

ILLINOIS INDEPENDENT TAX TRIBUNAL

JAMAL HUSSEIN,)	
)	
Petitioner)	
v.)	No. 15 TT 173
)	
ILLINOIS DEPARTMENT OF REVENUE)	Judge Brian F. Barov
)	
Respondent.)	

**DEPARTMENT OF REVENUE'S MOTION
FOR LEAVE TO FILE ANSWER INSTANTER**

The Illinois Department of Revenue, (the "Department") by and through its attorney, George Foster, Special Assistant Attorney General, respectfully requests this Tribunal to enter an order extending granting it leave to file its answer instanter:

1. Taxpayer filed its Petition in this Tribunal on August 19, 2015.
2. Per order entered August 19, 2015, the Department's Answer was due September 21, 2015.
3. The Department's attorney was not able to file the Answer by the due date set forth above.
4. Allowing the motion should not require the changing of the currently set initial status conference or prejudice the Petitioner.
5. The Department's attorney spoke with opposing Counsel Jim Dickett, who stated that Petitioner would have no objection to this motion.

WHEREFORE, the Department respectfully requests that this Tribunal grant the Department leave to file its answer instanter.

Respectfully submitted,


George Foster

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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 1212 Leonard Drive, Plainfield, Illinois, 60586, and can be reached at 815-274-0285.

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-4910.

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 July 28 2015, the Department issued a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) (“Notice”) against the Petitioner in the amount of \$147,732.25. 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 was the owner of the underlying defunct corporation, RC Marathon Inc.

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

9. The underlying corporation is in the process of remitting the amounts due via a

short-term payment plan or other installment agreement with the Department's collections and/or criminal investigations divisions.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

COUNT I

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 9 as though fully set forth herein.

11. 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 11 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

12. Even though Petitioner was the owner of the corporation, the underlying corporation is in the process of paying off the balances due to the Department so the Petitioner is not personally liable for the corporation's unpaid sales tax, penalties, and interest.

ANSWER: The allegations in paragraph 12 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis denied.

13. Therefore, 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 13 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis 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

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 13 as though fully set forth herein.

15. 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 15 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

16. Petitioner did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because the underlying corporation is in the process of paying the amounts due to the Department.

ANSWER: The allegations in paragraph 16 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis denied.

17. 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 17 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis 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

18. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 17, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 17 as though fully set forth herein.

19. 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 19 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that

basis denied.

20. 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 20 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

21. 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 20 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis denied.

22. 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 22 of the petition consist not of material allegations of fact, but of legal and/or factual conclusions, and are on that basis denied.

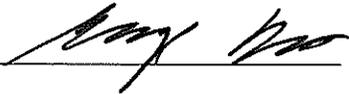
WHEREFORE, the Department prays that the Tribunal enter an order:

- 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.

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Respectfully Submitted,

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State of Illinois

By: 

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