a customer does not cancel the Service Contract within the Grace Period, U.S. Cellular would give WPI a rebate, an amount equal to the difference between the advertised price and the purchase price WPI paid to U.S. Cellular for the Promotional Phones. The Department denies the remaining allegations in paragraph 11 of the petition.

12. In or about June 2010, the Department conducted an audit of WPI and assessed Sales Tax on the Discount Credit Amount as it determined that the Discount Credit Amount should be considered as a rebate.

ANSWER: The Department admits that on or about June 2010, the Department conducted an audit of WPI and assessed Sales Tax on the rebate that WPI received from U.S. Cellular that the Department deemed to be taxable. The Department denies the remaining allegations in paragraph 12 of the petition.

13. WPI disagreed with the Department and filed a protest shortly thereafter.

ANSWER: The Department admits the allegations in paragraph 13 of the petition.

14. On or about May 31, 2012, the Department issued a Notice of Decision and Recommendation for Disposition finding that the Department's assessment at issue was proper.

ANSWER: The Department admits the allegations in paragraph 14 of the petition.

15. On or about July 9, 2012, WPI filed its complaint in the Circuit Court of Cook County seeking judicial review of the administrative decision of the Department.

ANSWER: The Department admits the allegations in paragraph 15 of the petition.

16. WPI, however, could not pursue an appeal of the Department's administrative decision as WPI was dissolved and financially unable to secure a bond as required under Section 12 of the Retailers' Occupation Tax Act, 35 ILCS 120/12.

ANSWER: The Department admits the allegations in paragraph 16 of the petition.

17. WPI's complaint was subsequently dismissed on September 27, 2012 for failing to post a bond.

ANSWER: The Department admits the allegations in paragraph 17 of the petition.

18. On or about February 19, 2013, the Department issued Final Notice of Sales Tax Due to WPI for the Reporting Period.

ANSWER: The Department admits the allegations in paragraph 18 of the petition.

19. On or about May 31, 2013, Petitioner and his wife, Helen Uhm, filed a joint petition for Chapter 7 Bankruptcy.

ANSWER: The Department admits the allegations in paragraph 19 of the petition.

20. On May 20, 2014, the United States Bankruptcy Court in the Northern District of Illinois entered an order discharging the Petitioner and his wife under Title 11, Section 727 of the United States Bankruptcy Code. Please see Exhibit B, a copy of an order entered by the United States Bankruptcy Court-Northern District of Illinois on May 20, 2014.

ANSWER: The Department admits the allegations in paragraph 20 of the petition.

21. On May 14, 2015, the Department issued the Notice imposing penalty of \$3,125,027.69 on Petitioner personally, alleging Petitioner's willful failure to pay WPI's Sales Tax.

ANSWER: The Department admits the allegations in paragraph 21 of the petition.

22. U.S. Cellular provided its customers of Promotional Phones at free of charge or at deeply discounted price when the customers signed Service Plan with U.S. Cellular.

ANSWER: The Department denies that paragraph 22 of the petition accurately describes the subject transactions and therefore denies the allegations in paragraph 22 of the petition.

23. U.S. Cellular then shifted and spread out the cost of Promotional Phones over the Service Contract period in the form of minimum monthly contract payments. Please see

Exhibit C, a copy of Chicago Tribune article explaining how cellular phone companies build their monthly service fees by adding costs of discounted phones.

ANSWER: The allegations in paragraph 23 of the petition consist primarily of conclusions and are denied.

24. During the Service Contract period, the Department collected Telecommunication Excise Tax on the monthly payments at the rate substantially similar to the rate of Sales Tax.

ANSWER: The allegations in paragraph 24 of the petition are vague and conclusory and are denied.

25. This resulted in the Department collecting lesser amount of Sales Tax on the Promotional Phones at the time of sale but collecting more amount of Telecommunication Excise Tax over the Service Contract Period. Consequently, there was no tax revenue loss incurred by the Department.

ANSWER: The allegations in paragraph 25 of the petition consist primarily of conclusions and are denied.

26. If the Department is to collect Sales Tax on the Discount Credit Amount, then the Department would be charging both Sales Tax and Telecommunication Excise Tax on the same amount – double dipping by charging both taxes on the Discount Credit Amount.

ANSWER: The allegations in paragraph 26 of the petition consist primarily of conclusions and are denied.

27. Such double taxation on the same Discount Credit Amount is simply inequitable and unjustifiable.

ANSWER: The allegations in paragraph 27 of the petition consist primarily of conclusions and are denied.

28. Moreover, such Discount Credit Amount provided by U.S. Cellular was not a rebate as it was contingent upon customers keeping the Service Contract beyond the Grace Period and to compensate WPI's loss resulting from selling Promotional Phones at discounted prices as mandated by U.S. Cellular.

ANSWER: The allegations in paragraph 28 of the petition consist primarily of conclusions and are denied.

29. Clearly, the Department erred in finding that the Discount Credit Amounts were rebates.

ANSWER: The allegations in paragraph 29 of the petition consist primarily of conclusions and are denied.

30. Department's assessment of Sales Tax on the Discount Credit Amount was an error, improper or unjustifiable. Therefore, the Petitioner shall be not be held personally responsible for the tax amount.

ANSWER: The allegations in paragraph 30 of the petition consist primarily of conclusions and are denied.

31. Even if the Department's assessment of Sales Tax on the Discount Credit Amount was correct and proper, Petitioner shall not be held personally liable for WPI's Sales Tax on the Discount Credit Amount because he did not willfully fail to make payment of such taxes to the Department.

ANSWER: The allegations in paragraph 31 of the petition consist primarily of conclusions and are denied.

32. "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 v. department of Revenue*, 168 Ill. 2d. 247, 255 (1995) quoting *Department of Revenue v. Heartland Investments, Inc.*, 106 Ill. 2d at 29-30 (1985).

ANSWER: The allegations in paragraph 32 of the petition consist primarily of legal conclusions and are denied.

33. Here, the Sales Tax on the Discount Credit Amount had been never collected from customers, and WPI has not tried to evade remitting any of the collected Sales Tax.

ANSWER: The Department admits that WPI did not try to evade remitting any collected sales tax. The Department denies the Petitioner's characterization of the rebates at issue as a "Discount Credit Amount" and all other allegations in paragraph 33 of the petition.

34. When Promotional Phones were sold to customers, WPI collected the Sales Tax on the advertised price charged to customers and remitted all of the collected Sales Tax to the Department.

ANSWER: The Department admits the allegations in paragraph 34 of the petition.

35. Petitioner, as an owner and the president of WPI, made sure that WPI's Sales Tax returns were filed on time and all of the collected Sales Taxes were remitted to the Department.

ANSWER: The allegations in paragraph 35 of the petition are vague and conclusory and are denied.

36. Neither the Petitioner nor WPI in any way had been benefited from the Sales Tax collected from WPI's customers.

ANSWER: The allegations in paragraph 36 of the petition are vague and conclusory and are denied.

37. Even if not collecting Sales Tax on the Discount Credit Amount was determined to be a mistake on WPI's part, Petitioner cannot be found personally responsible for the uncollected Sales Tax because he did not take any intentional, knowing and voluntary acts, or recklessly disregarded obvious or known risks pertaining to WPI's payment of Sales Tax to the Department.

ANSWER: The allegations in paragraph 37 of the petition consist primarily of 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,

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