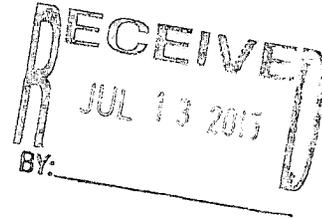


ILLINOIS INDEPENDENT
TAX TRIBUNAL

ANDREW UHM,)
)
) Petitioner,)
)
) v.)
)
) ILLINOIS DEPARTMENT)
) OF REVENUE,)
)
) Respondent.)



15 T1140

PETITION

The Petitioner, Andrew Uhm, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Collection Action-Assessment and Notice of Intent ("Notice") issued by the Illinois Department of Revenue ("Department"), for the reasons stated below:

INTRODUCTION

1. Petitioner is an individual residing at 1536 Haig point Lane, Vernon Hills, Illinois.
2. Petitioner's tax I.D. number is [REDACTED] and the phone number is 773-320-6633.
3. Petitioner owned and operated Wireless Products Innovations, Inc. ("WPI") from December 2002 to June 2012.
4. Petitioner was the sole shareholder and president of WPI.

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.

RELEVANT BACKGROUND FACTS

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").
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.
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.
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.

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.
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.
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.
13. WPI disagreed with the Department and filed a protest shortly thereafter.
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.
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.
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.
17. WPI's complaint was subsequently dismissed on September 27, 2012 for failing to post a bond.
18. On or about February 19, 2013, the Department issued Final Notice of Sales Tax Due to WPI for the Reporting Period.

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

APPLICABLE LAW

- Uniform Penalty and Interest Act

Section 3-7. Personal liability Penalty. 35 ILCS 735/3-7(a)

(a) 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 wilfully fails to file the return or make the payment to the Department or wilfully 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.

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

ERROR I

Department's Sales Tax Assessment on the Discount Credit Amount Received by WPI is
Improper and Unjust

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.

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.
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.
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.
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.
27. Such double taxation on the same Discount Credit Amount is simply inequitable and unjustifiable.
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.
29. Clearly, the Department erred in finding that the Discount Credit Amounts were rebates.
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.

ERROR II

Petitioner did not Wilfully fail to make the payment to the Department

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

CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner, Andrew Uhm, respectfully requests that the Collection Action-Assessment and Notice of Intent dated May 14, 2015 imposing WPI's Sales Tax liabilities on Petitioner be reversed and vacated.

Respectfully Submitted,

Andrew Uhm, Petitioner

By: 
Sungwhan Kim
One of the Attorneys for Petitioner

B.H. Whang and Associates, Ltd.
1100 Hicks Road
Rolling Meadows, IL 60008
847-517-3696
skim@bhwhang.com
ARDC: 6306328

Exhibit A

Collection Action

Assessment and Notice of Intent



May 14, 2015



Letter ID: L0687935760

ANDREW UHM
1536 HAIG POINT LN
VERNON HILLS IL 60061-3801

Taxpayer ID: XXX-XX-
NPL Penalty ID: 2620560



WIRELESS PRODUCTS INNOVATIONS
1111 N PLAZA DR
755
SCHAUMBURG IL 60173-4963

We have determined you are personally liable for a penalty of \$3,125,027.69.

The penalty is equal to the amount of unpaid liability of WIRELESS PRODUCTS INNOVATIONS, due to your status as a responsible officer, partner, or individual of WIRELESS PRODUCTS INNOVATIONS.

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 \$3,125,027.69. 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 13, 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.

TRACI SKEETERS
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. 31614
217 785-2635 fax

To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review. You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action

Assessment and Notice of Intent



May 14, 2015



Letter ID: L0687935760

ANDREW UHM
1536 HAIG POINT LN
VERNON HILLS IL 60061-3801

Taxpayer ID: XXX-XX-
NPL Penalty ID: 2620560



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: 3375-3083

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	1,023,584.00	409,532.00	518,946.03	-	-	1,952,062.03
31-Aug-2011	657,602.00	131,620.00	79,818.52	-	-	869,040.52
30-Sep-2011	23,927.00	4,887.00	1,886.34	-	-	30,700.34
31-Oct-2011	23,927.00	4,887.00	1,804.58	-	-	30,618.58
30-Nov-2011	23,927.00	4,887.00	1,723.72	-	-	30,537.72
31-Dec-2011	23,927.00	4,887.00	1,659.80	-	-	30,473.80
31-Jan-2012	23,927.00	4,887.00	1,596.83	-	-	30,410.83
29-Feb-2012	23,927.00	4,887.00	1,543.73	-	-	30,357.73
31-Mar-2012	23,927.00	4,887.00	1,482.77	-	-	30,296.77
30-Apr-2012	23,927.00	4,887.00	1,421.81	-	-	30,235.81
31-May-2012	23,927.00	4,887.00	1,362.81	-	-	30,176.81
30-Jun-2012	23,926.00	4,887.00	1,303.75	-	-	30,116.75

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: L0687935760
ANDREW UHM

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

Total amount due: \$3,125,027.69

Write the amount you are paying below.

\$ _____
Write your Account ID on your check.

000 006 006358240164 731 123199 5 0000312502769



Illinois Department of Revenue

Authority to Levy Statutory References and Taxpayers' Bill of Rights

Authority to Levy

From 35 ILCS 5/1109 of the Income Tax Act and 35 ILCS 120/5f of the Retailers' Occupation Tax Act.

In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment. Levy shall not be made until the Department has caused a demand to be made on the taxpayer in the manner provided above. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the salary, wages, commissions and bonuses of any employee, including officers, employees, or elected officials of the United States as authorized by Section 5520a of the Government Organization and Employees Act (5 U.S.C. 5520a), but not upon the salary or wages of officers, employees, or elected officials of any state other than this State by serving a notice of levy on the employer, as defined in Section 701(d). Levy shall not be made until the Department has caused a demand to be made on the employee in the manner provided above. The provisions of Section 12-803 of the Code of Civil Procedure relating to maximum compensation subject to collection under wage deduction orders shall apply to all levies made upon compensation under this Section. To the extent of the amount due on the levy, the employer or other person making payments to the taxpayer shall hold any non-exempt wages or other payments due or which subsequently come due. The levy or balance due thereon is a lien on wages or other payments due at the time of the service of the notice of levy, and such lien shall continue as to subsequent earnings and other payments until the total amount due upon the levy is paid, except that such lien on subsequent earnings or other payments shall terminate sooner if the employment relationship is terminated or if the notice of levy is rescinded or modified. The employer or other person making payments to the taxpayer shall file, on or before the return dates stated in the notice of levy (which shall not be more often than bimonthly) a written answer under oath to interrogatories, setting forth the amount due as wages or other payments to the taxpayer for the payment periods ending immediately prior to the appropriate return date. A lien obtained hereunder shall have priority over any subsequent lien obtained pursuant to Section 12-808 of the Code of Civil Procedure, except that liens for the support of a spouse or dependent children shall have priority over all liens obtained hereunder.

Illinois law (735 ILCS 5/12-803 of the Code of Civil Procedure) and Federal law (15 U.S.C. 1673) define "maximum wages subject to collection."

Federal law places a ceiling of 25% of the amount of an employee's disposable earnings subject to garnishment, so long as state law does not prohibit garnishment or provide for more limited garnishment than is allowed by federal law.

"The maximum wages, salary commissions, and bonuses subject to collection under a deduction order, for any work week shall not exceed the lesser of (1) 15% of such gross amount paid for that week, or (2) the amount by which *disposable earnings* (emphasis added) for a week exceed 45 times the Federal Minimum Hourly Wage prescribed by Section 206(a)(1) of Title 29 of the United States Code, as amended, in effect at the time the amounts are payable.... The term "*disposable earnings*" (emphasis added) means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." (735 ILCS 5/12-803)

Taxpayers' Bill of Rights

- You have the right to call the Illinois Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond within specified time periods to our notices by asking questions, paying the amount due, or providing proof to refute our findings.
- You have the right to appeal our decisions in many instances within specified time periods by asking for our review or by taking the
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment, within certain time periods.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 *et seq.*

For more information about these rights and other departmental procedures, visit our Web site at www.revenue.state.il.us or contact us at the address or telephone numbers below.

call: 1 800 732-8866
1 217 782-3336
1 800 544-5304 (TDD-telecommunications device for the deaf)

write: ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19044
SPRINGFIELD IL 62794-9044

Exhibit B

www.chicagotribune.com/business/technology/chi-us-cellular-we-turned-down-the-iphone-20111104,0,7384568.story

chicagotribune.com

U.S. Cellular: We turned down the iPhone

Associated Press

1:10 PM CDT, November 4, 2011

U.S. Cellular Corp., the country's sixth-largest cellphone company, on Friday said it had the opportunity to carry the iPhone but turned it down because the phone is too expensive.

It's the first U.S. carrier to acknowledge turning down the phone.

Consumers pay \$200 for the base model of the iPhone 4S, but Apple charges carriers about \$600 for it. Carriers count on making their money back in service fees over the life of the contract.

U.S. Cellular CEO Mary Dillon told analysts on an earnings conference call Friday that "the terms were unacceptable from a risk and profitability standpoint."

She didn't provide any details, but said the added load the iPhone could have placed on its data network was not a big consideration.

Chicago-based U.S. Cellular has 5.9 million subscribers, a number that has been shrinking slowly over the past two and a half years. Only a quarter of its subscribers on contract-based plans have smartphones, compared with half at AT&T Inc.

Carriers see the ability to sell the iPhone as a crucial competitive advantage, though its high price means it's not an easy path to profits. Sprint started selling the phone last month and has said it will take two years for it to pay off.

AT&T was the exclusive U.S. carrier for Apple Inc.'s phone for three and a half years, until Verizon Wireless got it in February. Now, tiny Mississippi-based carrier C Spire Wireless is set to add it too.

T-Mobile USA, the fourth-largest carrier, has a data network that isn't compatible with the iPhone.

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advertisement

One account is more rewarding than two.
 Link your MileagePlus and OnePass accounts to earn awards faster.

[Link Now](#)

MileagePlus
 UNITED

Exhibit C

United States Bankruptcy Court

Northern District of Illinois

Case No. 13-22727

Chapter 7

In re: Debtors (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Andrew I Uhm
aka Andrew II Yong Uhm
1950 Lake Charles Drive
Vernon Hills, IL 60061

Helen Y Uhm
1950 Lake Charles Drive
Vernon Hills, IL 60061

Social Security / Individual Taxpayer ID No.:

xxx-xx-██████

xxx-xx-██████

Employer Tax ID / Other nos.:

DISCHARGE OF JOINT DEBTORS

It appearing that the debtors are entitled to a discharge, **IT IS ORDERED:** The debtors are granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

FOR THE COURT

Dated: May 20, 2014

Jeffrey P. Allsteadt, Clerk
United States Bankruptcy Court

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.