

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>MOHAMMED ALLAHRAKHA,</b>	)	
	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 15 TT 162</b>
<b>ILLINOIS DEPARTMENT</b>	)	<b>Judge Brian F. Barov</b>
<b>OF REVENUE,</b>	)	
<b>Respondent</b>	)	
	)	

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**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. The Notice was issued by Respondent on June 8, 2012, assessing Petitioner personally for the Corporation’s unpaid sales and use taxes for the tax periods of September 30, 2008, June 30, 2009, and December 31, 2009, totaling approximately \$50,000, including penalties and interest (the exact amount is not available as the Petitioner does not possess a copy of the Notice)

ANSWER: The Department admits that the Notice was issued on June 8, 2012. The Department further states that the Notice speaks for itself and denies the remaining allegations in paragraph 1 of the notice.

2. The Corporation was incorporated with the Illinois Secretary of State on August 14, 2003, and it was involuntarily dissolved on January 8, 2010.

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

1. The Corporation was incorporated with the Illinois Secretary of State on August 14, 2003, and it was involuntarily dissolved on January 8, 2010.

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

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

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

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 A.*

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

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

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

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

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

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

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.

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. 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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The allegations in paragraph 11 are not material allegations of fact that require a response from the Respondent.

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 B.*

ANSWER: The Department admits the allegations in paragraph 12 of the petition.

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]*.

ANSWER: The allegations in paragraph 13 of the petition consist of legal conclusions and are thus denied.

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).

ANSWER: The allegations in paragraph 14 of the petition consist of legal conclusions and are thus denied.

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).

ANSWER: The allegations in paragraph 15 of the petition consist of legal conclusions and are thus denied.

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.*

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

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).

ANSWER: The allegations in paragraph 17 of the petition consist of legal conclusions and are thus denied.

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.*

ANSWER: The allegations in paragraph 18 of the petition consist of legal conclusions and are thus denied.

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]*.

ANSWER: The allegations in paragraph 19 of the petition consist of legal conclusions and are thus denied.

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)*.

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

### COUNT I

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 21 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.

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

24. The Petitioner was not an officer of 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 24 of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25 of the petition and therefore neither admits or denies said allegations.

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

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 26 of the petition and therefore neither admits or denies said allegations.

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

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

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

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

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.

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

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.

ANSWER: The allegations in paragraph 30 of the petition consist of 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 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

George Foster  
Illinois Department Of Revenue  
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Chicago, Illinois 60601  
312-814-3493  
[george.foster@illinois.gov](mailto:george.foster@illinois.gov)



**Collection Action**  
**Assessment and Notice of Intent**



October 1, 2010 TDD 1 800 544-5304



Letter ID: L0904783552

MOHAMMED I. ALLAHRAKHA  
8535 MEADOW LN  
DARIEN IL 60561-1704

Taxpayer ID: XXX-XX-8951  
Account ID: 3577-8644  
NPL Penalty ID: 11302183



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

**We have determined you are personally liable  
for a penalty of \$31,032.27.**

The penalty is equal to the amount of unpaid liability of AB STATE PETROLEUM INC , due to your status as a responsible officer, partner, or individual of AB STATE PETROLEUM INC

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 \$31,032.27.** 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** that you are personally responsible for all or any of this liability, you may file a protest and request an administrative hearing within 60 days of the date of this notice. If you do not file a protest within the time allowed, you will give up your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over this hearing. You may be represented by your attorney. A protest of this notice does not preserve your rights under any other tax notice.

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.

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

217 782-9904 ext. 31613  
217 785-2635 fax

**For information about**  
› how to pay  
› submitting proof  
› collection actions



# Collection Action

## Assessment and Notice of Intent



October 1, 2010

TDD 1 800 544-5304



Letter ID: L0904783552

MOHAMMED I. ALLAHRAKHA  
8535 MEADOW LN  
DARIEN IL 60561-1704

Taxpayer ID: XXX-XX-8951  
Account ID: 3577-8644  
NPL Penalty ID: 11302183



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.

### ST-1 Sales and Use Taxes

Account ID: 3577-8644

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2006	2,822.00	925.00	605.31	-	-	4,352.31
30-Jun-2007	17,093.00	6,938.00	2,648.96	-	-	26,679.96

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: L0904783552  
MOHAMMED I. ALLAHRAKHA

**Total amount due: \$31,032.27**

Write the amount you are paying below.

\$ \_\_\_\_\_

Write your Taxpayer ID on your check.

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

000 006 015523450246 731 123199 3 0000003103227

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>MOHAMMED ALLAHRAKHA</b>	)	
	)	
v.	)	<b>15-TT-162</b>
	)	<b>Judge Brian F. Barov</b>
<b>STATE OF ILLINOIS</b>	)	
<b>DEPARTMENT OF REVENUE</b>	)	

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**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 paragraphs 7, 8, 9,10,24,25, and 26.

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: 9-10-15