

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

---

ARSHAD ALI,	)	
Petitioner	)	
	)	
V	)	No. 14 TT 143
ILLINOIS DEPARTMENT	)	Chief Judge James M. Conway
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 11401 Glenn Circle, Plainfield Illinois, 60585, and can be reached at 630-699-9819

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](mailto:jdickett@aol.com).

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

3. Petitioner’s Taxpayer ID is XXX-XX-6329.

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 2, 2014, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) (“Notice”) in the amount of \$323,834.02 for the unpaid liability of Ruby Petro LLC, for the the tax periods ending June 30, 2009, December 31, 2009, May 31, 2012, September 30, 2012, November 30, 2012, March 31, 2013, and February 28, 2014. The Notice is attached hereto as Exhibit A.

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 manager of Ruby Petro LLC (now defunct) who was paid wages via a W-2 and did not own the business

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

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales tax for Ruby Petro LLC during the tax periods at issue because the business retained and reasonably relied on an outside accountant to prepare the sales tax returns, but the corporation's outside accountant turned out to be inept and was fired. After the outside accountant was replaced, the business endured another audit with minimal liability that was paid in full.

ANSWER: The Department admits that the business underwent another audit and that the liability was paid. The statement that the liability was minimal is vague and conclusory and is denied. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. The amounts contained on the Notice from 2009 comprise over 99% of the total assessment and are based on a sales tax audit whereby it was discovered that the corporation's outside accountant was making errors so he was fired.

ANSWER: 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 is not personally liable for the corporation's debt 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 was not an officer or owner of Ruby Petro LLC, and he also did 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 the corporation reasonably relied on an outside accountant to prepare the sales tax returns.

ANSWER: The allegations in paragraph 13 of the petition consist primarily of legal and /or factual conclusions and are denied.

14. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax 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 Taxpayer; 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 was not an owner or officer of Ruby Petro LLC, and he did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because the corporation reasonably relied on an outside accountant

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 Taxpayer; 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 Ruby Petro LLC is not supported by law.

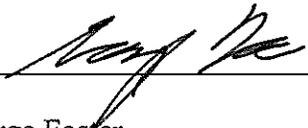
ANSWER: The allegations in paragraph 23 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

**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

George Foster  
Illinois Department Of Revenue  
100 W. Randolph Street, Level 7  
Chicago, Illinois 60601  
312-814-3493  
[george.foster@illinois.gov](mailto:george.foster@illinois.gov)

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

---

<b>ARSHAD ALI</b>	)	
	)	
v.	)	<b>14-TT-143</b>
	)	
<b>STATE OF ILLINOIS</b>	)	
<b>DEPARTMENT OF REVENUE</b>	)	

---

**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.

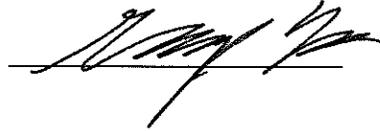
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies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

  
\_\_\_\_\_  
Mark Dyckman  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 8/28/14

**CERTIFICATE OF SERVICE**

I, George Foster, an attorney, do hereby certify that on August 28, 2014 a copy of the Department's ANSWER was served on James E. Dickett, Romanoff & Dickett Ltd., by causing a copy to be sent by electronic mail to [jdickett@aol.com](mailto:jdickett@aol.com).

A handwritten signature in black ink, appearing to read "George Foster", is written over a horizontal line.