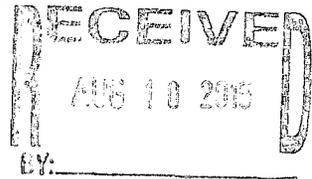


**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MOHAMMED ALLAHRAKHA)
)
) Petitioner,)
 v.)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE,)
)
) Respondent.)

Docket No. _____



15TT162

PETITION

NOW COMES the Petitioner, MOHAMMED ALLAHRAKHA, by and through its attorneys, LAVELLE LAW, LTD., and petitions Illinois Department of Revenue Department of Administrative Hearings to review and revoke the Notice of Personal Liability (the “**Notice**”) issued to Petitioner with respect to the unpaid sales and use taxes of AB STATE PETROLEUM, INC. (the “**Corporation**”) issued by the Respondent, the ILLINOIS DEPARTMENT OF REVENUE, for the reasons stated below:

INTRODUCTION

1. The Notice was issued by Respondent on September 15, 2010, assessing Petitioner personally for the Corporation’s unpaid sales and use taxes for the tax periods of December 31, 2006, and June 30, 2007, totaling approximately \$31,000, including penalties and interest (the exact amount is not available as the Petitioner does not possess a copy of page two the Notice). *See Notice attached hereto as Exhibit A.*

2. The Corporation was incorporated with the Illinois Secretary of State on November 18, 2004, and it was voluntarily dissolved on June 29, 2010.

3. Petitioner now resides at 8535 Meadow Lane, Darien, Illinois 60561 and his telephone number is 630-212-0081.

4. On June 10, 2015, the Illinois Department of Revenue Office of Administrative Hearings granted Petitioner's request for a late discretionary hearing to contest the Notice. *See correspondence attached hereto as Exhibit B.*

BACKGROUND AND RELEVANT FACTS

5. Throughout its entire existence, the Corporation owned and operated a gas station in Illinois.

6. Throughout the periods in question, Petitioner was a shareholder of the Corporation along with Abdul Rasheed Jangda ("**Jangda**") and Abdul Karim ("**Karim**").

7. Throughout the periods in question, the Petitioner was essentially a "silent investor" in the Corporation; aside from being a shareholder of the Corporation, the Petitioner had no management responsibilities with respect to the Corporation and no involvement in its day-to-day operations.

8. Throughout the periods in question, the Petitioner did not sign and state sales tax returns, did not sign any checks or other Corporation documents and, to the best of the Petitioner's knowledge, did not have authority to sign checks of the Corporation.

9. Throughout the periods in question, Jangda and Karim managed the Corporation's operations and had sole responsibility for its day-to-day operations and tax compliance, including sales tax filings and payment.

10. Throughout the periods in question, the Petitioner had no knowledge of, and no reason to know of, the Corporation's underpayment and/or any underreporting of its sales tax obligations.

11. Upon information and belief, Jangda and Karim have not been held personally responsible for the unpaid sales and use taxes of the Corporation for the periods in question.

12. Since being issued the Notice, the Petitioner has attempted to resolve the underlying liabilities to Respondent, including by filing an Offer in Compromise with Respondent's Board of Appeals, which Offer in Compromise was denied on December 15, 2014, due to the Petitioner not having sufficient means to "fulfill the terms and conditions of any compromise the Board might Authorize." See *Board of Appeals Order attached hereto as Exhibit C*.

APPLICABLE LAW

Personal Liability Penalty

13. Section 3-7 of the Illinois Uniform Penalty and Interest Act (the "UPIA") states that:

"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 [such as income withholding taxes] imposed in accordance with that Act [a "responsible person"] and who willfully fails to file the return or make the payment to the Department or willfully 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" (the "**100% Penalty**").
[emphasis added].

14. Illinois Courts have summarized the requirements for assessment of the 100% Penalty by stating that the penalty may only be imposed only upon corporate officers or employees who: (1) are responsible for the filing of the tax returns in question and payment of related taxes due (the "responsible person" requirements); and (2) who have "willfully" failed to file such returns or remit such taxes (the "willfulness") requirement. *McLean v. Dep't of*

Revenue, 326 Ill. App. 3d 667, 674 (3d Dist. 2001).

The “Responsible Person” Requirement

15. When interpreting the text of UPIA § 3-7’s statutory predecessor, Illinois courts have looked at how federal courts construed similar text used in Section 6672 of the Internal Revenue Code (the “Code”). *Branson v. Department of Revenue*, 168 Ill. 2d 247, 260 (1995).

16. Section 6672 of the Code imposes a penalty against responsible persons of a corporation who have a duty to collect, truthfully account for, and pay over federal social security and withholding taxes, and who willfully fail to do so. *Id.*

17. When considering whether a taxpayer was a responsible officer of a Corporation, therefore, Respondent often will take into account those factors federal courts have considered when determining whether one is a responsible person under Code Section 6672. *The Department of Revenue of the State of Illinois v. John Doe*, IT 15-03 (2015).

18. One of the better descriptions of the factors to consider when determining whether a person is a responsible person under Section 6672 is found in *Ghandour v. U.S.*, 36 Fed. Cl. 53 (1996). *Id.*

19. The *Ghandour* Court’s description of the analysis can be summarized as follows: A “responsible person” is one who was under a duty to collect, truthfully account for, and pay over the taxes at issue. In order to make this determination, the fact-finder must look for those individuals who had “the power to control the decision-making process by which the employer corporation allocates funds to other creditors in preference to its withholding tax obligations.” Stated slightly differently, a responsible person is one “with ultimate authority over expenditure of funds.”... In determining whether an individual is a responsible person, courts

have generally focused on those facts bearing on an individual's "status, duty, and authority" within the employer corporation. ...An individual's status is to be determined by reference to such things as his title or position within the corporate structure (e.g., an officer or director), as well as his ownership stake in the employer corporation. However, the holding of corporate office alone is not sufficient to trigger liability under I.R.C. § 6672(a).... Next, the finder of fact must examine a person's duties within the employer organization to determine whether he was a responsible person under I.R.C. § 6672. "[A] person's 'duty' under § 6672 must be viewed in light of his power to compel or prohibit the allocation of corporate funds." In this connection, a person's duties are to be evaluated in terms of those affairs of the Corporation over which that individual had responsibility, i.e., the job description. For instance, duty may be determined by reference to corporate by-laws and resolutions or to the duties actually performed by an individual in the course of business. Ultimately, the crucial inquiry is whether a person had a duty to oversee, manage, or administer the financial affairs of the company, specifically with reference to the paying of creditors and taxes....Finally, a person's authority within the Corporation is highly relevant in ascertaining whether an individual was a responsible person for the purposes of I.R.C. § 6672. Where a person has authority to sign the checks of the Corporation, or to prevent their issuance by denying a necessary signature, or where that person controls the disbursement of the payroll, or controls the voting stock of the Corporation, he will generally be held "responsible." The focus here is on "actual authority," i.e., substance as opposed to form. Among the

indicia of authority which have been found by the courts to be noteworthy are the powers to vote significant blocks of stock, sign checks, hire and fire employees, control employees' pay, enter contracts on behalf of the Corporation, make decisions regarding the finances of the Corporation, and prepare corporate tax strategies. Again, the ultimate question is whether, in combination with his status and duty, an individual had sufficient authority within the employer company to prevent the default on the Corporation's withholding tax obligations. *[emphasis added and citations omitted]*.

The "Willfulness" Requirement

20. "Willful" means a voluntary, conscious and intentional act on the part of the officer or employee, and may consist of a voluntary, conscious, and intentional failure to file the required return or make the payment to IDOR or a voluntary, conscious, and intentional attempt to take any other action to evade or defeat the tax. *86 Ill. Admin. Code 700.340(b)*.

21. A responsible person's failure to make a tax payment is willful if he or she used taxes collected to pay other creditors of the business in question while knowing that he or she was obligated to remit the taxes; willfulness does not require a showing of actual knowledge of nonpayment; reckless disregard for obvious or known risks will suffice. *McLean*, 326 Ill. App. 3d at 675-76.

COUNT I **IMPROPER ASSESSMENT OF 100% PENALTY**

22. Petitioner realleges and incorporates by reference Paragraphs 1-21 as Paragraph 22 of Count I as though fully set forth herein.

23. As stated above, an individual can only be assessed the 100% Penalty with respect to a corporation if that individual was a responsible person with respect to that corporation and

that individual willfully failed to file the returns or remit the taxes in question.

24. While the Petitioner may have had the status of an officer of the Corporation, this title was in name only, as the Petitioner had none of the responsibilities with respect to the Corporation that are normally afforded to a corporate president. Moreover, being a corporate officer and shareholder is not sufficient to determine that an individual was a responsible person with respect to that corporation.

25. The Petitioner had no duties with respect to the Corporation. Specifically, the Petitioner had no management responsibilities, was not involved in the Corporation's day-to-day operations, and had no responsibility over or involvement in the Corporation's sales tax filings and payments.

26. The Petitioner had no authority within the Corporation and was not an authorized signer of the Corporation's checks.

27. With Petitioner not having the requisite "duties" or "authority" with respect to the Corporation, the Petitioner was not a "responsible person" for purposes of the assessment of the 100% Penalty.

28. With the Petitioner having no involvement in the preparation or filing of the Corporation's sales tax returns and no authority to determine which creditors of the Corporation were paid and when such payments were made, the Petitioner cannot be said to have failed to file any return or used taxes collected to pay other creditors of the Corporation while knowing that he was obligated to remit such taxes to the Respondent.

29. With the Petitioner not being a responsible person with respect to the Corporation's unpaid sales and use taxes and not having willfully failed to file any sales tax returns or remit sales tax payments to the Respondent, the Respondent's assessment of the 100%

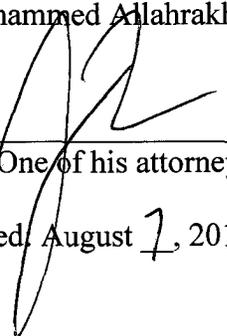
Penalty against the Petitioner was improper and must be reversed.

CONCLUSION AND RELIEF REQUEST

30. Based on the foregoing, it is apparent that Petitioner was not a responsible person with respect to the Corporation's unpaid sales and use taxes did not willfully fail to file any sales tax returns or remit sales tax payments to the Respondent, and that the Respondent's assessment of the 100% Penalty against the Petitioner was improper and must be reversed..

WHEREAS, for the reasons set forth herein, the Petitioner requests that the Notice be revoked and that the related 100% Penalty assessed against the Taxpayer be abated in its entirety.

Respectfully Submitted,
Mohammed Allahrakha

By: 
One of his attorneys

Dated, August 7, 2015

Joshua A. Nesser
Lavelle Law, Ltd., #27743
180 N. LaSalle #2503
Chicago, IL 60601
(847) 755-7555
Dir 312-888-4113
Fax 847.241-1526
jnesser@lavellelaw.com
S:\7001-7250\7137\Petition.Admin.Hearing.AB.State.7.30.15.doc

EXHIBIT A

Collection Action
Notice of Intent



September 15, 2010



Letter ID: L1547610816

MOHAMMED ALLAHRAKHA
8535 MEADOW LN

DARIEN IL 60561-1704

Taxpayer ID: 05-0612050



AB STATE PETROLEUM INC
11100 S STATE ST
CHICAGO, IL 60628-4207

**You have been identified as a responsible
officer, partner, or individual of AB STATE PETROLEUM INC .**

Illinois law provides that we may hold you personally liable for a penalty equal to the total tax, penalty, and interest due from AB STATE PETROLEUM INC .

The following pages detail the current amount of debt we are pursuing against AB STATE PETROLEUM INC . This debt must be paid immediately. 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 this debt is not paid, we intend to issue a penalty against you for the full amount of the debt. Once the penalty becomes final, we can take further collection action against you personally which may include the seizure and sale of your assets and levy of your wages and bank accounts.

If you believe you are not personally responsible for this debt, send us written proof within 10 days. If the information you submit is insufficient, we may continue to issue the penalty.

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

DEATRICE CAPLETON
ILLINOIS DEPARTMENT OF REVENUE
100 WEST RANDOLPH STE 7-400
CHICAGO, IL 60601

312 814-3390
312 814-3408 fax

- For information about**
- › **how to pay**
 - › **submitting proof**
 - › **what you owe**
 - › **collection actions**



EXHIBIT B



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

June 10, 2015

Joshua A. Nesser
Lavelle Law Ltd.
180 N. LaSalle
Chicago, IL 60601

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Mohammed I. Allahrakha, Responsible Officer for Triple A Petroleum Inc.
Account ID: 3450-5687
Collection Action Letter ID: L1613233280 dated June 8, 2012
NPL Penalty ID: 1180543
Mohammed I. Allahrakha, Responsible Officer for AB State Petroleum Inc.
Account ID: 3577-8644
Collection Action Letter ID: L0904783552 dated October 1, 2010
NPL Penalty ID: 11302183

Dear Mr. Nesser:

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

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 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,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T".

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

TDC:vs

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

MOHAMMED ALLAHRAKHA)
)
) Petitioner,)
 v.) Docket No. _____)
)
 ILLINOIS DEPARTMENT)
 OF REVENUE,)
)
) Respondent.)

NOTICE OF FILING

TO: Illinois Independent Tax Tribunal
160 N. LaSalle Street Room N506
Chicago, Illinois 60601
ITT.TaxTribunal@illinois.gov

Illinois Department of Revenue
Office of Administrative Hearings MC-500
101 West Jefferson Street
P.O. Box 19014
Springfield, Illinois 62794-9014

PLEASE TAKE NOTICE THAT on August 7, 2015, the undersigned caused to be filed with the Illinois Independent Tax Tribunal, a true and correct copy of **PETITIONER'S PETITION**, a copy of which is attached hereto and served upon you.

CERTIFICATE OF SERVICE

I, Joshua A. Nesser, an attorney, hereby certify that on August 7, 2015, I served those persons named above with a copy of this Notice of Filing and the attached pleading by depositing the same in the U.S. Mail at 180 N. LaSalle, Chicago, Illinois with postage prepaid before the hour of 5:00 p.m, and, with respect to the Illinois Independent Tax Tribunal, via email.

Joshua A. Nesser

Joshua A. Nesser
Lavelle Law, Ltd., #27743
180 N. LaSalle #2503
Chicago, IL 60601
Phone: 312.888.4113
Fax: 847.241-1526
jnesser@lavellelaw.com