

3 Guns, LLC on various dates in 2013.

ANSWER: The Department states that the Assessments speak for themselves and therefore deny the description and characterization thereof and all other allegations in paragraph 4 of the petition.

5. Neither Assessment presents a *prima facie* claim for Taxpayer's personal liability for the taxes, penalties or interest under the Assessment.

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

6. On information and belief, 3 Guns, LLC was not unable to pay the taxes at issue in the Assessments.

ANSWER: The allegations in paragraph 6 of the petition are vague and conclusory and are therefore denied.

7. Further, Taxpayer was not a "responsible officer" of 3 Guns, LLC for the purposes of any of its unpaid taxes. He was merely a passive investor in the company. He never exercised any control over the company's operations, and he never had any responsibility or control over collecting, accounting for, or paying over any of its taxes.

ANSWER: The allegations in paragraph 7 of the petition consist primarily of legal and / or factual conclusions and are denied.

8. Therefore, the Assessments should be dismissed, vacated, and otherwise set aside.

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

9. 3 Guns, LLC was an Illinois limited liability company created on or about July 15, 2011, and which was involuntarily dissolved on or about January 10, 2014.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. 3 Guns, LLC owned and operated a restaurant named "Urban Union" formerly located at 1421 W. Taylor St., Chicago, IL 60607.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. Taxpayer was merely a passive investor in 3 Guns, LLC and Urban Union.

Taxpayer had no involvement in, participation in, or control in any of the management or operations of 3 Guns, LLC or Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the petition and therefore neither admits or denies said allegations.

12. The other two managers of 3 Guns, LLC, Michael Shrader and Jason Chan, were entirely responsible for the management and operation of 3 Guns, LLC and Urban Union.

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 and therefore neither admits or denies said allegations.

13. Taxpayer had no involvement in, participation in, or control of any of the day-to-day operations of 3 Guns, LLC or the Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the petition and therefore neither admits or denies said allegations.

14. Taxpayer never received any distributions from 3 Guns, LLC or Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. Taxpayer never kept any of the books, records, or accounts for 3 Guns, LLC or Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the petition and therefore neither admits or denies said allegations.

16. Taxpayer had no involvement in, participation in, or control of any of 3 Guns, LLC's or Urban Union's books, records, or accounts.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 of the petition and therefore neither admits or denies said allegations.

17. Taxpayer never had personal knowledge of if, how, and where 3 Guns, LLC or Urban Union kept its books, records, or accounts.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 17 of the petition and therefore neither admits or denies said allegations.

18. Taxpayer was never responsible for collecting, accounting for, or paying any taxes on behalf of 3 Guns, LLC or Urban Union.

ANSWER: The allegations in paragraph 18 of the petition consist of legal and / or factual conclusions and are denied.

19. Taxpayer had no involvement in, participation in, or control of any of the collection,

accounting, or payment of taxes on behalf of 3 Guns, LLC or the Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 of the petition and therefore neither admits or denies said allegations.

20. Taxpayer never had check-writing, bill-paying, or accounts payable authority for 3 Guns, LLC or Urban Union.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 20 of the petition and therefore neither admits or denies said allegations.

21. Taxpayer never willfully failed to collect, account for, or pay any taxes on behalf of 3 Guns, LLC or Urban Union.

ANSWER: The allegations in paragraph 21 of the petition consist of legal and / or factual conclusions and are denied.

22. Taxpayer is not a responsible officer or other representative of 3 Guns, LLC or Urban Union whom may be found personally liable for their unpaid taxes, penalties, or interest.

ANSWER: The allegations in paragraph 22 of the petition consist of legal and / or factual conclusions and are denied.

23. This Petition is timely. Sixty (60) days after September 23, 2015, excluding all weekends and any applicable extensions for service, is Sunday November 22, 2015.

ANSWER: The allegations in paragraph 23 of the petition consist of legal and / or factual conclusions and are denied.

24. Taxpayer should not be required to post any bond. This claim is not frivolous or

legally insufficient, and Taxpayer is not acting primarily for the purpose of delaying the collection of tax, or prejudicing the ability ultimately to collect the tax.

ANSWER: The allegations in paragraph 24 of the petition consist of legal and / or factual conclusions and are denied.

25. "The liability imposed upon an individual defendant [under applicable Illinois tax laws] is derivative in nature." *McLean v. IDOR*, 326 Ill.App.3d 667, 673 (1st Dist. 2001). "Only where the corporation has incurred retailers' occupation tax liability and is unable to pay such amounts to the Department of Revenue may personal liability attach to a responsible officer or employee who has 'willfully' failed to file retailers' occupation tax returns or pay retailers' occupation taxes." *Id.*, at 673-74. "Personal liability for a retail corporation's unpaid retailers' occupation taxes, which survives dissolution of the corporation, may be imposed only upon corporate officers or employees who are responsible for the filing of retailers' occupation tax returns and payment of taxes due, and who have 'willfully' failed to file such returns or remit such taxes." *Id.*, at 674. "Persons who are required to collect, truthfully account for, and pay over any tax are referred to as 'responsible persons.'" *Id.* "After the Department of Revenue presents a *prima facie* claim for tax penalty liability for nonpayment of [applicable] taxes, the responsible corporate officer or employee has the burden to establish that one or more elements of the penalty are lacking." *Id.*

ANSWER: The allegations in paragraph 25 of the petition consist of legal conclusions and are thus denied.

26. Taxpayer incorporates his allegations in paragraph 1-25 above.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 25 as though fully set forth herein.

27. On information and belief, 3 Guns, LLC was not unable to pay the taxes, penalties,

and interest at issue in Assessment No. 2880245 (exhibit 1).

ANSWER: The allegations in paragraph 27 of the petition are vague and conclusory and are therefore denied.

28. The Department has not presented a *prima facie* claim for Taxpayer's personal liability for nonpayment of the taxes, penalties or interest under Assessment No. 2880245.

ANSWER: The allegations in paragraph 28 of the petition consist of legal and / or factual conclusions and are denied.

29. Further, Taxpayer was not an officer, employee, or other agent of 3 Guns, LLC who (a) was responsible for the filing of retailers' occupation tax returns and payment of taxes due, (b) willfully failed to file such returns or remit such taxes, or (c) was required to collect, truthfully account for, and pay over any tax to the IDOR.

ANSWER: The allegations in paragraph 29 of the petition consist of legal and / or factual conclusions and are denied.

30. Taxpayer incorporates his allegations in paragraph 1-25 above.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 25 as though fully set forth herein.

31. On information and belief, 3 Guns, LLC was not unable to pay the taxes, penalties, and interest at issue in Assessment No. 3650061 (exhibit 2).

ANSWER: The allegations in paragraph 31 of the petition are vague and conclusory and are therefore denied.

32. The Department has not presented a *prima facie* claim for Taxpayer's personal liability for nonpayment of the taxes, penalties or interest under Assessment No. 3650061.

ANSWER: The allegations in paragraph 32 of the petition consist of legal and / or factual conclusions and are denied.

33. Further, Taxpayer was not an officer, employee, or other agent of 3 Guns, LLC who (a) was responsible for the filing of retailers' occupation tax returns and payment of taxes due, (b) willfully failed to file such returns or remit such taxes, or (c) was required to collect, truthfully account for, and pay over any tax to the IDOR.

ANSWER: The allegations in paragraph 33 of the petition consist of legal and / or factual 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 and 1002D Notice at issue are correct as issued;
- c. ordering judgment in favor of the Department and against the Petitioner; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

SEAN J. O'SCANNLAIN)	
)	
v.)	15-TT-237
)	Chief Judge James F. 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 9,10,11,12,13,14,15,16,17,19, and 20.

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: 1/5/16