

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

NAJI A. ALQUHAITI,)	
Petitioner)	
)	
V)	No. 15 TT 226
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 located at 3848 Broadway in Rockford, Illinois, and can be reached at 815-229-1146.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. Petitioner is represented by attorneys Lane M. Gensburg and Anne J. Kim of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Anne J. Kim can be reached at 312-263-2200 or akim@dandgpc.com.

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

3. 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. See 20 ILCS 5/5-15.

ANSWER: The allegations in paragraph 3 of the petition consist of legal conclusions and are thus denied.

4. On March 14, 2012, the Department issued a Notice of Penalty Liability (the "NPL") to Petitioner asserting a personal penalty liability of \$185,212.15 in connection with the Retailers Occupation Tax/Use Tax ("ROT") liability of Rural Smoke Shop, Inc. d/b/a Rural Tobacco Shop (EIN 20-2570409) ("Rural Tobacco"). The total liability consists of \$81,704 in tax due, \$92,237 in penalties, and \$12,015.15 in interest, with payments and credits of \$744. A copy of the NPL is attached hereto as Exhibit A. The Department's Office of Administrative Hearings granted Petitioner a late discretionary hearing in connection with the NPL on September 10, 2015. A copy of the Department's letter granting the late discretionary hearing is attached hereto as Exhibit B.

ANSWER: The Department admits that on March 14, 2015 it issued a Notice of Penalty Liability (the "NPL") to Petitioner asserting a personal penalty liability and that a copy of the Notice was attached to the Petition as Exhibit A. The Department further states that the Notice speaks for itself and therefore denies the description and characterization thereof and any remaining allegations relative to the NPL in paragraph 4 of the petition. The Department admits that the Department's Office of Administrative Hearings granted Petitioner a late discretionary hearing in connection with the NPL on September 10, 2015, and that a copy of the Department's letter granting the late discretionary hearing is attached to the Petition as Exhibit B.

5. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the "Tribunal Act"), 35 ILCS 1010/1-1 *et seq.*

ANSWER: The allegations in paragraph 5 of the petition consist of legal conclusions and are thus denied.

6. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the issuance of the Department's grant of a late discretionary hearing in connection with the NPL.

ANSWER: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

7. Rural Tobacco was an Illinois corporation and retailer located at 1710 Rural Street in Rockford, Illinois which on information and belief was at all times owned by a man named Ali Bussen Almaosmi. Petitioner had worked as an employee of Rural Tobacco in 2006 and 2007, but was never at any time an owner, officer or otherwise a person responsible for the taxes or operations of Rural Tobacco. Petitioner was unaware of any of the Department's original ROT audit proceedings related to Rural Tobacco and has no knowledge of the basis for the ROT liability upon which the NPL herein was issued.

ANSWER: The Department admits that Rural Tobacco was an Illinois corporation and retailer located at 1710 Rural Street in Rockford, Illinois. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 7 of the petition and therefore neither admits or denies said allegations.

8. Petitioner believes he had been erroneously listed as a shareholder on Rural Tobacco's 2009 REG-I business registration filed with the Department, which on information and belief is why the Department believed him to be a responsible officer of Rural Tobacco and serves as the Department's only basis for the NPL at issue herein.

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 that Petitioner believes he had been erroneously listed as a shareholder on Rural Tobacco's 2009 REG-I business registration

filed with the Department and therefore neither admits or denies said allegations. The Department denies the remaining allegations in paragraph 8 of the petition.

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9. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 8 above as and for this paragraph 9.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 8 as though fully set forth herein.

10. Section 3-7 of the Illinois Uniform Penalty and Interest Act provides:

"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 imposed in accordance with that Act 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."

See 35 ILCS 735/3-7(a).

ANSWER: The allegations in paragraph 10 of the petition consist of legal conclusions and are thus denied.

11. As stated above, Petitioner never had any control, supervision, or responsibility to file tax returns or collect and remit tax payments on behalf of Rural Tobacco. Petitioner therefore is not a responsible person of Rural Tobacco and did not act willfully in connection with any of Rural Tobacco's tax liabilities.

ANSWER: The allegations in paragraph 11 of the petition consist primarily of legal and / or factual conclusions and are denied.

12. To the best of Petitioner's knowledge, Ali Hussen Almaosmi ("Ali") was at all times the sole owner and responsible officer of Rural Tobacco. In support of same, a copy of the lease agreement for Rural Tobacco's store rental at 1710 Rural Street in Rockford, Illinois executed by Ali is attached hereto as **Exhibit C**. A copy of Rural Tobacco's 2009 corporate annual report which identifies Ali as Rural Tobacco's President and identifies no other owners or officers is attached hereto as **Exhibit D**. A copy of a Department Statute of Limitations Waiver in connection with an audit of Rural Tobacco and signed by Ali on April 26, 2011 as the "owner" thereof is attached hereto as **Exhibit E**.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the petition that Ali Hussen Almaosmi ("Ali") was at all times the sole owner and responsible officer of Rural Tobacco and therefore neither admits or denies said allegations. The Department admits that what appears to be a copy of a lease agreement for Rural Tobacco's store rental at 1710 Rural Street in Rockford, Illinois is attached to the Petition as Exhibit C. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of any allegations contained or implied in paragraph 12 of the petition that the document is a true and accurate copy of a lease agreement for Rural Tobacco's store rental at 1710 Rural Street in Rockford, Illinois or that it was actually executed by Ali Hussen Almaosmi and therefore neither admits or denies said allegations. The Department admits that what appears to be a copy of Rural Tobacco's 2009 corporate annual report is attached to the Petition as Exhibit C. The Department states that the document speaks for itself and therefore denies the Petitioner's description and characterization thereof. The Department further denies that the copy of the 2009 corporate annual report attached to the Petition as Exhibit C is a true and complete copy of the 2009 corporate annual report actually filed with the Secretary of State's Office. The Department admits that a copy of a Department Statute of Limitations Waiver in connection with

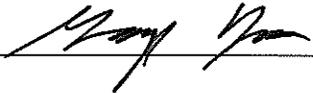
an audit of Rural Tobacco is attached to the Petition as Exhibit E. The Department states that the document speaks for itself and therefore denies the Petitioner's description and characterization thereof.

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: 

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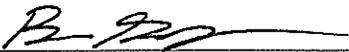
**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

NAJI A. ALQUHAITI)	
)	
v.)	15-TT-226
)	Chief Judge James M. Conway
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 paragraphs 7, 8, and 12.

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: 12/28/15