

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>JEFFERY GRADE</b>	)	
	)	
<b>Petitioner</b>	)	
<b>v.</b>	)	<b>15-TT-250</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant</b>	)	

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**NOTICE OF FILING**

TO: [virginia@prihodalaw.com](mailto:virginia@prihodalaw.com)

Virginia D. Prihoda  
7551 N. Oakley Avenue  
Chicago, IL 60645  
(773) 262-1712

Donald A. Statland  
324 Skokie Lane N.  
Glencoe, IL 60022  
(312) 726-3898

PLEASE TAKE NOTICE, that on January 12, 2016, the undersigned representative for the Illinois Department of Revenue (the "Department") filed the Department's Answer to Jeffrey Grade's Petition with the Illinois Tax Tribunal, located at 160 North LaSalle Street, Room N506, Chicago, IL 60601.

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Rickey A. Walton  
Special Assistant Attorney General

Rickey A. Walton  
Illinois Department of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-1016 phone  
(312) 814-4344 facsimile  
[rick.walton@illinois.gov](mailto:rick.walton@illinois.gov)

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Jeffery Grade’s (“Petitioner”) Petition respectfully pleads as follows:

**PARTIES**

1. Petitioner is an individual residing at 908 North Ave., Deerfield, Illinois 60015, with telephone at (847) 607-9944.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 1.

2. Petitioner suffers a disability and under a Durable Power of Attorney for Property executed before Petitioner’s diagnosis, appears through his wife, Linda Grade, attorney in fact. A copy of this Power of Attorney is attached as Exhibit A. Petitioner suffered from this disability throughout the periods at issue in this case.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegations contained in Paragraph 2 and demands strict proof thereof.

3. Petitioner is represented by Virginia D. Prihoda, with offices located at 7551 N. Oakley Ave., Chicago, IL 60645, Telephone (773) 262-1712, also [virginia@prihodalaw.com](mailto:virginia@prihodalaw.com); and Donald A. Statland, Esq. with offices located at 324 Skokie Lane N., Glencoe, IL 60022, Telephone (312) 726-3898.

**ANSWER:** The information contained in Paragraph 3 is required by Rule 310(a)(1)(B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 3.

4. Petitioner's tax ID is xxx-xx-5378.

**ANSWER:** The information contained in Paragraph 4 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, Department admits the factual allegations contained in Paragraph 4.

#### **NOTICE**

5. The Department issued its Collection Action Assessment and Notice of Intent ("Notice") to Jeffery Grade on October 5, 2015, assessing \$43,799.47 as a responsible person penalty pursuant to 35 ILCS 5/1002(d) for withholding income tax due from Everest Elevator, Inc., FEIN 26-4061979 for the periods extending from October 2, 2012 through September 30, 2014. A copy of the Notice is attached to this Petition as Exhibit B.

**ANSWER:** A copy of the Notice is required to be attached to the Taxpayer's Petition pursuant to Rule 310(a) (1) (D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the above, the Department admits that the Notice, dated October 5, 2015, issued to Jeffrey Grade extends to tax periods October 1, 2012 through December 31, 2013 and July 1, 2014 through September 30, 2014.

### **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the "Tribunal Act"), 35 ILCS 1010/1 to 35 ILCS 1010/1-100.

**ANSWER:** Admits.

7. This 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 Notice of Tax Liability for tax exceeding \$15,000.

**ANSWER:** Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). Notwithstanding the foregoing, the Department admits the allegations contained in Paragraph 7. Further, the Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 7 and states that such statute speaks for itself.

### **BACKGROUND**

8. Taxpayer was an officer and shareholder of Everest Elevator, Inc. ("Everest"), an Illinois corporation formed on January 16, 2009.

**ANSWER:** The Department admits that Taxpayer is identified as "secretary" on Annual Reports Everest Elevator, Inc. filed with the Illinois Secretary of State's office

for the years ending December 31, 2012, December 31, 2013 and December 31, 2014. The Department also admits that Everest Elevator, Inc. filed Articles of Incorporation with the Illinois Secretary of State's office on January 16, 2009. The Department lacks sufficient knowledge to either admit or deny the other factual allegations contained in paragraph 8 and demands strict proof thereof.

9. An individual named Joseph Hancock was also an officer and shareholder of Everest.

**ANSWER:** The Department admits that an individual named Joseph Hancock is identified as "president" on Annual Reports Everest Elevator, Inc. filed with the Illinois Secretary of State's office for years ending December 31, 2012, December 31, 2013 and December 31, 2014 and is identified as a director on the Annual Report Everest Elevator, Inc. filed with the Illinois Secretary of State's office for the year ending December 31, 2014. The Department lacks sufficient knowledge to admit or deny the other factual allegations contained in Paragraph 9 and demands strict proof thereof.

10. An individual named Roy Zeder was also an officer and shareholder of Everest.

**ANSWER:** The Department admits that an individual named Roy Zeder is identified as a "director" on the Annual Report Everest Elevator, Inc. filed with the Illinois Secretary of State's office for the year ending December 31, 2013. The Department lacks sufficient knowledge to admit or deny the other factual allegations contained in Paragraph 10 and demands strict proof thereof.

11. After Everest commenced operations, Petitioner was diagnosed with a medical condition.

**ANSWER:** The Department lacks sufficient knowledge to either admit or deny the allegation contained in Paragraph 11 and demands strict proof thereof.

12. Petitioner lacked the functional ability to make decisions because of his disease and lacked the ability to implement decisions.

**ANSWER:** Denied.

13. 35 ILCS 5/1002(d) provides, in relevant part:

Any person required to collect, truthfully account for, and pay over the tax imposed by this Act who willfully fails to collect such tax or truthfully account for any pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for the penalty imposed by Section 3-7 of the Uniform Penalty and Interest Act.

**ANSWER:** The Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 13 and states that such statute speaks for itself.

### **COUNT I**

14. The tax periods at issue extend from October 1, 2012 through and including December 31, 2014.

**ANSWER:** The Department admits that the tax periods at issue are the periods October 1, 2012 through December 31, 2013 and July 1, 2014 through September 30, 2014.

15. The management functions and decision making were performed by Joseph Hancock.

**ANSWER:** Paragraph 15 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

## **COUNT II**

16. As noted above, Petitioner was diagnosed with an illness which significantly impaired his functioning.

**ANSWER:** The Department's lacks sufficient knowledge to either admit or deny the allegations contained in Paragraph 16 and demands strict proof thereof.

17. The diagnosis was made prior to October 1, 2012.

**ANSWER:** The Department's lacks sufficient knowledge to either admit or deny the allegation contained in Paragraph 17 and demands strict proof thereof.

18. During the relevant periods, Joseph Hancock managed Everest. Petitioner did not willfully fail to remit withholding taxes to the State of Illinois.

**ANSWER:** Paragraph 19 contains legal conclusions, not material allegations of facts, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** the Department prays that the Tribunal:

- a. Find that Petitioner was required to but willfully failed to collect, account for and pay over to the Department income taxes withheld from the wages of the employees of Everest Elevator, Inc. for the periods October 1, 2012 through December 31, 2013 and July 1, 2014 through September 30, 2014;

- b. Find that Petitioner was a responsible officer of Everest Elevator, Inc. during the periods October 1, 2012 through December 31, 2013 and July 1, 2014 through September 30, 2014;
- c. Uphold the liability set forth in the Collection Action, dated October 5, 2015, holding Petitioner personally liable for the deficiency shown therein.

Respectfully Submitted,

**LISA MADIGAN**  
Attorney General  
State of Illinois

By: \_\_\_\_\_  
Rickey A. Walton  
Special Assistant Attorney General

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Special Assistant Attorney General  
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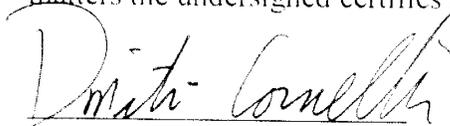
STATE OF ILLINOIS )  
)  
)  
)  
COUNTY SANGAMON )  
)

**AFFIDAVIT OF DMITRI CORNELLIER  
PURSUANT TO TRIBUNAL RULE 5000.310(B)(3)**

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

1. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon personal knowledge.
2. I am currently employed by the Illinois Department of Revenue.
3. My current title is Revenue Tax Specialist I in the Illinois Department of Revenue's Collection Division, 100% Penalty Unit.
4. I conducted the initial review of Everest Elevator, Inc. and concluded that Jeffrey Grade was a responsible person of Everest Elevator, Inc. during the period October 1, 2012 through December 31, 2013 and July 1, 2014 through September 30, 2014.
5. On October 5, 2015, I issued the Collection Action Assessment and Notice of Intent to Jeffrey Grade.
6. I lack the requisite knowledge to either admit or deny the allegations alleged in Jeffrey Grade's Petition in paragraphs 2, 8, 9, 10, 11, 16 and 17.

Under penalties as provided by law, pursuant to Section 1-109 of the Code of Civil Procedure, the 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 she believes the same to be true.



Dmitri Cornellier  
Revenue Tax Specialist I  
Illinois Department of Revenue  
Springfield, IL

1/12/2016  
Date

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**CERTIFICATE OF SERVICE BY ELECTRONIC MAIL**

TO: [virginia@prihodalaw.com](mailto:virginia@prihodalaw.com)  
Virginia D. Prihoda  
7551 N. Oakley Avenue  
Chicago, IL 60645  
(773) 262-1712

Donald A. Statland  
324 Skokie Lane N.  
Glencoe, IL 60022  
(312) 726-3898

Please take notice that the undersigned Representative for the Illinois Department of Revenue (the "Department") certifies that, on January 12, 2016 he served the Department's Answer to Jeffrey Grade's Petition on the individuals listed above by electronic mail at the electronic mail address shown above at the date and time shown on the electronic transmission confirmation.

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Rickey A. Walton  
Special Assistant Attorney General

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