ILLINOIS INDEPENDENT
TAX TRIBUNAL

JAMES R SCHAAF, Petitioner v. ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)))))))))))

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PETITION

The Petitioner, James R. Schaaf, ("Petitioner") petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Deficiency ("Deficiency") Letter ID: L0344302048 dated March 23, 2012 issued by the Illinois Department of Revenue ("Department) for the reasons stated below.

INTRODUCTION

1. The "Notice" was issued by the Department on March 23, 2015 assessing liability in the amount of $47,292.19 in withholding tax, $22,952.55 in penalties, and $26,577.43 in interest, less a payment of $2,598 for taxable periods January 1, 2004 through March 31, 2009 pursuant to an audit closure dated September 7, 2012 of Family Comfort Heating & Cooling Inc (Taxpayer) for Illinois withholding from employees.
2. Due to extremely poor communication with prior accountants that have represented Taxpayer with respect to this matter, the Taxpayer is unclear as to the procedural history of the Notice of Withholding Tax, Penalty and Interest Liability. Appended hereto as Exhibit are copies of the Notice of Audit results, as well as various Taxpayer statements and Notices of Intent for Collection Activity that is currently in the Taxpayer's possession.

3. James Schaaf, "Petitioner", filed a petition for a late discretionary hearing with the Department on August 25, 2015, seeking a relief with respect to the notice. On September 24, 2015, the Chief Administrative Law Judge granted the request for a late discretionary hearing and referred the Petitioner to file this petition, given that the protest amount exceeds $15,000.00. A True and correct copy of such determination is appended hereto as Exhibit B.
4. Petitioner of 1081 Sycamore Lane, Bartlett, IL 60103, is an individual or stated by the Department to be a Responsible Officer of Family Comfort Heating & Cooling Inc a former Illinois Domestic Company (dissolved March 9, 2012) with a business address was 1261 Hambrecht Circle, Bartlett, IL 60103. The business no longer maintains a telephone number. The Taxpayer Account is 36-4261637-000. Petitioner's telephone number is (847) 561-3109.
5. Respondent, Illinois department of Revenue, is an agency of the State of Illinois responsible for administering and enforcing the revenues laws of the state of Illinois.

BACKGROUND

6. James Schaaf, "Petitioner", is an individual or stated by the Department to be a Responsible Officer of Family Comfort Heating & Cooling Inc "Taxpayer" which filed a Sub-S Corporation tax return.
7. The Illinois Department of Revenue preformed a withholding audit with a report being issued on December 2, 2011 that used estimated withholding amounts for the 2008 Illinois 941 second, third, and fourth quarter tax returns and the 2009 Illinois 941 tax return for the first quarter.
8. I have attached copies of the 4 quarterly IL-941 tax returns for 2008 that total withholding was only $4,156.52. We have also attached the 2008 W-3 filed with the Social Security Administration that indicates that the total Illinois withholding was only $4,156.52. The total

wages reported on the W-3 was $148,560.67 which equaled the total compensation reported on line 1 of all 4 quarterly tax returns. In addition, the fourth quarterly tax return for 2008 was marked as the final tax return.

9. I have also attached a copy of the 2008 Form 1120S Tax return which indicates he total wages paid was only $146,915(Line 8 = $37,263 and Schedule A Line 3 = $109,652). I cannot identify the difference of $1,645.67 as reported on the Sub-s Tax return.
10. All forms were prepared by Results One CPA of Elmhurst, IL which has been dissolved.
11. No tax returns were needed to be filed, as the company did not have any employees in 2009 per James Schaaf.

ERRORS

12. It is Petitioners understanding that, through the course of the Audit, the auditor took the position that an estimated withholding tax liabilities for the 2008 Illinois 941 second, third, and fourth quarter tax returns and the 2009 Illinois 941 tax return for the first quarter was appropriate..
13. I request that the audit be reopened, and adjusted, for the estimated withholding reported of $17400.00 in error by the Illinois Department of Revenue to utilize the documents that I am presenting for their review. The actual 2nd quarter liability in 2008 was $1,407.10. The 3rd quarter liability in 2008 was $1,432.54. The 4th quarter liability and final tax return in 2008 was $0. No tax return was needed to be filed for 2009.
14. I also request that all penalties and interest assessed be readjusted based on the actual liability.
15. I wish to work with Theresa Hammond of the Illinois Department of Revenue Collection Department to correct these issues and have establish an installment payment plan for the balance of the liability outstanding.

RELIEF REQUESTED

8. For the reasons stated above, Petitioner requests that the Deficiency, Penalty and Interest be modified to reflect a lesser amount of $14,560.36 in withholding tax, including adjusting the penalty and interest to the appropriate penalty and interest based on the corrected withholding tax.

Respectively submitted,

James R. Schaaf

By:_____

Dated:_____

1081 Sycamore Lane
Bartlett, Il 60103
Cell (847) 561-3109
jim.schaaf@yahoo.com

Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

September 24, 2015

Sean Herbrand, CPA
TAC Services
3217 Charlemagne
St. Charles, IL 60174

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Family Comfort Heating & Cooling
Taxpayer ID: 36-4261637
Notice of Deficiency dated June 19, 2012
Letter ID: CNXXXX944971526

Dear Mr. Herbrand:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above Notice of Deficiency (NOD). Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for the above NOD.

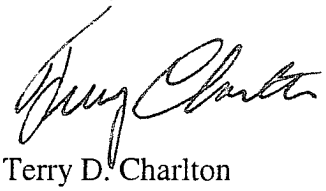
The amount of liabilities at issue for this protest exceeds the statutory amount ($15,000, exclusive of penalties and interest or $15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax

Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,



Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC:vs

cc: Family Comfort Heating & Cooling

Collection Action

Notice of Intent

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

March 23, 2015

Letter ID: L0344302048

JAMES R. SCHAAF
1081 SYCAMORE LN
BARTLETT IL 60103-5654

Taxpayer ID: XXX-XX-9958
1002D Penalty ID: 1780247

FAMILY COMFORT HEATING & COOLI
1081 SYCAMORE LN
BARTLETT IL 60103-5654

Demand for Payment

We intend to issue a levy against your assets unless you pay us.

You must pay us $94,224.17 by April 13, 2015. If you do not, we intend to issue a levy for this amount against your assets without further notice to you.

A levy means we can, by legal authority, take your assets held by someone else. Examples of assets we may levy include your wages, contractual payments, bank accounts, and accounts receivables.

The following pages detail the items that need your immediate attention.

If you have any questions about this notice, please contact us immediately at the address and phone number listed below.

THERESA HAMMOND
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 524-4720 ext. 31020
217 785-2635 fax

For information about
- how to pay
- what you owe
- collection actions

Turn page

Collection Action
Notice of Intent

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

March 23, 2015

Letter ID: L0344302048

JAMES R. SCHAAF
1081 SYCAMORE LN
BARTLETT IL 60103-5654

Taxpayer ID: XXX-XX-9958
1002D Penalty ID: 1780247

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Withholding Income Tax **Account ID: 36-4261637-000**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2004	1,181.27	619.76	1,143.50	0.00	0.00	2,944.53
30-Jun-2004	1,181.27	619.76	1,119.16	0.00	0.00	2,920.19
30-Sep-2004	1,509.81	764.31	1,398.61	0.00	0.00	3,672.73
31-Dec-2004	1,111.89	589.23	1,006.04	0.00	0.00	2,707.16
31-Mar-2005	501.60	320.70	441.04	0.00	0.00	1,263.34
30-Jun-2005	723.30	418.24	617.84	0.00	0.00	1,759.38
30-Sep-2005	833.19	466.61	687.09	0.00	0.00	1,986.89
31-Dec-2005	1,167.21	613.57	925.38	0.00	0.00	2,706.16
31-Mar-2006	501.60	320.70	379.31	0.00	0.00	1,201.61
30-Jun-2006	2,109.78	1,028.30	1,519.86	0.00	0.00	4,657.94
30-Sep-2006	3,663.15	1,711.80	2,492.06	0.00	0.00	7,867.01
31-Dec-2006	3,587.01	1,678.28	2,294.58	0.00	0.00	7,559.87
31-Mar-2007	2,594.07	1,241.38	1,558.68	0.00	0.00	5,394.13
30-Jun-2007	2,349.21	1,133.65	1,316.72	0.00	0.00	4,799.58
30-Sep-2007	2,797.59	1,330.94	1,456.09	0.00	0.00	5,584.62
31-Dec-2007	2,691.90	1,284.45	1,027.82	0.00	(2,598.00)	2,406.17
31-Mar-2008	1,388.34	710.87	619.97	0.00	0.00	2,719.18
30-Jun-2008	4,350.00	2,014.00	1,807.58	0.00	0.00	8,171.58
30-Sep-2008	4,350.00	2,014.00	1,697.94	0.00	0.00	8,061.94
31-Dec-2008	4,350.00	2,014.00	1,585.92	0.00	0.00	7,949.92
31-Mar-2009	4,350.00	2,058.00	1,482.24	0.00	0.00	7,890.24

Total Balance: 94,224.17