

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

CRAIG ENGBERG,)	
Petitioner)	
)	
V)	No. 15 TT 256
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. The DEPARTMENT issued the Notices regarding Max 18, Inc. (11-3716734 and 5518-1570) and finding ENGBERG liable for a penalty pursuant to Illinois law (35 ILCS 5/1002(d)) related to withholding income tax and a penalty pursuant to Illinois law (35 ILCS 735/3-7)) related to Sales/Use Tax and E911 Surcharge and ST-4 MPEA Food and Beverage Tax as a person who has control, supervision or responsibility for filing returns or making payments and who willfully fails to do so.

ANSWER: The Department admits that it issued the referenced Notices, and further states that the Notices speak for themselves and therefore denies the description and characterization thereof and any remaining allegations in paragraph 1 of the petition.

2. The Notices specify the 1002D Penalty ID 3410066 and NPL Penalty ID 3254089, federal identification number XXX-XX-6431 and reporting periods and figures as follows:

(Detailed figures from petition not copied or retyped here)

ANSWER: The Department states that the referenced Notices speak for themselves and therefore denies the description and characterization thereof and any remaining allegations in paragraph 2 of the petition.

3. Max 18, Inc. was incorporated in 2003 for the purpose of operating a restaurant establishment under the exclusive authority of Paul Engberg.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the petition and therefore neither admits or denies said allegations.

4. Max 18, Inc. was dissolved and ceased operations at the end of October in 2014.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the petition and therefore neither admits or denies said allegations.

5. ENGBERG was at all times solely a minority shareholder owning approximately twenty percent (20%) of Max 18, Inc.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the petition and therefore neither admits or denies said allegations.

6. ENGBERG never had any operational authority, including no authority over the daily Operations.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the petition and therefore neither admits or denies said allegations.

7. ENGBERG never was an employee of Max 18, Inc.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the petition and therefore neither admits or denies said allegations.

8. ENGBERG has at all times since 2003, been the exclusive operational manager of BCP, Inc., a restaurant and entertainment establishment existing under the name Thunder Bowl in Mokena, Illinois.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

9. ENGBERG never had any duty to collect, truthfully account for or pay over any of the taxes at issue.

ANSWER: The allegations in paragraph 9 of the petition consist primarily of legal and / or factual conclusions and are denied.

10. ENGBERG never had any power to control the decision-making process by which Max 18, Inc. allocated funds to any creditors, including any creditors in preference to the withholding tax, or other trust fund tax obligations of Max 18, Inc.

ANSWER: The allegations in paragraph 10 of the petition consist primarily of legal and / or factual conclusions and are denied.

11. ENGBERG never had any authority, ultimate or otherwise, over the expenditure of funds for Max 18, Inc.

ANSWER: The allegations in paragraph 11 of the petition consist primarily of legal and / or factual conclusions and are denied.

12. ENGBERG had no knowledge that any State of Illinois, Illinois Department of Revenue tax obligation was delinquent and unpaid.

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. ENGBERG never had control over, supervision of, or responsibility for filing returns or making payments related to tax returns.

ANSWER: The allegations in paragraph 13 of the petition consist primarily of legal and / or factual conclusions and are denied.

14. ENGBERG never willfully failed to file any return or make any payment.

ANSWER: The allegations in paragraph 14 of the petition consist primarily of legal and / or factual conclusions and are denied.

15. Paul Engberg is the sole individual responsible for the operations of Max 18, Inc., including the daily operations and the preparation, filing and paying of tax returns.

ANSWER: The allegations in paragraph 15 of the petition consist primarily of legal and / or factual conclusions and are denied.

16. ENGBERG is not a person responsible for the payroll, withholding, sales/use and/or food and beverage tax obligations of Max 18, Inc.

ANSWER: The allegations in paragraph 16 of the petition consist primarily of legal and / or factual conclusions and are denied.

17. ENGBERG did not willfully fail to collect, truthfully account for, or pay over any payroll, withholding, sales/use and/or food and beverage tax for Max 18, Inc.

ANSWER: The allegations in paragraph 17 of the petition consist primarily of legal and / or factual conclusions and are denied.

18. ENGBERG did not willfully attempt in any manner to evade or defeat any tax or the payment of any tax of Max 18, Inc.

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

19. The Notices improperly determine that ENGBERG is liable for a penalty pursuant to Illinois law (35 ILCS 5/1002(d)) related to Illinois withholding income tax of Max 18, Inc.

ANSWER: The allegations in paragraph 19 of the petition consist primarily of legal and / or factual conclusions and are denied.

20. The Notices improperly determine that ENGBERG is liable for a penalty pursuant to Illinois law (35 ILCS 735/3-7)) related to Illinois Sales/Use Tax and E911 Surcharge and ST-4 MPEA Food and Beverage Tax of Max 18, Inc.

ANSWER: The allegations in paragraph 20 of the petition consist primarily of legal and / or factual conclusions and are denied.

21. The Notices improperly determine that ENGBERG is liable for penalties as a person who has control, supervision or responsibility for filing returns or making payments and who willfully fails to do so related to Max 18, Inc.

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

22. The Notices do not account for the following:

- a. Max 18, Inc. was incorporated in 2003 for the purpose of operating a restaurant establishment under the exclusive authority of Paul Engberg.
- b. ENGBERG was at all times solely a minority shareholder owning approximately twenty percent (20%) of Max 18, Inc.
- c. ENGBERG never had any operational authority, including no authority over the daily operations.
- d. ENGBERG never was an employee of Max 18, Inc.
- e. ENGBERG has at all times since 2003, been the exclusive operational manager of BCP, Inc., a restaurant and entertainment establishment existing under the name Thunder Bowl in Mokena, Illinois.
- f. ENGBERG never had any duty to collect, truthfully account for or pay over any of the taxes at issue.
- g. ENGBERG never had any power to control the decision-making process by which Max 18, Inc. allocated funds to any creditors, including any creditors in preference to the withholding tax, or other trust fund tax obligations of Max 18, Inc.

- h. ENGBERG never had any authority, ultimate or otherwise, over the expenditure of funds for Max 18, Inc.
- i. ENGBERG had no knowledge that any State of Illinois, Illinois Department of Revenue tax obligation was delinquent and unpaid.
- j. ENGBERG never had control over, supervision of, or responsibility for filing returns or making payments.
- k. ENGBERG never willfully failed to file any return or make any payment.
- l. Paul Engberg is the sole individual responsible for the operations of Max 18, Inc., including the daily operations and the preparation, filing and paying of tax returns.
- m. ENGBERG is not a person responsible for the payroll, withholding, sales/use and/or food and beverage tax obligations of Max 18, Inc.
- n. ENGBERG did not willfully fail to collect, truthfully account for, or pay over any payroll, withholding, sales/use and/or food and beverage tax for Max 18, Inc.
- o. ENGBERG did not willfully attempt in any manner to evade or defeat any tax or the payment of any tax of Max 18, Inc.

ANSWER: The Department states that the Notices speak for themselves and further states that the allegations in paragraph 22 of the petition with respect to the Notices consist of legal and or factual conclusions and therefore the allegations in paragraph 22 are denied.

27. The Notices include penalties and interest charges that are improper.

ANSWER: The allegations in paragraph 27 of the petition consist primarily 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 in this matter are both correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
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State of Illinois

By: 

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

CRAIG L. ENGBERG)	
)	
v.)	15-TT-256
)	Judge Brian F. Barov
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 3,4,5,6,7,8,12, 22a, 22b,22c,22d,22e,22g and 22i.

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: 1/13/16