



3. Jurisdiction is proper in Illinois pursuant to section 1010/1-45 of the Illinois Compiled Statutes because Petitioner is a taxpayer pursuant to 35 ILCS 1010/1-10 that was issued an Assessment and Notice of Intent for an alleged tax deficiency pursuant to the Illinois Income Tax Act, 35 ILCS 5/1002(d).
4. Jurisdiction is further proper pursuant to 2-209 of the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-209(1) and (2), because Petitioner conducted business within this State.
5. Venue is proper in Cook County pursuant to section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-101, because it is the county in which the transaction or some part thereof took place.

**Background and relevant facts**

6. Petitioner was a passive investor in ATS from September 9, 2008 to March 11, 2014, covering all of the taxable periods at issue (i.e., the First, Second, Third, and Fourth Quarters of 2013, and the First Quarter of 2014 taxable periods).
7. ATS filed a return for all taxable periods at issue.
8. Although Petitioner, until March of 2014, controlled a majority of ATS' membership interests, other members held veto power over certain company matters.
9. During the taxable periods at issue, ATS' President and Chief Executive Officer was Amy R. McGeorge ("Ms. McGeorge"). Ms. McGeorge ran the company as her day-to-day principal business function and occupation and made all decisions regarding ATS' business matters.
10. Ms. McGeorge was paid a substantial salary and was also a minority owner of ATS through her ownership interest in Lauder Endeavors, LLC.

11. Ms. McGeorge signed company checks and made decisions on which creditors to pay.
12. Ms. McGeorge signed all tax returns and made all tax deposits.
13. Ms. McGeorge had the customer contacts and the relationships with the ATS employees.
14. ATS had a history of tax delinquency, but Petitioner did not know ATS was delinquent with payroll taxes for the taxable periods at issue until after the fact.
15. Ms. McGeorge periodically reported to investors that she had plans to improve the ATS' profits and was trying to sell the business. Her contacts with Petitioner were often merely requests for more money. Despite repeated requests for additional funding, Petitioner told her during 2013 that he was done, and was not going to make any further investments in or loans to the company. Ms. McGeorge was well-aware she could expect no further funding from Petitioner.
16. Nevertheless, after numerous pleas from Ms. McGeorge for assistance, Petitioner did make one final loan of \$125,000 to ATS in February 2014 to assist ATS in entering into an Installment Agreement with the Internal Revenue Service. This investment was for the specific purpose of making such tax payment. The March, 2014 Installment Agreement had been negotiated by Ms. McGeorge.
17. During the summer of 2012 through the summer of 2013, Petitioner worked full-time for his church: Christ Redeemer Church in Ponte Vedra. He held the title of Executive Administrator. He resigned his position with the church in the fall of 2013, and accepted the full time position of CEO with Woofound, Inc., a start-up company located in Baltimore, Maryland. Petitioner continues to commute to Baltimore, returning home to his Florida residence every other weekend.

18. Petitioner never drew a salary from ATS. Although Petitioner was listed as Vice President in company records, he never acted in such capacity. In fact, the reason that Petitioner was listed as Vice President is not known, but, presumably, it was simply a matter of corporate convenience and to protect his investment in ATS.
19. Petitioner was a director of and significant investor in ATS but, by 2013, the “handwriting was on the wall,” and he was no longer involved with ATS in any meaningful way.
20. Petitioner had no authority to sign checks on behalf of ATS, never signed any checks on behalf of ATS, and was not involved at all in the operation of the business. Petitioner had no authority over employee matters.
21. Upon information and belief, Ms. McGeorge continued running ATS in 2013 to continue receiving her large salary and in attempt to recoup her losses.
22. In March, 2014, Petitioner abandoned his interest in Lauder Endeavors, leaving Ms. McGeorge as sole owner and, as a result, the majority owner of ATS.
23. Upon information and belief, after closing the doors of ATS, Ms. McGeorge merely “moved across the street,” and continues to run a temporary staffing agency, using extensive customer and employee contacts from ATS. Upon information and belief, she operates under the entity names of Ginger Marketing, LLC and People, LLC, and also continues to use “Talagy” as a trade name.
24. Petitioner had no idea of the extent of ATS’ 2013 Illinois tax delinquency until he received the Notice from the Department.
25. Petitioner was never interviewed in connection with the delinquent payroll taxes by an Illinois Department of Revenue Investigator.

**Applicable law**

26. The Department seeks to impose personal liability on Petitioner as a responsible officer of ATS pursuant to section 1002(d) of the Illinois Income Tax Act, 35 ILCS 5/1002(d). 35 ILCS 5/1002(d) 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.
27. In determining the first element, whether an individual is a responsible person, the courts have indicated that the focus should be on whether that person has significant control of the business affairs of a corporation and whether he participates in decisions regarding the payment of creditors and the dispersal of funds. *See, e.g., Monday v. United States*, 421 F. 2d 1210 (7th Cir. 1970), *cert. denied* 414 U.S. 910 (1973). Liability attaches to those persons with the power and responsibility within the corporate structure for seeing that taxes are remitted to the government. *Id.*
28. As to the second element, it must also be determined whether the taxpayer “willfully” failed to remit withholding taxes due to the Department. The phrase “willful failure” is not defined by any Illinois tax statute. However, Illinois courts have held that the Illinois responsible officer provisions are analogous to the provisions of the Internal Revenue Code section 6672 and, as such, Illinois law may be interpreted in a similar manner. *Branson v. Department of Revenue*, 168 Ill. 2d 247 (1995).

**Error 1**

**Petitioner was improperly classified as a responsible person under 35 ILCS 5/1002(d)**

29. As a passive investor in ATS for the taxable periods at issue, Petitioner was never required to collect, truthfully account for, and/or pay over any tax imposed under the Internal Revenue Code. As such, Petitioner had no statutorily-imposed duty to make ATS' tax payments.
30. Petitioner may not be presumed to be a "responsible person" merely from acquiring titular authority for the purpose of protecting his investment in ATS.
31. Petitioner exercised no authority over ATS' finances or general decision making, had no office space at ATS, and was engaged full-time elsewhere.
32. Petitioner took no action with respect to ATS' expenditures, tax deposits, or payroll.

## **Error 2**

### **Petitioner did not act willfully within the meaning of 35 ILCS 5/1002(d)**

33. For the taxable periods at issue, Petitioner was far removed from the financial decisions of ATS. He did not write checks and made no decisions regarding the payment of creditors.
34. Petitioner did not make a voluntary, conscious, nor deliberate choice to pay withholding taxes to other creditors instead of paying taxes to the government.
35. In fact, Petitioner did all he could to see that ATS' taxes were paid. Specifically, Petitioner loaned funds to ATS in February of 2014, at the request of Ms. McGeorge, for the explicit purpose of paying the company's delinquent taxes. He had no legal duty or obligation to make such loan.

36. Petitioner was a busy executive during the taxable periods at issue and worked full time for his church in 2013, through the fall. Petitioner currently works full time in Baltimore as an executive at a start-up company, commuting from Jacksonville.

Ms. McGeorge, as ATS' chief executive officer, occupied the dominant role in the financial affairs of ATS, and she alone made decisions not to pay the Internal Revenue Service and to instead pay other creditors.

**Conclusion and relief requested**

37. WHEREFORE, Petitioner Derek M. Mercer accordingly and respectfully requests the reversal or modification of the Notice because Petitioner: (1) was not a “responsible person” and (2) did not act “willfully” to avoid the payment of taxes for the four quarters at issue within the meaning of 35 ILCS 5/1002(d).

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WHEREAS, Petitioner requests that the Notice be modified or reversed for the reasons contained herein.



By: Michael Raff  
Attorney for Derek M. Mercer, Petitioner  
308 Odom's Mill Blvd.  
Ponte Vedra Beach, FL 32082

Representative:

Michael Raff  
Gordon Law Group, Ltd.  
400 Central Avenue #340  
Northfield, IL 60093  
P: 847-580-1279  
F: 847-305-1202  
E: Michael@gordonlawltd.com

Enclosures:

1. Assessment and Notice of Intent April 24, 2015
2. Late Discretionary Hearing Granted August 11, 2015
3. Illinois Power of Attorney

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



#BWNKMGV  
#CNXX X123 X192 7849#  
DEREK W. MERCER  
145 BROKEN POTTERY DR  
PONTE VEDRA FL 32082-4204

April 24, 2015



Letter ID: CNXXX123X1927849

Taxpayer ID: XXX-XX-8496  
1002D Penalty ID: 920805



ATS GROUP LLC  
818 A1A N  
# 100  
PONTE VEDRA BEACH FL 32082-3296

**You now owe a personal liability penalty.**

By May 8, 2015, pay us \$75,297.26, which is unpaid liability of ATS GROUP LLC. We have determined that you are personally liable for this amount due to your status as a responsible officer, partner, or individual of ATS GROUP LLC.

The enclosed statement details the items you owe.

Illinois law (35 ILCS 5/1002(d)) 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.

If we do not receive this payment, we intend to take collection 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.

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.

DMITRI CORNELIER  
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**  
› payments  
› bankruptcy  
› collection actions



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



April 24, 2015

#BWNKMGV  
 #CNXX X123 X192 7849#  
 DEREK W. MERCER  
 145 BROKEN POTTERY DR  
 PONTE VEDRA FL 32082-4204



Letter ID: CNXXX123X1927849

Taxpayer ID: XXX-XX-8496

1002D Penalty ID: 920805



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Withholding Income Tax						Account ID: 13-4361514-000
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2013	14,947.67	1,844.76	468.66	0.00	(3,138.72)	14,122.37
30-Jun-2013	17,039.32	1,803.94	670.78	0.00	0.00	19,514.04
30-Sep-2013	13,021.36	1,282.19	387.86	0.00	(3,169.77)	11,521.64
31-Dec-2013	16,112.60	1,733.26	593.24	0.00	0.00	18,439.10
31-Mar-2014	11,770.08	1,127.01	303.02	0.00	(1,500.00)	11,700.11
<b>Total Balance:</b>						<b>75,297.26</b>



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

August 11, 2015

Derek W. Mercer  
308 Odom's Mill Blvd.  
Vedra Beach, FL 32082

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
Derek W. Mercer  
Collection Action and Notice of Intent dated February 3, 2015  
1002(D) Penalty ID: 920805  
Letter ID: L1588699616

Dear Mr. Mercer:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above Notice. 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 Notice.

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](http://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 cursive script, appearing to read "Terry Charlton".

Terry D. Charlton  
Chief Administrative Law Judge

TDC:vs



# IL-2848-AH Power of Attorney For Administrative Hearing Proceedings

### Read this information first

If you do not have a Form IL-2848, Power of Attorney, on file, you must file this original form, in person or by mail, with the Office of Administrative Hearings. This form allows you to become the official representative of record for the identified protested tax matter and to establish your authority to act on behalf of this taxpayer, receive notices, and file documents for the identified proceeding. You must be an attorney to represent a taxpayer at an administrative hearing or other preliminary proceedings, including status calls and pretrial conferences. Please type or print when completing this form and mail to one of our offices below.

OFFICE OF ADMINISTRATIVE HEARINGS (7-900)  
ILLINOIS DEPARTMENT OF REVENUE  
100 W RANDOLPH ST  
CHICAGO IL 60601-3274

OFFICE OF ADMINISTRATIVE HEARINGS (5-500)  
ILLINOIS DEPARTMENT OF REVENUE  
101 W JEFFERSON ST  
SPRINGFIELD IL 62794-0044

### Step 1: Complete the following taxpayer information

1 DEREK MERCER  
Taxpayer's name  
2 308 ODOM'S MILL BLVD  
Mailing address  
3 PONTE VEDRA BEACH FL 32082  
City State ZIP

4 Write all applicable taxpayer identification numbers.  
IBT number \_\_\_\_\_  
EIN \_\_\_\_\_  
Account number \_\_\_\_\_  
License number \_\_\_\_\_

### Step 2: Complete the following representative information

5 MICHAEL RAFF  
Representative's name  
6 GORDON LAW GROUP  
Firm name, if applicable  
7 400 CENTRAL AVE, STE 340  
Mailing address  
8 NORTHFIELD IL 60093  
City State ZIP  
9 (847) 580-1279 (847) 305-1202  
Phone number Fax number  
10 Identify the type of proceeding. (Check all that apply.)  
 Informal review  Hearing

11 Identify the type of protested item. (Check all that apply.)  
 Assessment  Deficiency  
 Revocation  Penalty  Claim  
 Other \_\_\_\_\_  
Type of protested item  
a Issue date of protested items \_\_\_\_\_  
b Periods covered \_\_\_\_\_  
c Assessment or notice numbers, if any \_\_\_\_\_  
(If needed, attach additional sheets to identify items a, b, and c.)

### Step 3: Taxpayer's signature

I, the undersigned taxpayer, authorize the party identified in Step 2 to represent me with full power and authority at the identified proceeding. I authorize all further notices and written documents, including confidential information, pertinent to this proceeding to be sent to the representative's address listed in Step 2. If signing as a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer identified in Step 1.

[Signature] \_\_\_\_\_ 9-16-15  
Taxpayer's signature Title, if applicable Date

### Step 4: Representative's signature

I, the undersigned, affirm that the taxpayer identified in Step 1 has authorized me as representative for the identified proceeding and that I am an attorney, either

- in good standing of the Illinois Bar; or
- admitted (or am seeking admission) *pro hac vice* for this Illinois proceeding

Michael Raff IL \_\_\_\_\_ 9/16/15  
Printed name of representative Jurisdiction or state Representative's signature Date

