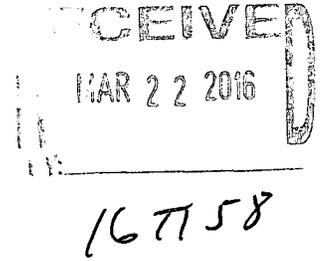


**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

NEVENKA BOROJA,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



PETITION

Petitioner, Nevenka Boroja (“Petitioner”), by and through her attorneys, The Law Office of James E. Dickett, Ltd, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner is an individual who can be contacted at 10322 Golden Arch, St. John, Indiana, 46373, and can be reached at 773-710-1921.
2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.
3. Petitioner’s 1002(d) Penalty ID is 2380660.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement of Illinois tax laws. 20 ILCS 5/5-15.

NOTICE

5. On or about August 12, 2015, the Department issued a personal liability assessment to Petitioner for the unpaid Illinois withholding tax of Optimus Personnel Inc. for approximately \$21,580. The Department's demand for payment regarding the Notice is attached hereto as Exhibit 1.

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.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner obtained a late discretionary hearing from the Department dated March 11, 2016 (copy attached as Exhibit 2), and then timely filed this Petition within 60 days of the Department's letter granting the late discretionary hearing for Petitioner.

BACKGROUND

8. Petitioner is a former corporate officer of Optimus Personnel Inc. that was 100% owned and 100% operated by Petitioner's former boyfriend who turned out to be a loser.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois payroll tax for the corporation during the tax periods at issue because the corporation was 100% owned and 100% operated by someone else.

COUNT I

Petitioner is not a responsible officer who failed to pay the Illinois payroll tax, penalties, and interest of the corporation.

10. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 9, inclusive, hereinabove.

11. A corporate officer who does not have control or supervision for filing or paying Illinois payroll tax is not personally liable for the corporation's debt. 35 ILCS 5/1002(d).

12. Petitioner was a corporate officer who did not have control, supervision, or responsibility for filing Illinois payroll tax returns or making Illinois payroll tax payments and therefore is not personally liable for the corporation's unpaid taxes.

13. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the Illinois payroll tax of the corporation.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid payroll tax, penalties, and interest of the corporation because Petitioner did not have control, supervision, or responsibility for filing the tax returns or making the tax payments; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and cancels the Notice.

COUNT II

Petitioner did not willfully fail to pay the Illinois payroll tax, penalties, and interest of the corporation.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. A corporate officer who does not willfully fail to pay the corporation's Illinois payroll tax is not personally liable for the unpaid sales tax, penalties, and interest. 35 ILCS 5/1002(d).

16. Petitioner was a corporate officer who did not willfully fail to pay the Illinois payroll tax, penalties, and interest and therefore is not personally liable for such amounts because she had nothing to do with nor any knowledge regarding the operations of the business including taxes.

17. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the Illinois payroll tax, penalties, and interest of the corporation.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid Illinois payroll tax, penalties, and interest of the corporation because Petitioner did not willfully fail to pay such amounts;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) enters judgment in favor of Petitioner and against the Defendants.

COUNT III

The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate Illinois payroll taxes.

18. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 17, inclusive, hereinabove.

19. The Illinois statute regarding personal liability assessments improperly defines unpaid corporate taxes to include penalties and interest. 35 ILCS 735/3-7 and 35 ILCS 5/1002(d).

20. The intent of Illinois statute regarding personal liability assessments for unpaid corporate taxes is to allow the state to pursue responsible, willful corporate officers for unpaid corporate taxes that were collected “in trust” for the state.

21. The unpaid corporate Illinois payroll tax penalties and interest contained in the Notice at issue were not collected “in trust” for the state.

22. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of the corporation is not supported by law.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

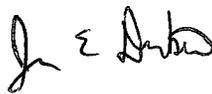
- (a) finds and declares that Petitioner is not personally liable for the unpaid Illinois payroll tax penalties and interest of the corporation because such amounts were not collected “in trust” for the state;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and cancels the Notice.

Thank you for considering this Petition.

Respectfully submitted,

Nevenka Boroja,
Petitioner

By:



One of Petitioner’s Attorneys

Date:

3-16-16

James E. Dickett
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)
jdickett@aol.com

Collection Action
Assessment and Notice of Intent

Exhibit 1



#BWNKMGV
#CNXX X132 2419 1684#
NEVENKA BOROJA
10332 S AVENUE H
CHICAGO IL 60617-6050

October 20, 2015



Letter ID: CNXXX13224191684

Taxpayer ID: XXX-XX-2092

1002D Penalty ID: 2380660



OPTIMUS PERSONNEL INC
6124 DELAWARE ST
MERRILLVILLE IN 46410-3058

You now owe a personal liability penalty.

By November 3, 2015, pay us \$21,580.35, which is unpaid liability of OPTIMUS PERSONNEL INC. We have determined that you are personally liable for this amount due to your status as a responsible officer, partner, or individual of OPTIMUS PERSONNEL INC.

The enclosed statement details the items you owe.

Illinois law (35 ILCS 5/1002(d)) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

If we do not receive this payment, we intend to take collection action against you personally to collect this debt. Collection action can include the seizure and sale of your assets and levy of your wages and bank accounts.

Your payment must be guaranteed (*i.e.*, cashier's check, money order) and made payable to the Illinois Department of Revenue. Send or bring it to us at the address below.

DMITRI CORNELLIER
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31613
217 785-2635 fax

For information about

- > payments
- > bankruptcy
- > collection actions



Collection Action

Assessment and Notice of Intent



October 20, 2015

#BWNKMGV
 #CNXX X132 2419 1684#
 NEVENKA BOROJA
 10332 S AVENUE H
 CHICAGO IL 60617-6050



Letter ID: CNXXX13224191684

Taxpayer ID: XXX-XX-2092
 1002D Penalty ID: 2380660



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: 36-4370732-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2001	133.97	5.36	188.80	0.00	0.00	328.13
30-Jun-2001	133.97	5.36	183.18	0.00	0.00	322.51
30-Sep-2001	133.97	5.36	178.45	0.00	0.00	317.78
31-Dec-2001	133.97	5.36	173.95	0.00	0.00	313.28
31-Mar-2002	120.67	4.83	153.38	0.00	0.00	278.88
30-Jun-2002	120.67	4.83	149.73	0.00	0.00	275.23
30-Sep-2002	120.67	4.83	146.08	0.00	0.00	271.58
31-Dec-2002	120.67	4.83	142.02	0.00	0.00	267.52
31-Mar-2003	107.36	4.29	121.92	0.00	0.00	233.57
30-Jun-2003	107.36	34.29	117.59	0.00	0.00	259.24
30-Sep-2003	107.36	34.29	113.27	0.00	0.00	254.92
31-Dec-2003	107.36	77.23	109.62	0.00	0.00	294.21
31-Mar-2004	159.23	100.06	159.64	0.00	0.00	418.93
30-Jun-2004	159.23	100.06	156.36	0.00	0.00	415.65
30-Sep-2004	159.23	100.06	153.19	0.00	0.00	412.48
31-Dec-2004	159.23	100.06	149.74	0.00	0.00	409.03
31-Mar-2005	1,529.86	773.13	1,399.98	0.00	0.00	3,702.97
30-Jun-2005	1,529.86	773.13	1,359.16	0.00	0.00	3,662.15
30-Sep-2005	1,529.86	773.13	1,313.39	0.00	0.00	3,616.38
31-Dec-2005	1,529.86	773.13	1,264.52	0.00	0.00	3,567.51
31-Mar-2006	211.37	123.00	167.43	0.00	0.00	501.80
30-Jun-2006	211.37	123.00	159.69	0.00	0.00	494.06
30-Sep-2006	211.37	123.00	151.16	0.00	0.00	485.53
31-Dec-2006	211.37	123.00	142.64	0.00	0.00	477.01
Total Balance:						21,580.35

Exhibit 2



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

March 11, 2016

James E Dickett
The Law Office of James E. Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Nevenka Boroja
Collection Action, Assessment and Notice of Intent, dated August 12, 2015
Letter ID: L1309186832
1002(d) Penalty ID: 2380660

Dear Mr. Dickett:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request on behalf of Nevenka Boroja for a late discretionary hearing for the above Notice. I believe that it is appropriate to grant this late discretionary hearing request for Nevenka Boroja for the above Notice.

The amount of liability 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,

A handwritten signature in cursive script, appearing to read "Terry D. Charlton".

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

TDC