

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

DALISAY SULIT, an individual)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.

RECEIVED
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BY: _____
15 71 236

PETITION

Petitioner, Dalisay Sulit (“Petitioner”), by and through her attorneys, Dale & Gensburg, P.C., for her Petition before the Illinois Independent Tax Tribunal (the “Tribunal”) hereby complains of the Defendant, the Illinois Department of Revenue (the “Department”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois resident who resides at 33 Ruffled Feathers Drive, Lemont, Illinois 60439.
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.
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.

NOTICES

Illinois Department of Revenue

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**).

JURISDICTION

5. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the "Tribunal Act"), 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.

BACKGROUND

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

8. Petitioner is 76 years old. She practiced as a pediatrician from 1976 through 1982, and from 1982 through 1993 worked for the City of Chicago with the Department of Professional Regulations where she was an inspector for institutional care.

9. After leaving her employment with the City of Chicago, Petitioner formed Alliance in March 1994. She was the majority shareholder, as well as the President and Administrator.

10. As Alliance's Administrator, she directed and coordinated medical services provided by Alliance. She was also involved on the business end of Alliance's operations, where she was a signatory on its bank accounts and signed checks as well as tax returns.

11. In April 2012, Petitioner was diagnosed with breast cancer. Due to her treatment, Petitioner was unable to continue to perform her functions as President and Administrator of Alliance, warranting that her son Reginaldo take over as Administrator and assume most of her duties as President.

12. While Petitioner would still come to Alliance's office to work while she received treatment, her hours were reduced and her responsibilities changed dramatically, limited to assisting in the overseeing of medical services provided by Alliance. Petitioner largely ceased performing her responsibilities as President, and no longer involved herself in the day to day business operations of Alliance or its financial and tax affairs.

13. After Petitioner became sick, Reginaldo Sulit signed almost all of Petitioner's checks from that point forward, and oversaw and was responsible for Alliance's tax affairs including paying over Alliance's Illinois withholding taxes.

14. 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.

15. For the periods in question, the operations and management of Alliance were the responsibility of Reginaldo Sulit. Reginaldo Sulit was also responsible for collecting and paying over Alliance's Illinois withholding tax liability, including the withholding tax liabilities for the quarters in question.

16. 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, for the quarters in question.

COUNT I

Defendant's Proposed Penalty Liability Assessment against the Petitioner is not Supported

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

18. 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**).

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the Notices of Penalty Liability;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and/or collect the amount due stated in the Notices of Penalty Liability against Petitioner; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All Failure to Pay/File Penalties should be Abated for Reasonable Cause

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

20. 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.

21. 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).

22. 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).

23. 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.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

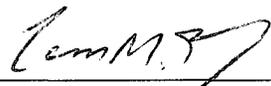
(a) Finds and declares that all late filing and late payment penalties should be abated for reasonable cause;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to file and failure to pay penalties stated included in the responsible officer liabilities; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances

Respectfully submitted,

DALISAY SULIT, Petitioner

By: 

Lane M. Gensburg,
One of Petitioner's Attorneys

Lane M. Gensburg, Esq.
Sandra Mertens, Esq.
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
F – 312-263-2242
lgensburg@dandgpc.com
smertens@dandgpc.com

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RECEIVED
SEP 23 2015
DALE & GENSBURG, P.C.

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

September 21, 2015

Lane Gensburg
Dale & Gensburg PC
200 W. Adams Street, Suite 2425
Chicago, IL 60606

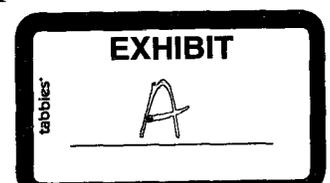
Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Reynaldo Sulit and Dalisay Sulit
Collection Action and Notice of Intent dated October 6, 2014
Reynaldo Sulit: 1002(D) Penalty ID: 3410012
3050059
Dalisay Sulit: 1002D Penalty ID: 960687
2160352

Dear Mr. Gensburg:

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

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) 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 black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton
Chief Administrative Law Judge

TDC:vs

Collection Action
Assessment and Notice of Intent



October 6, 2014



Letter ID: L1600911840

DALISAY SULIT
33 RUFFLED FEATHERS DR
LEMONT IL 60439-7752

Taxpayer ID: XXX-XX-8173
1002D Penalty ID: 960687



ALLIANCE HOME HEALTHCARE INC
11001 SOUTHWEST HWY
PALOS HILLS IL 60465-2481

**We have determined you are personally liable
for a penalty of \$127,233.94.**

The penalty is equal to the amount of unpaid liability of ALLIANCE HOME HEALTHCARE INC, due to your status as a responsible officer, partner, or individual of ALLIANCE HOME HEALTHCARE INC.

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.

Pay us **\$127,233.94**. 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.

If you do not agree, you may contest this notice by following the instructions listed below.

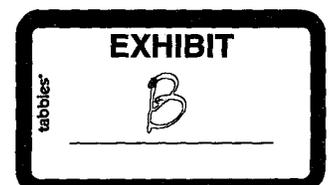
- If the amount of this liability is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is December 5, 2014. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement 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.

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
› how to pay
› submitting proof
› collection actions



Collection Action
Assessment and Notice of Intent



October 6, 2014



Letter ID: L1600911840

DALISAY SULIT
33 RUFFLED FEATHERS DR
LEMONT IL 60439-7752

Taxpayer ID: XXX-XX-8173
1002D Penalty ID: 960687



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

IL Withholding Income Tax

Account ID: 36-3978540-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2013	42,874.35	4,637.44	243.99	-	(34,343.39)	13,412.39
3-Jun-2013	47,330.12	2,686.59	593.15	-	(21,464.29)	29,145.57
30-Sep-2013	34,709.63	2,310.29	506.87	-	(12,606.72)	24,920.07
31-Dec-2013	37,703.60	2,812.99	542.79	-	(11,073.69)	29,985.69
31-Mar-2014	31,555.13	2,765.62	348.36	-	(4,898.89)	29,770.22

IDOR-SP-NPL (N-03/07)

Retain this portion for your records.
Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L1600911840
DALISAY SULIT

Total amount due: \$127,233.94

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Attach this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

Collection Action
Assessment and Notice of Intent



January 9, 2015



Letter ID: L0806260240

DALISAY SULIT
33 RUFFLED FEATHERS DR
LEMONT IL 60439-7752

Taxpayer ID: XXX-XX-8173
1002D Penalty ID: 2160352



ALLIANCE HOME HEALTHCARE INC
11001 SOUTHWEST HWY
PALOS HILLS IL 60465-2481

**We have determined you are personally liable
for a penalty of \$63,825.00.**

The penalty is equal to the amount of unpaid liability of ALLIANCE HOME HEALTHCARE INC, due to your status as a responsible officer, partner, or individual of ALLIANCE HOME HEALTHCARE INC.

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 in

Pay us \$63,825.00. 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.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this liability is more than \$15,000,** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal,** file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is **March 10, 2015.** Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue,** you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/ 2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement 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.

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› collection actions



Collection Action
Assessment and Notice of Intent



January 9, 2015



Letter ID: L0806260240

DALISAY SULIT
33 RUFFLED FEATHERS DR
LEMONT IL 60439-7752

Taxpayer ID: XXX-XX-8173
1002D Penalty ID: 2160352



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

IL Withholding Income Tax

Account ID: 36-3978540-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2014	36,415.43	3,741.54	484.85	-	-	40,641.82
3 p-2014	30,632.06	2,187.55	120.11	-	(9,756.54)	23,183.18

IDOR-5P-NPL (N-03/07)

Retain this portion for your records.
Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L0806260240
DALISAY SULIT

Total amount due: \$63,825.00

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PO BOX 19035
SPRINGFIELD IL 62794-9035

\$ _____

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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

DALISAY SULIT)
)
Petitioner,)
)
) No.
v.)
)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

CERTIFICATE OF SERVICE

TO: Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, IL 60601

I, Raquel Rodriguez, a non-attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Thursday, November 19, 2015.



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