

ILLINOIS INDEPENDENT TAX TRIBUNAL

LUCINDA HUSSEIN)	
)	
Petitioner,)	
v.)	No. 15 TT 174
)	
ILLINOIS DEPARTMENT OF REVENUE)	Judge Brian F. Barov
)	
Respondent.)	

Notice of Motion

To: James E. Dickett
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
Jdickett@aol.com

PLEASE TAKE NOTICE that on September 23, 2015, 2015, I filed the attached **MOTION FOR LEAVE TO FILE ANSWER INSTANTER** with the Illinois Independent Tax Tribunal, 160 N. LaSalle, Room N506, Chicago, Illinois.



 George Foster
 Special Assistant Attorney General
 Illinois Department of Revenue
 100 West Randolph Street, 7-900
 Chicago, IL 60601
 (312) 814-3493
 George.Foster@Illinois.gov

Proof of Service

I, George Foster, the attorney for the Department of Revenue, state that I have this **23rd day of September 2015** served the foregoing **Motion for Leave to File Answer Instanter** upon the person(s) to whom said Motion is directed, by email to Jdickett@aol.com



 George Foster

ILLINOIS INDEPENDENT TAX TRIBUNAL

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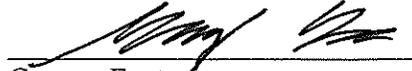
**DEPARTMENT OF REVENUE'S MOTION
FOR LEAVE TO FILE ANSWER INSTANTER**

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 INDEPENDENT
TAX TRIBUNAL**

LUCINDA HUSSEIN,)	
Petitioner)	
)	
V)	No. 15 TT 174
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 2319 IL Route 59, Plainfield, Illinois, 60544, 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 listed as an officer of the underlying defunct corporation, Burning Leaf Cigars Inc., but she did not have anything to do with the day-to-day operations of the business including sales tax.

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. 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 an officer of the corporation, she had nothing to do with the business and the underlying corporation also 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 she had nothing to do with the business and also 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 21 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.

H

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: 

George Foster
Special Assistant Attorney General

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100 W. Randolph Street, Level 7
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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

LUCINDA SANCHEZ HUSSEIN)	
)	
v.)	15-TT-174
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

**AFFIDAVIT OF BRIAN GOLDBERG
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 8.

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.



Brian Goldberg
Deputy General Counsel
Illinois Department of Revenue

DATED: 9/17/15