

Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3212, or 312-606-3222 or clutz@hmbllaw.com.

ANSWER: The information contained in paragraph 2 is required by Rule 310(a)(1)(A) 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 2.

3. Petitioner's FEIN is 36-4273732.

ANSWER: The information contained in paragraph 3 is required by Rule 310(a)(1)(A) 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. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: The Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.) and the Retailers' Occupation Tax Act, which are relevant to the legal claims raised in Taxpayer's petition. The term "tax laws" is ambiguous, and therefore the Department denies all other allegations contained in Paragraph 4.

NOTICE

5. On December 30, 2015, Petitioner received three Notices of Deficiency for the Tax Years Ending December 31, 2011, December 31, 2012, and December 31, 2013 ("Years at Issue") in the amount of \$23,836.55, \$33,191.24, and \$24,747.95 respectively. True and

accurate copies of the Notice of Deficiency (“Notices”) are attached hereto as Exhibit A.

ANSWER: Department admits the factual allegations contained in Paragraph 5.

JURISDICTION

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

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding this objection or waiving same, the Department admits the statutes referred to in Paragraph 6 exist and are in effect and states that such statutes speak for themselves.

7. The 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 both Notices.

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 above, the Department admits the sections of the Tribunal Act referred to in Paragraph 7 exist and are in effect and states that such sections of the Tribunal Act speak for themselves.

BACKGROUND

8. Petitioner owns an interest in The Surgery Center at 900 N. Michigan Ave., LLC (“The Surgery Center”), an outpatient surgical center located at 900 N. Michigan Ave., Chicago, IL.

ANSWER: The Department admits the factual allegations contained in Paragraph 8.

9. Petitioner’s members include the President of The Surgery Center (Guita Griffiths); the Chief Operating Officer and Chief Information Officer at The Surgery Center

(Kenny Bozorgi); an investment trust owned jointly by Guita Griffiths and Kenny Bozorgi; and a number of Gift Trusts, for whom the grantor is also a doctor and Medical Director at the Surgery Center (Nader Bozorgi).

ANSWER: The Department admits that Guita Griffiths and Kenny Bozorgi are members of The Surgery Center. The Department admits that certain gift trusts and one investment trust were also members of The Surgery Center. The Department denies that the grantor is a doctor and Medical Director that practices medicine at the Surgery Center (Nader Bozorgi). The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 9 and demands strict proof thereof.

10. Petitioner's managers are Guita Griffiths, Nader Bozorgi, and Mandan Farahati.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10.

11. Guita Griffiths owned a 24.5% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11.

12. Kenny Bozorgi owned a 24.5% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12.

13. Kenny Bozorgi Gift Trust owned a 19.6% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13.

14. The Amanda Bozorgi Gift Trust owned a 2.45% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations contained in Paragraph 14.

15. The Alex Bozorgi Gift Trust owned a 2.45% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15.

16. The Guita Bozorgi Griffiths Gift Trust owned a 19.6% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16.

17. Griffiths Grandchildren Gift Trust owned a 4.9% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17.

18. K&G Investment Trust owned a 2% interest in Petitioner.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18.

19. Petitioner was formed for the sole purpose of holding the members' interests in The Surgery Center in a single entity.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19.

20. Nader Bozorgi is Kenny Bozorgi and Guita Griffiths' father.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20.

21. Each of the gift trusts' income is reportable by Nader Bozorgi.

ANSWER: Department admits that certain gift trusts income are reportable by the joint return of Nader Bozorgi and Mandan Farahati Bozorgi; the Department denies the remaining

factual allegations contained in Paragraph 21.

22. Dr. Nader Bozorgi is Chairman of the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 22.

23. Dr. Nader Bozorgi spends his full time working on site at the Surgery Center, where he maintains an office.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23.

24. His primary duties involve management of clinical staff, including nurses, technicians and other healthcare professionals.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24.

25. Dr. Nader Bozorgi oversees material management and staffing and uses his past experience as a surgeon to enhance and monitor the medical operations at the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25.

26. He is actively engaged in business development and coordinates the Medical Executive Committee meetings as well as other quality control committees.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26.

27. Dr. Kenny Bozorgi is the Chief Operation Officer and Chief Information Officer of the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations contained in Paragraph 27.

28. Dr. Kenny Bozorgi is involved on a daily basis both with medical operations/staffing and with all information technology issues.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 28.

29. He is also involved in the day-to-day running of the center, training and overseeing training of staff and acting as a liaison for physicians who use the Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29.

30. Guita Griffiths is President of the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30.

31. She spends her full time at the center and oversees strategy, financing and business development at the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 31.

32. Trained as an attorney, Guita Griffiths manages all litigation with help of outside attorneys and negotiates all business relationships for the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 32.

33. Guita Griffiths keeps her primary office at the Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 33.

34. During the Years at Issue, Petitioner distributed all of its income to its members.

ANSWER: The Department admits the factual allegations contained in Paragraph 34.

35. The payments Petitioner made to its members were in exchange for their personal services performed for the business

ANSWER: The Department denies the factual allegations contained in Paragraph 35.

36. On its Illinois Income and Replacement Tax Returns for the Years at Issue and in accordance with section 203 (d)(2)(H) of the Illinois Income Tax Act (“Act”), Petitioner deducted the payments made to its members as compensation for service rendered by the members.

ANSWER: The Department admits that Petitioner deducted payments made to its members; the Department denies the remaining allegations contained in Paragraph 36 and further states that it contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

37. On audit, the Department disallowed Petitioner’s deduction for compensation paid for services rendered by the members virtually in its entirety.

ANSWER: The Department admits the factual allegations contained in Paragraph 37.

38. As a result of the disallowance of the services rendered deduction, the Department increased Petitioner’s net income to \$1,240,413 for the Tax Year Ending December 31, 2011.

ANSWER: The Department admits the factual allegations contained in Paragraph 38.

39. In accordance with the disallowance, the Department assessed Replacement Tax against Petitioner in the amount of \$18,606, plus penalties and interest for the 2011 tax year.

ANSWER: The Department admits the factual allegations contained in Paragraph 39.

40. For the Tax Year Ending December 31, 2012, the Department increased Petitioner's net income to \$1,756,294 as a result of the disallowance of the services rendered deduction.

ANSWER: The Department admits the factual allegations contained in Paragraph 40.

41. In accordance with the disallowance, the Department assessed Replacement Tax against Petitioner in the amount of \$26,344, plus penalties and interest.

ANSWER: The Department admits the factual allegations contained in Paragraph 41.

42. For the Tax Year Ending December 31, 2013, the Department increased Petitioner's net income to \$1,318,502 as a result of the disallowance of the services rendered deduction.

ANSWER: The Department admits the factual allegations contained in Paragraph 42.

43. In accordance with the disallowance, the Department assessed Replacement Tax against Petitioner in the amount of \$19,778, plus penalties and interest.

ANSWER: The Department admits the factual allegations contained in Paragraph 43.

COUNT I

Petitioner is Entitled to A Deduction for the Compensation Paid To its Members for Services Rendered

44. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 43, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 43 as if fully set forth herein.

45. The Act allows a partnership to deduct "[a]ny income of the partnership which

constitutes personal service income as defined in Section 1348(b)(1) of the Internal Revenue Code (as in effect December 31, 1981) or a reasonable allowance for compensation paid or accrued for services rendered by partners to the partnership, whichever is greater.” 35 ILCS 5/203(d)(2)(H).

ANSWER: Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 45 and demands strict proof thereof.

46. Internal Revenue Code Section 1348, as in effect on December 31, 1981, provides that “personal service income” consist of “[a]ny income which is earned income within the meaning of section 401(c)(2)(C) or section 911(b) or which is an amount received as a pension or annuity which arises from an employer-employee relationship or from tax deductible contributions to a retirement plan.”

ANSWER: Paragraph 46 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 46 and demands strict proof thereof.

47. Internal Revenue Code section 911(b), as in effect on December 31, 1981, provided that the term “earned income” means wages, salaries, or professional fees, and other amounts received as compensations for personal services actually rendered, but does not include that part of compensation derived by the taxpayer for personal profits rather than a reasonable allowance as compensation for services actually rendered.

ANSWER: Paragraph 47 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 47 and demands strict proof thereof.

48. The question of what constitutes reasonable compensation for services rendered to a business is a one of fact. *Lydia E. Pinkham Medicine Co. v. Commissioner*, 128 F. 2d 986, 990 (1st Cir. 1942).

ANSWER: Paragraph 48 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 48 and demands strict proof thereof.

49. For payments to partners to be considered reasonable compensation for services rendered, it must be the intent of the business to compensate the partners for their services. *Whitcomb v. Commissioner*, 733 F.2d 1991 (1st Cir. 1984).

ANSWER: Paragraph 49 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 49 and demands strict proof thereof.

50. The exclusive source of Petitioner's income is the services performed by Kenny Bozorgi, Guita Griffiths, and Nader Bozorgi.

ANSWER: The Department denies the factual allegations contained in Paragraph 50. ???

51. The payments made to Kenny Bozorgi, Guita Griffiths, and Nader Bozorgi constitute reasonable compensation for services rendered.

ANSWER: The Department denies the factual allegations contained in Paragraph 51.

52. Petitioner intended to compensate Kenny Bozorgi for his role as Chief Operating Officer and Chief Information Officer of The Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 52.

53. Petitioner intended to compensate Guita Griffiths for her role as President of

The Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 53.

54. Petitioner intended to compensate Nader Bozorgi for his role as Chairman of The Surgery Center.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 54.

55. The compensation Kenny Bozorgi, Guita Griffiths, and Nader Bozorgi ranged between \$1,349,288 and \$1,793,156, cumulatively, in any given tax year and is well within the realm of reasonable compensation for the executive staff of a health care business.

ANSWER: The Department denies the factual allegations contained in Paragraph 55.

56. Because the compensation paid to Kenny Bozorgi, Guita Griffiths, and Nader Bozorgi constitutes reasonable compensation for services performed, Petitioner was entitled to deduct these payments from its income pursuant to Act section 203(d)(2)(H).

ANSWER: The Department denies the factual allegations contained in Paragraph 56.

57. Because Petitioner was entitled to deduct the payments made to Kenny Bozorgi, Guita Griffiths, and Nader Bozorgi, the Notices should be withdrawn and cancelled.

ANSWER: The Department denies the factual allegations contained in Paragraph 57.

WHEREFORE, the Department respectfully requests this Tribunal to:

- (a) deny each prayer for relief in Count I of the petition;
- (b) find that the Petitioner improperly deducted from its income payments made to its members for personal services;
- (c) find that the Notices are valid;
- (d) enter judgment in favor of the Department and against the Petitioner; and

(e) grant any further relief this Tribunal deems just and appropriate.

COUNT II

All Late Payment Penalties Should be Abated Based on Reasonable Cause

58. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 57, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 57 as if fully set forth herein.

59. In its Notices, Defendants assessed late payment penalties in an amount totaling \$12,945.60.

ANSWER: The Department admits the factual allegations contained in Paragraph 59.

60. Illinois law provides that late payment penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS §734-8.

ANSWER: Paragraph 60 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 60 and demands strict proof thereof.

61. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 61 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations in paragraph 61 and demands strict proof thereof.

62. A taxpayer will be considered to have made a good faith effort to determine and

pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations in paragraph 62 and demands strict proof thereof.

63. Petitioner reasonably deducted the income that it paid to its members for services rendered.

ANSWER: The Department denies the factual allegations contained in Paragraph 63. ???

64. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined its Illinois replacement tax liability.

ANSWER: The Department denies the factual allegations contained in Paragraph 64. ???

65. The Department's determination that Petitioner owes penalties on late payment of tax is not support by law or fact.

ANSWER: The Department denies the factual allegations contained in Paragraph 65. ???

WHEREFORE, Department respectfully requests this Tribunal to:

- (a) deny each prayer for relief in Count II of the petition;
- (b) find that the Petitioner did not exercise ordinary business care and prudence when it deducted from its income payments made to its members for personal services ;
- (c) find that the Notices correctly reflect the Petitioner's Illinois income tax assessment, including penalties and interest;
- (d) enter judgment in favor of the Department and against the Petitioner; and
- (e) grant any further relief this Tribunal deems just and appropriate.

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

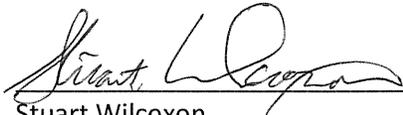
900 NORTH EQUITY HOLDINGS LLC,)	
)	
Petitioner,)	16 TT 40
v.)	Judge Brian F. Barov
)	
THE STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

**AFFIDAVIT OF STUART WILCOXON
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

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

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. An audit uncovered a liability for 900 North Equity Holdings LLC for the period 12/31/11 through 12/31/13 inclusive.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 9-19; 22-33; and 52-54.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



Stuart Wilcoxon
Revenue Auditor III
Illinois Department of Revenue
DATED: April 28, 2016