ILLINOIS INDEPENDENT
TAX TRIBUNAL

JOSE VASQUEZ,	)	
Petitioner	)	
	)	
V	)	**No. 15 TT 154**
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 Taxpayer's Petition states as follows:

1. Petitioner is an individual who lives at 15240 Sacramento Street, Markham, Illinois, 60428, and can be reached at 773-251-6892.

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

2. Petitioner is represented by Romanoff & 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 Department admits the allegations in paragraph 2 of the petition.

3. Petitioner's Taxpayer ID is XXX-XX-1314.

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

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

5. On June 16, 2015, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty in the amount of $70,691.89. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

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: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

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: The allegations in paragraph 7 of the petition consist of legal conclusions and are thus denied.

8. Petitioner is a corporate officer of V & V Liquors Inc.

ANSWER: The Department admits the allegations in paragraph 8 of the petition.

9. Petitioner is not involved in the filing, preparation, and payment of Illinois sales tax for the corporation.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. The amount that is currently owed by the corporation is the result of a sales tax audit for the tax periods 1/1/07 to 12/31/09 whereby the Petitioner retained and reasonably relied on an outside accountant to handle all of the corporation's tax matters including tax matters including sales tax. Moreover, at present over 93% of the audit tax liability has been paid.

ANSWER: The Department admits that over 93% of the audit tax liability has been paid. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

COUNT I

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 10 as though fully set forth herein.

12. A corporate officer who does not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 35 ILCS 735/3-7.

ANSWER: The allegations in paragraph 12 of the petition consist

not of material allegations of fact, but of legal conclusions, and are on that basis denied.

13. Petitioner is a corporate officer who does not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments and therefore is not personally liable for the corporation's unpaid sales tax, penalties, and interest because he reasonably relied on an outside accountant to handle all of the corporation's tax matters including tax matters including sales tax. Moreover, at present over 93% of the audit tax liability has been paid.

ANSWER: The allegations in paragraph 13 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

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

ANSWER: The allegations in paragraph 14 of the petition consist not of material allegations of fact, but primarily of factual and/or legal 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 Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT II

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 14 as though fully set forth herein.

16. 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: The allegations in paragraph 16 of the petition consist of legal conclusions and are thus denied.

17. Petitioner is a corporate officer who did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because he reasonably relied on an outside accountant who made errors in preparing and filing the corporation's sales tax returns and also because. over 93% of the audit tax liability has been paid.

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

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

ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus 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 Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

COUNT III

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 18 as though fully set forth herein.

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

ANSWER: The allegations in paragraph 20 of the petition consist of legal conclusions and are thus denied.

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

ANSWER: The allegations in paragraph 21 of the petition consist not of material allegations of fact, but of legal conclusions, and are denied.

22. The unpaid corporate sales tax penalties and interest contained in the Notice at issue were not collected "in trust" for the state.

ANSWER: The allegations in paragraph 22 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions

and are thus denied.

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

ANSWER: The allegations in paragraph 23 of the petition consist not of material allegations of fact, but primarily of factual and/or legal 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,

LISA MADIGAN
Attorney General
State of Illinois

By: _____

George Foster
Special Assistant Attorney General

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ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLLINOIS

JOSE VASQUEZ	)	
	)	
v.	)	**15-TT-154**
	)	
STATE OF ILLINOIS	)	
DEPARTMENT OF REVENUE	)	

AFFIDAVIT OF MARK DYCKMAN
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraph 9 and 10.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

Mark Dyckman
Deputy General Counsel
Illinois Department of Revenue

DATED: 8-30-15