

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>DAVID M. KLEIN,</b>	)		
	)		
	)		
v.	)	<b>Case No. 16-TT-14</b>	
	)		
<b>THE ILLINOIS DEPARTMENT</b>	)		
<b>OF REVENUE,</b>	)		
	)		
<b>Respondent.</b>	)		

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**ANSWER TO PETITION**

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

**JURISDICTIONAL STATEMENT**

1. Jurisdiction before the Independent Tax Tribunal is appropriate, as this Petitioner arises from the Assessment and Notice of Intent issued on November 20, 2015, by the Illinois Department of Revenue against Petitioner for an Illinois tax liability in excess of \$15,000.00 in the aggregate.

**ANSWER:** Paragraph 1 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

2. On August 24, 2015, the Department issued Final Notices of Tax Due (Letters ID: CNXXXX8X595368X2, CNXXX13428245922) and a Taxpayer Statement (Letter ID: CNXXX1143X718888) (the “Notices”), proposing an assessment of the following taxes for the following periods, plus penalties and interest:

Letter ID: CNXXX13428245922			
	Liability	Payments/Credit	Unpaid Balance

Tax	5,282.00	0.00	5,282.00
Late Payment Penalty Increase	528.20	0.00	528.20
Interest	145.86	0.00	145.86
<b>Assessment Total</b>	<b>\$6,311.70</b>	<b>\$0.00</b>	<b>\$6,311.70</b>

Letter ID: CNXXX8X595368X2			
	Liability	Payments/Credit	Unpaid Balance
Tax	5,282.00	0.00	5,282.00
Late Payment Penalty Increase	528.20	0.00	528.20
Interest	355.64	0.00	355.64
<b>Assessment Total</b>	<b>\$6,299.54</b>	<b>\$0.00</b>	<b>\$6,299.54</b>

Letter ID: CNXXX1143X718888				
	Tax	Penalty	Interest	Balance
31-July 2014	4,991	698.92	151.34	5,841.26
31-Aug 2014	5,282.00	863.84	145.86	6,311.70
30-Sep 2014	5,282.00	863.84	133.70	6,299.54

Copies of the Notices are attached hereto as Exhibits A, B, and C, and are incorporated herein by reference.

**ANSWER:** The Department states the Notices speak for themselves and admit the Notices are attached to the taxpayer's Petition as Exhibits.

- On November 20, 2015, the Department issued an Assessment and Notice of Intent (Letter ID: L0955972368) determining that Petitioner is personally liable for a penalty of \$18,765.00. (Exhibit D).

**ANSWER:** The Department admits the allegations in Paragraph 3.

#### FACTUAL BACKGROUND

- Petitioner is an individual whose address is 969 Stanford Way, Fairview Heights, Illinois 62208-3795 and whose phone number is (618) 530-4320.

**ANSWER:** The Department admits the allegations in Paragraph 4.

- Petitioner's Social Security Number is omitted from this Petition in accordance with the rules

published by the Illinois Independent Tax Tribunal.

**ANSWER:** Paragraph 5 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

6. Petitioner is a member of DAFR, LLC (“DAFR”).

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 6 and demands strict proof thereof.

7. DAFR’s Taxpayer Identification Number is 46-5250187.

**ANSWER:** The Department admits the allegations in Paragraph 7.

8. Petitioner and Frank Ferrara (“Ferrara”) were the members of DAFR.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 8 and demands strict proof thereof.

9. DAFR operated a restaurant, Gus’s Place, in Fairview Heights, Illinois, from April 2014 through September 2014.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 9 and demands strict proof thereof.

10. On or about June 6, 2014, Ferrara sold all of his interest in DAFR to Petitioner.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and therefore demands strict proof thereof.

11. At all times, Ferrara completely handled the finances, including any taxes owed to the State of Illinois, for DAFR.

**ANSWER:** The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and therefore demands strict proof thereof.

ERROR IN DETERMINATION OF PETITIONER'S LIABILITY

12. Respondent erroneously determined that Petitioner is personally liable for willfully failing to file tax returns and willfully failing to pay taxes due under 35 ILCS 735/3-7 of the Illinois Uniform Penalty and Interest Act (the "Act").

**ANSWER:** The Department denies the allegations in Paragraph 12.

13. Section 3-7(a) provides that an officer or employee..."who has the control, supervision or responsibility of filing returns and making payment..."

**ANSWER:** Paragraph 13 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

14. Petitioner did not have the "control, supervision or responsibility" of filing the tax returns for DAFR or making payments thereupon.

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further, the Department lacks sufficient information to admit or deny the allegations in Paragraph 14 and demands strict proof thereof.

15. Ferrara managed DAFR's operations, prepared all returns and reports, made any payments due, and handled the day-to-day business.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 15 and demands strict proof thereof.

16. A review of the bank records for DAFR shows that Petitioner only signed two checks from DAFR's account during the life of the business.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in

Paragraph 16 and demands strict proof thereof.

17. All other checks from DAFR were signed by Ferrara.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 17 and demands strict proof thereof.

18. Section 3-7(a) of the Act provides imposes a personal liability penalty on an individual “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...”

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

19. Petitioner did not “willfully” fail to file any returns, nor did Petitioner “willfully” fail to make payment to the Department.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

20. Whenever Petitioner received notices from the Department, Petitioner gave Ferrara the notices to handle.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 20 and demands strict proof thereof.

21. Petitioner reasonably believed that Ferrara sufficiently and timely addressed any notices from the Department based on Ferrara’s assurances that he did so.

**ANSWER:** The Department lacks sufficient information to admit or deny the allegations in Paragraph 21 and demands strict proof thereof.

22. If it is determined that Petitioner is personally liable, the amount of tax due is overstated because DAFR's sales were significant lower than estimated by the Department.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the allegations in Paragraph 22.

**WHEREFORE,** the Department respectfully requests this tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflect the Petitioner's liability including interest and penalties;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: February 29, 2016

Respectfully submitted,  
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte  
Ashley Hayes Forte  
Special Assistant Attorney General

Ashley Hayes Forte  
Illinois Department of Revenue  
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CHICAGO, ILLINOIS**

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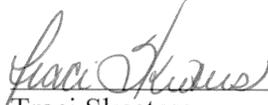
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**AFFIDAVIT OF TRACI SKEETERS  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Collections Bureau's 100% Penalty Unit.
2. My current title is RTS III.
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 6, 8-11, 14-17 and 20-21.

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.

  
\_\_\_\_\_  
Traci Skeeters  
RTS III  
Illinois Department of Revenue

DATED: 2-25-2014