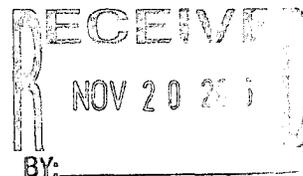


ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO OFFICE



SEAN J. O'SCANNLAIN, Petitioner,) Case No.
)
v.) Taxpayer ID No. xxx-xx-6673
) NPL Penalty IDs:
ILLINOIS DEPARTMENT OF REVENUE, Respondent.) 2880245, 3650061

TAXPAYER'S PETITION TO PROTEST ASSESSMENTS

Taxpayer Sean J. O'Scannlain ("Taxpayer"), TIN xxx-xx-6673, by his attorneys Brotschul Potts LLC and pursuant to 35 ILCS 1010/1-1 *et seq.*, 35 ILCS 5/908, 35 ILCS 735/3-7 and other applicable law, hereby protests the two September 23, 2015 Assessments and Notices of Intent issued by the Illinois Department of Revenue ("Department"), nos. 2880245 and 3650061, copies of which are attached to this Petition as exhibits 1 and 2 (together, "Assessments"). In support of this Petition, Taxpayer states as follows:

INTRODUCTION

1. This Tribunal has jurisdiction over this Petition under 735 ILCS 1010/1-1 *et seq.*, 735 ILCS 5/2-908 and 735 ILCS 735/3-7.
2. Taxpayer is an Illinois citizen who resides at 4401 N. Hermitage Ave., Chicago, IL 60640, phone number (773) 908-7427. His Taxpayer ID is xxx-xx-6673.
3. On September 23, 2015, the Department issued to Taxpayer the Assessments.
4. The Assessments sought to hold Taxpayer personally liable as a responsible officer for the unpaid withholding, food and beverage, and sales taxes, interest, and penalties incurred by 3 Guns, LLC on various dates in 2013.
5. Neither Assessment presents a *prima facie* claim for Taxpayer's personal liability for the taxes, penalties or interest under the Assessment.

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

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.

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

3 GUNS, LLC AND TAXPAYER’S INVOLVEMENT IN THE COMPANY

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.

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

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.

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.

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.

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

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

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.

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

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

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.

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

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

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.

TIMELINESS OF THIS PETITION, AND NO BOND SHOULD BE REQUIRED

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.

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.

APPLICABLE LAW

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.*

ERROR 1
ASSESSMENT NO. 2880245

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

ERROR 2
ASSESSMENT NO. 3650061

30. Taxpayer incorporates his allegations in paragraph 1-25 above in this Error 2.

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).

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.

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.

PRAYER FOR RELIEF

WHEREFORE, Taxpayer Sean J. O'Scannlain requests the Tribunal to dismiss, vacate, and/or otherwise set aside the Assessments attached here as exhibits 1 and 2, excuse any and all requirements that Taxpayer post any bond, award Taxpayer his costs, attorneys' fees, and expenses, and grant Taxpayer any and all other just and appropriate relief.

DATE: November 20, 2015

Scott A. Schaefers (ARDC No. 6278386)
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
FAX: (312) 277-3278
Email: sschaefers@brotschulpotts.com

Respectfully submitted,

SEAN J. O'SCANNLAIN, Taxpayer.

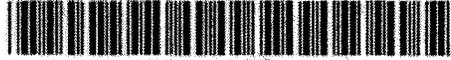
By: 
Scott A. Schaefers, one of his attorneys

Collection Action

Assessment and Notice of Intent



September 23, 2015



Letter ID: L0836979216

SEAN J. OSCANNLAIN
4401 N HERMITAGE AVE
CHICAGO IL 60640-5301

Taxpayer ID: XXX-XX-6673
NPL Penalty ID: 2880245



3 GUNS LLC
PO BOX 17080
DENVER CO 80217-0080

We have determined you are personally liable for a penalty of \$73,257.59.

The penalty is equal to the amount of unpaid liability of 3 GUNS LLC, due to your status as a responsible officer, partner, or individual of 3 GUNS LLC.

Illinois law (35 ILCS 735/3-7) 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 \$73,257.59. 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 **November 22, 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.

FLO WOOD
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31609
217 785-2635 fax

For information about
› how to pay
› submitting proof
› collection actions

Turn page

Assessment and Notice of Intent



September 23, 2015



Letter ID: L0836979216

SEAN J. OSCANNLAIN
4401 N HERMITAGE AVE
CHICAGO IL 60640-5301

Taxpayer ID: XXX-XX-6673

NPL Penalty ID: 2880245



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.

ST-4 MPEA Food & Beverage Tax

Account ID: 4055-6026

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Jan-2013	700.00	434.00	36.30	-	-	1,170.30
28-Feb-2013	700.00	434.00	36.30	-	-	1,170.30
30-Apr-2013	636.00	93.60	32.97	-	-	762.57
31-May-2013	700.00	434.00	36.30	-	-	1,170.30
30-Jun-2013	700.00	434.00	36.30	-	-	1,170.30
31-Jul-2013	700.00	434.00	36.30	-	-	1,170.30
31-Aug-2013	700.00	434.00	36.30	-	-	1,170.30

Sales/Use Tax & E911 Surcharge

Account ID: 4055-6026

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Jan-2013	7,000.00	1,190.00	363.03	-	-	8,553.03
28-Feb-2013	7,000.00	1,190.00	363.03	-	-	8,553.03
31-Mar-2013	6,352.00	727.10	312.25	-	(165.00)	7,226.35
30-Apr-2013	5,885.00	738.50	305.18	-	-	6,928.68
31-May-2013	7,000.00	1,190.00	363.03	-	-	8,553.03

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: L0836979216

SEAN J. OSCANNLAIN

Total amount due: \$73,257.59

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

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

Collection Action

Assessment and Notice of Intent



September 23, 2015



Letter ID: L1239632400

SEAN J. OSCANNLAIN
4401 N HERMITAGE AVE
CHICAGO IL 60640-5301

Taxpayer ID: XXX-XX-6673
1002D Penalty ID: 3650061



3 GUNS LLC
PO BOX 17080
DENVER CO 80217-0080

We have determined you are personally liable for a penalty of \$1,170.31.

The penalty is equal to the amount of unpaid liability of 3 GUNS LLC, due to your status as a responsible officer, partner, or individual of 3 GUNS LLC.

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 \$1,170.31. 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 **November 22, 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 Action
Assessment and Notice of Intent



September 23, 2015



Letter ID: L1239632400

SEAN J. OSCANNLAIN
4401 N HERMITAGE AVE
CHICAGO IL 60640-5301

Taxpayer ID: XXX-XX-6673

1002D Penalty ID: 3650061



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: 45-2752115-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Sep-2013	700.00	434.00	36.31	-	-	1,170.31

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: L1239632400
SEAN J. OSCANNLAIN

Total amount due: \$1,170.31

Write the amount you are paying below.

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

\$ _____
Write your Account ID on your check.

000 006 017890775848 731 123199 6 0000000117031