

ILLINOIS INDEPENDENT TAX TRIBUNAL

REYNALDO SULIT, an individual)	
)	
Petitioner,)	
)	
v.)	No. 15-TT-235
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

ANSWER

NOW COMES the Illinois Department of Revenue (“Department”), by and through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and Answers the Petition of Rommel Sulit (“Petitioner”) as follows:

PARTIES

1. Petitioner is an Illinois resident who resides at 33 Ruffled Feathers Drive, Lemont, Illinois 60439 and can be reached at 773-490-4718.

ANSWER: The allegations in Paragraph 1 are required by Illinois Independent Tax Tribunal Regulation (“Tribunal Rule”) 310(a)(1)(A) (86 Ill. Adm. Code §5000.310), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations in Paragraph 1.

2. Petitioner is represented by attorneys Lane M. Gensburg and Sandra Mertens 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. Sandra Mertens can be reached at 312-263-2200 or smertens@dandgpc.com.

ANSWER: The allegations in Paragraph 2 are required by Illinois Independent Tax Tribunal Regulation (“Tribunal Rule”) 310(a)(1)(A) (86 Ill. Adm. Code §5000.310), are not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations in Paragraph 2.

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: Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's Petition. The term "tax laws" is vague and ambiguous and therefore the Department denies all other allegations in Paragraph 3.

NOTICES

4. By letter dated September 21, 2015, Chief Administrative Law Judge Terry Charlton granted Petitioner's request for a late discretionary hearing (**Exhibit A**) concerning (i) Petitioner's responsible officer penalty liability of \$127,233.94 equaling the outstanding withholding tax liability of Alliance Home Healthcare, Inc. ("Alliance") covering 1st, 2nd, 3rd and 4th quarters of 2013 and 1st quarter of 2014 (Notice of Penalty Liability dated October 6, 2014 - **Exhibit B**), and (ii) Petitioner's responsible officer liability of \$63,825 equaling the outstanding withholding tax liability of Alliance concerning the 2nd and 3rd quarters of 2014 (Notice of Penalty Liability dated January 9, 2015 - **Exhibit C**).

ANSWER: Department admits the allegations in Paragraph 4. Each Notice speaks for itself.

JURISDICTION

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 allegation in Paragraph 5 is not an allegation of material facts, and therefore does not require an answer pursuant to Tribunal Rule 310(b)(2). To the extent an answer is required, Department admits that Petitioner asserts in Paragraph 5 that this Tribunal has jurisdiction of Petitioner's claims pursuant to 35 ILCS 1010/1-1 *et seq.*

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

date of Chief Administrative Law Judge Charlton's September 21, 2015 letter granting a late discretionary hearing.

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact. Whether the taxpayer timely filed its petition and whether this Tribunal has jurisdiction are mixed questions of law and fact to be determined by this Tribunal. Department lacks sufficient information to determine whether Petitioner's petition was filed within 60 days of September 21, 2015.

BACKGROUND

7. Alliance is a family owned business that provides home healthcare nursing services.

ANSWER: Upon information and belief, Department admits the allegations in Paragraph 7.

8. Petitioner is 79 years old and was a practicing ophthalmologist for 39 years until he retired in 2007.

ANSWER: Department lacks sufficient information to either admit or deny the allegations in Paragraph 8.

9. Petitioner, during the quarters in question, was a 5% shareholder of Alliance.

ANSWER: Upon information and belief, Department admits the allegations in Paragraph 9.

10. On information and belief, Petitioner also held the title of Vice President of Alliance but at all times held that office in name only.

ANSWER: Upon information and belief, Department admits Petitioner held the title of Vice President of Alliance, but denies the remaining factual allegations in Paragraph 10.

11. The sole services Petitioner provided to Alliance was as a medical consultant to assist Alliance patients who had eye problems. Petitioner's consulting services to Alliance were very sporadic and rarely exceeded two hours a week, and there would be weeks

where no consulting services were provided.

ANSWER: Department denies that Petitioner's work for Alliance was very sporadic and rarely exceeded two hours a week in 2013. Department lacks sufficient information to either admit or deny the remaining allegations in Paragraph 11.

12. Petitioner had absolutely no involvement in the operations of Alliance, including its finances, taxes or administration. Petitioner had no office at Alliance and was not a signatory on any of Alliance's bank accounts, nor did he sign any tax returns of Alliance.

ANSWER: Department lacks sufficient information to either admit or deny the allegations in Paragraph 12.

13. Under Section 3-7 of the Illinois Uniform Penalty and Interest Act (35 ILCS 735/3-7), to be held liable for a Personal Liability Penalty, the Department must demonstrate that (i) the person in question had the control, supervision or responsibility for filing returns and making payment of the requisite tax, and (ii) willfully failed to file the returns or make the payment of tax or willfully attempted in any other manner to evade or defeat the tax.

ANSWER: Paragraph 13 contains a legal conclusion, and therefore, does not require an answer pursuant to Tribunal Rule 310(b)(2). Department admits the existence, force and effect of the statute referenced in Paragraph 13, and alleges that said statute speaks for itself.

14. For the periods in question, the operations and management of Alliance were the responsibility of Reginaldo Sulit, who is the Administrator of Alliance and the Petitioner's son. Reginaldo Sulit was responsible for collecting and paying over Alliance's Illinois withholding tax liability, including the withholding tax liabilities for the quarters in question.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 15. Department denies that Reginaldo Sulit was the sole person responsible for the activities alleged in Paragraph 14.

15. For the reasons discussed herein, Petitioner did not have control, supervision, or

responsibility over the filing of Alliance's Illinois withholding tax returns (and the attendant collection and payment of Alliance's withholding taxes) and was not responsible for Alliance's withholding tax liabilities, including the quarters in question.

ANSWER: Department denies the allegations in paragraph 15.

COUNT I

16. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 15 above as and for this paragraph 16.

ANSWER: Department realleges and incorporates its Answers to Paragraphs 1 through 15 above as if fully set forth herein.

17. The Department erred in determining that Petitioner is personally responsible (in accordance with 35ILCS 735/3-7) for Alliance's withholding tax liabilities as set forth in the Notices of Penalty Liability dated August October 6, 2014 (**Exhibit B**) and January 9, 2015 (**Exhibit C**).

ANSWER: Department denies the allegations in paragraph 17.

WHEREFORE, Department prays that this Tribunal:

(a) Find that Petitioner was an employee, officer or owner of Alliance who was responsible for the filing or payment of withholding income taxes and who willfully failed to file or pay withholding income taxes for the periods at issue;

(b) Uphold the Department's Notices;

(c) Enter judgment in favor of Department and against Petitioner; and

(d) Grant Department such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

Reasonable Cause

18. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 17 as this paragraph 18.

ANSWER: Department realleges and incorporates its Answers to Paragraphs 1 through 17 above as if fully set forth herein.

19. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

ANSWER: Paragraph 19 contains a legal conclusion, and therefore, does not require an answer pursuant to Tribunal Rule 310(b)(2). Department admits the existence, force and effect of the Uniform Penalty and Interest Act, and alleges that said act speaks for itself.

20. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

ANSWER: Paragraph 20 contains a legal conclusion, and therefore, does not require an answer pursuant to Tribunal Rule 310(b)(2). Department admits the existence, force and effect of the regulation referenced in Paragraph 20, and alleges that said statute speaks for itself.

21. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. See 86 Ill. Admin. Code 700.400(c).

ANSWER: Paragraph 21 contains a legal conclusion, and therefore, does not require an answer pursuant to Tribunal Rule 310(b)(2). Department admits the existence, force and effect of the regulation referenced in Paragraph 21, and alleges that said statute speaks for itself.

22. Pleading in the alternative, if Petitioner is determined to be liable for Alliance's Illinois withholding tax liability for the quarters in question, Petitioner's failure to timely pay Alliance's withholding tax liabilities or timely file its returns was due to reasonable cause warranting abatement of the late filing and late payment penalties.

ANSWER: Paragraph 22 contains a legal conclusion, and therefore, does not require an answer pursuant to Tribunal Rule 310(b)(2). Department admits the existence, force and effect of the regulation referenced in Paragraph 22, and alleges that said statute speaks for itself. Department denies the allegations in Paragraph 22.

WHEREFORE, Department prays that this Tribunal:

(a) Find that the Tribunal does not have jurisdiction to abate late payment and late filing penalties of Alliance Home Healthcare, Inc. in this action because the notices issued to Alliance Home Healthcare, Inc. for tax, interest, and penalties are final and are not properly before the Tribunal;

(b) Uphold the Department's Notices;

(c) Enter judgment in favor of Department and against Petitioner; and

(d) Grant Department such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN,
Attorney General, State of Illinois

By: _____

Special Assistant Attorney General

Jennifer Kieffer
Special Assistant Attorneys General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900

Chicago, IL 60601

Telephone: (312) 814-1533

Facsimile: (312) 814-4344

Email: Jennifer.Kieffer@Illinois.gov

DATED: December 22, 2015

ILLINOIS INDEPENDENT TAX TRIBUNAL

REYNALDO SULIT, an individual)	
)	
Petitioner,)	
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v.)	No. 15-TT-235
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ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

**AFFIDAVIT OF DMITRI CORNELIER
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Dmitri Cornellier, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Tax Specialist, in the 100% Penalty Unit of the Collections Bureau.
3. I issued the 100% Penalty Liability to Petitioner, Reynaldo Sulit, pursuant to 35 ILCS 5/1002(d).
4. I reviewed the Petition allegations and Department's Answer to the Petition.
5. I lack the requisite knowledge to either admit or deny the allegations alleged in Petition paragraphs 6, 8, 9, 11, 12, and 14.
6. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

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 as aforesaid that he verily believes the same to be true.



Dmitri Cornellier
Revenue Tax Specialist
100% Penalty Unit
Collections Bureau
Illinois Department of Revenue

Date: 12/15/2015