

Sales/Use Tax & E911 Surcharge	\$24,462.00
Penalty	4,181.74
Interest	598.14
Payments/Credits	(400.00)
Total Balance	\$28,841.88

2. The collection action for 1002D Penalty ID: 2660541 was reissued by the Department on March 11, 2015 for \$5,707.92 in unpaid liability of MBLR, Inc. for Taxes, Interest, and Penalty for Illinois Withholding Income Tax for the periods 31 March 2014 through September 2014. The tax, penalty and interest is broken down as follows:

IL Withholding Income Tax	\$ 5,370.95
Penalty	758.98
Interest	105.82
Payments/Credits	(527.83)
Total Balance	\$5,707.92

3. The collection action - Notice of Lien; Lien no. 2140719; Document no. TX15020 filed in the Office of the Recorder of Deeds or Registrar of Titles in Fulton County on May 11, 2015. The lien was filed for \$34,768.40 against Elizabeth Rhodes for unpaid tax liability of MBLR, Inc. stated in 1 & 2 above. The difference between the totals in 1 & 2 above (\$34,548.92) and \$34,768.40 is assumed to be additional interest of \$219.48.

BACKGROUND

Petitioner is stated as having been determined (by the Illinois Department of Revenue) as a responsible officer, partner, or individual of MBLR, Inc. and therefore personally responsible for the taxes, penalties, and interest due to the state. MBLR, Inc. was a restaurant owned and operated by my husband at 51 Monroe Street, St. Augustine, IL 61474.

ERRORS

1. The Department has determined that I, Elizabeth J. Rhodes, was a responsible officer, partner or individual in the operation of MBLR, Inc. and therefore, under Illinois Law (35 ILCS 735/3-7 and 35 ILCS 5/1002 (d)), is personally responsible for the unpaid taxes, penalties, and interest of MBLR, Inc. It is my contention that I was never a "responsible officer, partner or individual in the operation of MBLR, Inc."

FACTS

The following facts are submitted in support of my argument:

1. My ex husband, Mikell Benjamin Rhodes (aka Ben Rhodes) purchased the business from my father, Al Wagy on July 1, 2004 and operated it until it was closed on July 7, 2014. The business was organized as a S corporation, MBLR, Inc. dba Club 41. Ben was the sole decision maker of MBLR, Inc..

2. While I was listed as the secretary / treasurer of MBLR during it's incorporation, the following are true statements of fact:

During the entire 10 year period the restaurant was owned by MBLR, Inc., I was employed full time as a nurse at other locations providing over half of the income for the family.

I never worked at the restaurant in any capacity nor did I ever take a salary or any income.

During the 2013 - 2014 time frame (taxes at issue), I was employed full time as a nurse at an assisted living facility (Courtyard Estates, owned by Peterson Healthcare, Inc), in Bushnell, IL. This is easily verified by my federal and state income tax records.

I never attended a meeting of shareholders or took any minutes or participated in any correspondence of MBLR, Inc.. This can be verified by testimony of my ex-husband Ben Rhodes.

I had no responsibility for payments of wages, taxes, or any other bills or obligations of the business. This can be verified by testimony of my ex-husband Ben Rhodes.

While I was listed on the checking account, I never wrote any checks other than an occasional check to pick up supplies for the restaurant. These instances were very infrequent. This can be verified by testimony of my ex-husband Ben Rhodes.

I never made a single bank deposit on behalf of MBLR, Inc. This can be verified by testimony of my ex-husband Ben Rhodes and by bank employees.

I never took an active role in the management of MBLR, Inc.. This can be verified by testimony of my ex-husband Ben Rhodes.

I had no knowledge of the non payment of taxes until the last three weeks of operation of MBLR, Inc., after my husband had been arrested for cocaine possession. This can be verified by testimony of my ex-husband Ben Rhodes.

I was aware that the business was in financial difficulty and signed papers as requested by my ex husband to mortgage property (including a second mortgage on our residence) to add funds to the business. These requests for my signature were always presented to me in a way as to give me no choice. This can be verified by testimony of my ex-husband Ben Rhodes.

The above facts are not disputed by my ex husband nor by anyone who has close knowledge of the operation of MBLR, Inc.. Ben and I are now divorced and he has accepted full responsibility for the tax debt, agrees that I am not responsible, and is attempting to settle the outstanding tax liabilities. He has submitted a separate petition to the Illinois Department of Revenue Board of Appeals. An offer in compromise has also been submitted. I have the responsibility of our two teen age daughters and while I have a job, I am in no financial position to pay these taxes. If all my assets were liquidated, there would still be insufficient funds to pay these taxes.

SPECIFIC LAW SUPPORTING THE ARGUMENT

The only point of law that is at issue and that I am requesting the Tribunal rule on is whether or not I am "...a person who had control, supervision, or responsibility of filing returns or making payments for a taxpayer and who willfully failed to do..." under Illinois Law (35 ILCS 735/3-7 and 35 ILCS 5/1002 (d).

While I have had no legal training, I was able to find this statement on the Internet which seems to support my argument:

In determining whether an individual is a responsible person the courts have indicated that the focus should be on whether that person has significant control over the business affairs of a corporation and whether he or she participates in decisions regarding the payment of creditors and the disbursement of funds. (See, e.g., Monday v. United States, 421 F.2d 1210 (7th Cir. 1970). "Liability attaches to those with the power and responsibility within the corporate structure for seeing that the taxes are remitted to the government.")

RELIEF REQUESTED

For the reasons stated above, Petitioner requests she be dismissed as a "responsible officer, partner, or individual of MBLR, Inc." and the responsibility for the taxes, penalties, and interest and the lien against her be dismissed.

Elizabeth J. Rhodes,
Individual
33486 N. Troy Rd
Avon, IL 61415 - 8934
(309) 337 8511





Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

June 17, 2015

Elizabeth Rhodes
33486 N. Troy Rd.
Avon, IL 61415-8934

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Elizabeth Rhodes
(2) Collection Actions – Assessment and Notice of Intent
NPL Penalty ID: 2680580 (M B L R INC)
Letter ID: L0222414816, dated December 11, 2014
1002(d) Penalty ID: 2660541 (M B L R INC)
Letter ID: L1140314384, dated December 11, 2014

Dear Ms. Rhodes:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above Notices. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing regarding the above Notices.

The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late**

Page 1 of 2

discretionary hearing. See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,



Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC

March 24, 2015

Illinois Department of Revenue
101 West Jefferson
Springfield, IL 62704

Attention: Administrative Law Judge Terry Charlton

Subject: Request for a late discretionary hearing

Reference: NPL Penalty ID: 2680580 and 1002D Penalty ID: 2660541

Dear Sir:

On March 11, 2015, I was sent the letters of collection action on the two above penalty numbers. The reasons stated was that I was listed as an officer in MBLR, Inc. and was therefore responsible for the unpaid back taxes. Apparently, I had been sent a letter on December 11, 2014 but since it was related to my husband's business and I had not really participated in the business, I did not think they applied to me and just passed them on to my husband. I am sorry for not understanding my responsibility and needing to ask for a late discretionary hearing.

While I may have been listed as secretary / treasurer for my husband's restaurant, I never participated in any phase of management at any time over the ten year period (July 2004 to July 2014) it was in operation. While I was listed on the business checking account and may have written an occasional check to pick up supplies, I don't remember every making a single deposit in any account, and I know I never wrote any minutes of any meeting. I had no responsibility for filing or paying taxes (or supervision) on the business and I had no knowledge of the non payment of taxes until the business was in the last few days of operation, just prior to the shutdown on July 7, 2014.

The business's ultimate failure was the result of my husband's addiction to cocaine of which I had no knowledge until his arrest about three weeks before the business closed. I filed for divorce shortly after the shutdown of the business and expect it to be final within the next few weeks. My two daughters are living with and being supported by me and I certainly can't afford to pay these taxes. My husband is unemployed and being supported by unemployment and his parents.

It is my understanding that my husband, M. Benjamin Rhodes and his father are trying to file a Board of Appeals Petition taking responsibility for the taxes.

Since I had no real part in the business, can you please exempt me from this collection action?

Sincerely,

Elizabeth Rhodes

cc: Dmitri Cornellier -
Collections - Illinois Dept. of Revenue; PO Box 19035; Springfield, IL 62794-9035

Collection Action Notice of Lien



June 8, 2015



Letter ID: L0703382288

Taxpayer ID: XXX-XX-2523
Lien no.: 2140719
Document no.: TX15020

ELIZABETH RHODES
33486 N TROY RD
AVON IL 61415-8934



A tax lien has been filed.

We have filed a lien against you for \$34,768.40. The lien was filed in the Office of the Recorder of Deeds or Registrar of Titles in Fulton County on May 11, 2015, and can be found in the state tax lien index of that office under document number TX15020.

A lien is public record of your debt to us and can negatively affect your credit rating. You will not be able to sell or transfer the property until the lien is paid in full and we release it.

Call us for the total amount you must pay for the release of this lien. This amount will include your accrued interest and release fees and charges.

Also, if you do not pay all past due amounts immediately, we may take additional collection action, including seizure and sale of your real and personal property.

If you have any questions, please write or call our office weekdays 8:30 a.m. to 4:30 p.m.

LIEN UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

For information about
› payments
› bankruptcy
› collection actions

Turn page

217 785-5299
217 524-0526 fax

3/11/15 - 34,549.80

To avoid further collection action

Pay

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

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 documentation so that we can correct our records.

Collection action we may 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.
- prosecution for bad checks and deceptive practice.
- 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.

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.

Collection Action
Assessment and Notice of Intent

INCOME TAX



#BWNKMGV
#CNXX XX35 5589 6482#
ELIZABETH RHODES
33486 N TROY RD
AVON IL 61415-8934

March 11, 2015



Letter ID: CNXXXX3555896482

Taxpayer ID: XXX-XX-2523
1002D Penalty ID: 2660541



M B L R INC
4028 NORTH ILLINOIS ST
PEORIA HEIGHTS IL 61616

You now owe a personal liability penalty.

By March 25, 2015, pay us \$5,707.92, which is unpaid liability of M B L R INC. We have determined that you are personally liable for this amount due to your status as a responsible officer, partner, or individual of M B L R INC.

The enclosed statement details the items you owe.

Illinois law (35 ILCS 5/1002(d)) 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.

If we do not receive this payment, we intend to take collection 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.

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.

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

217 782-9904 ext. 31609
217 785-2635 fax

For information about

- › payments
- › bankruptcy
- › collection actions



Collection Action

Assessment and Notice of Intent



March 11, 2015



Letter ID: CNXXXX3555896482

#BWNKMGV
 #CNXX XX35 5589 6482#
 ELIZABETH RHODES
 33486 N TROY RD
 AVON IL 61415-8934

Taxpayer ID: XXX-XX-2523
 1002D Penalty ID: 2660541



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Withholding Income Tax

Account ID: 20-1186240-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2014	2,959.35	343.15	62.99	0.00	(527.83)	2,837.66
30-Jun-2014	2,234.04	368.08	40.93	0.00	0.00	2,643.05
30-Sep-2014	177.56	47.75	1.90	0.00	0.00	227.21
	<u>5,370.95</u>	<u>758.98</u>	<u>105.82</u>		Total Balance:	5,707.92

Collection Action
Assessment and Notice of Intent

Sales & Use TAX



#BWNKMGV
#CNXX XX81 7835 7929#
ELIZABETH RHODES
33486 N TROY RD
AVON IL 61415-8934

March 11, 2015



Letter ID: CNXXXX8178357929

Taxpayer ID: XXX-XX-2523

NPL Penalty ID: 2680580



M B L R INC
4028 NORTH ILLINOIS ST
PEORIA HEIGHTS IL 61616

You now owe a personal liability penalty.

By March 25, 2015, pay us \$28,841.88, which is unpaid liability of M B L R INC. We have determined that you are personally liable for this amount due to your status as a responsible officer, partner, or individual of M B L R INC.

The enclosed statement details the items you owe.

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.

If we do not receive this payment, we intend to take collection 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.

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.

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

217 782-9904 ext. 31609
217 785-2635 fax

For information about
› payments
› bankruptcy
› collection actions



Collection Action

Assessment and Notice of Intent



March 11, 2015



Letter ID: CNXXXX8178357929

#BWNKMGV
 #CNXX XX81 7835 7929#
 ELIZABETH RHODES
 33486 N TROY RD
 AVON IL 61415-8934

Taxpayer ID: XXX-XX-2523
 NPL Penalty ID: 2680580



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

Sales/Use Tax & E911 Surcharge

Account ID: 3525-2006

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Jan-2014	3,156.00 <i>ok</i>	415.60	95.46	0.00	(400.00)	3,267.06
28-Feb-2014	3,529.00 <i>3457</i>	452.90	103.24	0.00	0.00	4,085.14
31-Mar-2014	3,409.00 <i>ok</i>	509.08	90.73	0.00	0.00	4,008.81
30-Apr-2014	<u>4,500.00</u> <i>3492</i>	890.00	109.13	0.00	0.00	5,499.13
31-May-2014	4,757.00 <i>ok</i>	920.84	103.21	0.00	0.00	5,781.05
30-Jun-2014	4,500.00 <i>3268</i>	890.00	86.19	0.00	0.00	5,476.19
31-Jul-2014	611.00 <i>ok</i>	103.32	10.18	0.00	0.00	724.50
Total Balance:						28,841.88

$$\begin{array}{r}
 A = 1008 \\
 + 1232 \\
 \hline
 D = 2240
 \end{array}$$