

ILLINOIS INDEPENDENT
TAX TRIBUNAL

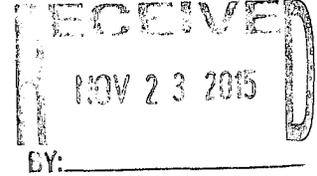
ADAM C. KERI

Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE

Respondent.



15 TI 292

PETITION

PRELIMINARY INFORMATION

1. Taxpayer: Adam C. Keri
4021 W 95th Place
Oak Lawn, IL 6045
2. Attorney: Al Giudice
Giudice Law Offices Ltd.
211 N. Clinton, Suite 3S
Chicago, IL 60661
312-287-2500
3. Social Security #: omitted
4. Statutory Notice: Attached as Exhibit A
5. Tax Years Involved: 2007,2008

PRELIMINARY STATEMENT

6. Petitioner was an individual taxpayer who was a shareholder in home repair establishment located in Illinois.
7. The establishment was The Pros Service Depot ("PROS").
8. PROS filed its withholding tax returns.
9. It is alleged that PROS did not pay all of its payroll taxes for the periods 2007-2008.
10. The Respondent issued a two Assessments and Notice of Intent("NOD") to assess a penalty against the tax payer due to his alleged status as a responsible officer of PROS for the tax years 2007-2008 on September 23, 2015.
11. The amounts assessed for additional tax, penalties and interest under the NODs are \$15,117.36.

JURISDICTION

12. Jurisdiction is based on the fact that the amount in controversy exceeds \$15,000.00 pursuant to 35 ILCS1010/1.

QUESTIONS PRESENTED

13. Is the taxpayer a responsible officer of PROS under Illinois Law?
14. Are the NODs issued for TYE 2008-2009 barred by the Illinois Income Tax Act's (IITA) statute of limitations?

FACTS

15. PROS filed its payroll tax returns for 2007 and 2008.
16. The Respondent issued the NODs on September 23, 2015 (Exhibit A).
17. The Petitioner did not intentional and knowing fail to pay withholding taxes.

ARGUMENT

18. The statute imposes personal liability for paying to the state unpaid corporate Retailers'

Occupation Tax, Use Tax and Withholding Tax obligations provides as follows:

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. 35 ILCS 735/3-7.

19. This section of the statute sets forth two tests for determining whether a person has personal liability for unpaid sales and withholding taxes incurred by a corporation. First, the person must be responsible for accounting for and paying the tax due. Second, the individual must willfully have failed to file for and/or pay the corporate taxes due.

20. The statute does not define the concept of willful failure.

21. The issue of willfulness is concerned with the state of the responsible person's state of mind. *Sawyer v. U.S.*, 831 F.2d 755 (7th Cir. 1987) "Willful failure to pay taxes has generally been defined as involving intentional, knowing and voluntary acts or, alternatively, reckless disregard for obvious or known risks." *Branson*, 168 Ill. 2d at 255.

22. The Petitioner did not willfully fail to pay the withholding taxes.

23. Section 905(a) of the IITA provides:

Sec. 905. Limitations on Notices of Deficiency.

(a) In general. Except as otherwise provided in this Act:

(1) A notice of deficiency shall be issued not later than 3 years after the date the return was filed, and

(2) No deficiency shall be assessed or collected with respect to the year for which the return was filed unless such notice is issued within such period.

24. The Petitioner's payroll tax returns for 2007 and 2008 would be due no later than January 2009 and the pursuant to Section 905 of the IITA the NOD would have had to have been filed prior to January 2012 (Three years after the date of the filed return).
25. Since the Respondent issued the NOD for the TYE 2008 and 2009 on September 23, 2015 the NODs were not timely because they were not issued within three years from the date Petitioner filed its Illinois returns.

CONCLUSION

26. Since the Petitioner did not willful fail to pay over the required taxes, he is not a responsible party under Illinois law and the petitioner should not be found to be personally liable for the withholding taxes of PROS.
27. Since the Respondent did not timely issue the NODs for TYE 2007 and 2008, they are barred by IITA § 905(a)(1)'s statute of limitation.

Dated: November 23, 2015.



Al Giudice
Giudice Law Offices Ltd.
211 N Clinton, Suite 3S
Chicago, Illinois 60661
(312) 287-2500 telephone
(847) 832-0500 facsimile
al827@aol.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to:

Dmitri Cornellier
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO Box 19035
Springfield, Illinois 62794-9035
(217)782-9904 ext 31614 telephone

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900 (7th floor of the Thompson Center)
Chicago, IL 60601

PROOF OF SERVICE

I, Al Giudice, the attorney certify that on November 23, 2015, I served this Petition from Chicago, Illinois by:

 x mailing a copy to the party to whom it is directed at the address indicated above by depositing same in U.S. mail with proper postage prepaid,



Al Giudice

Collection Action
Assessment and Notice of Intent



September 23, 2015



Lottor ID: L0646945552

ADAM C. KERI
4021 W 99TH PL
OAK LAWN IL 60453-3505

Taxpayer ID: XXX-XX-7084
1002D Penalty ID: 2680247



THE PROS SERVICE DEPOT
4021 W 99TH PL
OAK LAWN IL 60453 3505

**We have determined you are personally liable
for a penalty of \$15,117.36.**

The penalty is equal to the amount of unpaid liability of THE PROS SERVICE DEPOT, due to your status as a responsible officer, partner, or individual of THE PROS SERVICE DEPOT.

Illinois law (35 ILCS 5/1002(a)) 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 \$15,117.36. Your payment must be guaranteed (i.e., cashier's check, money order) and made payable to the Illinois Department of Revenue. Sent or being 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 the notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 10/0-1, 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.

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

DUOR-SP-INPL (9-23-07)

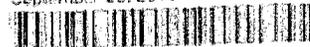
For information about
• how to pay
• submitting proof
• collection actions



Collection Action
Assessment and Notice of Intent



September 23, 2015



Letter ID: L0846945552

ADAM C. KERI
 4021 W 80TH PL
 OAK LAWN IL 60453-3508

Taxpayer ID: XX-XX-7004
 1002D Penalty ID: 2880247



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.

Account ID: 37-1540333-000

IL Withholding Income Tax

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2007	423.60	216.47	216.95	-	-	857.02
31-Mar-2008	1,848.46	913.32	392.84	-	-	3,544.44
30-Jun-2008	1,848.46	913.32	623.71	-	-	3,565.49
30-Sep-2008	1,848.46	913.32	777.13	-	-	3,538.91
31-Dec-2008	1,848.46	913.32	729.52	-	-	3,491.30

100R-SP-NPL (11-00007)

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

Collection Action (R-1208) (136)



Letter ID: L0846945552
 ADAM C. KERI

Total amount due: \$15,117.36
 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 016511634723 731 123199 8 0000001511736

7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

AL GIUDICE

Name

PO BOX 2775

Street address

GLENVIEW IL 60025

City State ZIP

(312) 287-2500

Daytime phone number

Name

Street address

City State ZIP

()

Daytime phone number

Name

Street address

City State ZIP

()

Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Al Giudice

Taxpayer's signature

Title, if applicable

5.20.2015

Date

Spouse's signature

Title, if applicable

Date

If corporation or partnership, signature of officer or partner

Title, if applicable

Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am not currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below, or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below, or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

ATTORNEY

ILLINOIS

Designation (attorney, C.P.A., enrolled agent)

Jurisdiction (state(s), etc.)

Al Giudice

Signature

5/20/15

Date

Designation (attorney, C.P.A., enrolled agent)

Jurisdiction (state(s), etc.)

Signature

Date

Designation (attorney, C.P.A., enrolled agent)

Jurisdiction (state(s), etc.)

Signature

Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following:

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here

Signature of witness

Date

Signature of witness

Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed

Signature of notary

Date

Notary seal

