

ILLINOIS DEPARTMENT OF REVENUE

ROBERT B. FLANNERY, Jr.
Petitioner.

)

NPL ID 1200822

167164

PETITION FOR
DETERMINATION OF PERSONAL LIABILITY

RECEIVED
MAR 31 2016
BY: [Signature]

NOW COMES the Petitioner, **ROBERT B. FLANNERY, Jr.**, by and through his attorney, Phillip E. Couri of the law firm of Couri and Couri, and in petitioning the Illinois Independent Tax Tribunal for relief from the determination of tax liability for non-payment of sales/use taxes by White Way Sign and Maintenance Company, Inc., states as follows:

1. The name and address and phone number of the Petitioner is Robert B. Flannery, Jr., 601 Raleigh Road, Glenview, Illinois, 60025, 847-724-3352.
2. Petitioner, Robert B. Flannery, Jr., is represented by Phillip E. Couri of the law firm of Couri and Couri, 552 Lincoln Avenue, Winnetka, Illinois, 60093, 847-446-7372, pec@courilaw.com.
3. White Way Sign and Maintenance Company Inc., FIN # 36-2694048.
4. Petitioner, Robert B. Flannery, Jr. received a Notice of Determination of Personal Liability, a copy of which is attached hereto as Exhibit A.
5. The liability assessed against Petitioner, is for sales/use tax and E911 surcharges for the period June 30, 2014 through January 31, 2015
6. Petitioner objects to the statutory notice issued against him for the non-payment of sales/use taxes for the following reasons:
 - a) Petitioner was the President and CEO of the tax payer. His responsibilities, as senior management, he was in charge of all labor negotiations and customer relations, and interfaced with the various trouble shooting issues of the overall management of the company.
 - b) All taxes of every kind, including sales and use taxes, dealings with the various tax agencies, were supervised by the accounting department of the

tax payer. Assurances were given Petitioner on an ongoing basis that all necessary taxes were paid to the various taxing bodies.

- c) Petitioner was neither directly nor indirectly involved with the accounting department.
- d) While company policy required that there be two (2) authorized signatures on every company check (payroll checks were outsourced to a processing company), Petitioner represents that he was never responsible for or in charge of the payment of any bills, payroll or taxes of any kind.
- e) Petitioner further represents that while he may have signed a check for such liability, he would have no way of knowing whether the payment for which the check was written was accurate or complete.
- f) The tax payer continually had a cash shortfall for the last several years. Petitioner and his family, in an attempt to keep the company functioning, infused over \$13,000,000.00 of family funds into the company for its operational needs.
- g) In addition, in order to alleviate or ameliorate the continual cash shortfall, the Petitioner voluntarily did not take a salary. At the time that the company went into bankruptcy, Petitioner was owed in excess of \$214,000.00 in back wages.

7. Illinois law 35 ILCS 735/3-7 with regard to personal liability and penalty for employees or officers of the company states,

“Any officer or employee of any tax payer subject to the provisions of the tax act, administered by the department, who has the control, supervision, or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that act, and 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, shall be personally liable for a penalty equal to the amount of tax unpaid by the tax payer, including interest and penalties thereon....”
(emphasis added)

8. Petitioner did not have control, supervision, or responsibility for filing returns or making payments for taxes owed.

9. Petitioner had no knowledge of whether the informational returns or the taxes payable to the various taxing agencies, were paid and was never informed that any taxes were due and owing.
10. In order for the Petitioner to be personally liable, under the Act there had to be a willingness on his part to consciously refuse or have knowledge of the fact that taxes were not paid and the conduct, on the Petitioner's part, had to be intentional. In re *Stoecker*, Bankr.N.D.Ill.1996 202 B.R.429.
11. The Petitioner has represented that he had no knowledge of whether any taxes were due and owing; and, that it was the responsibility of the accounting department which he did not oversee. In order for the Petitioner to be responsible, under the statute, the State is required to show that Petitioner knew the taxes were due and he was instrumental in the failure to pay same, *Department of Revenue v. Corrosion Systems Inc. (1989)* 133 Ill.Dec. 647; 185 Ill. App. 3d 580; 541 N.E.2d 858
12. The mere fact that Petitioner was the President and Chief Executive Officer of the tax payer is not sufficient to subject him to be a responsible person for liability under the Illinois Retailer's Occupational Tax Act. He would have had to have some exercise or control over the responsibility of payment of the taxes. In re *Stoecker Supra*.
13. Even though the Petitioner was a director and shareholder of the company, Petitioner has previously represented that he was not responsible for either filing the various tax returns or the payment of the taxes due. Under the law in this jurisdiction he cannot be a person who has willfully failed to pay the taxes. *McLean v. Department of Revenue (2001)* 260 Ill.Dec. 382; 326 Ill. App. 3d 667; 761 N.E.2d 226
14. Finally, the fact that the Petitioner and his family ultimately chose to cease subsidizing the corporation's financial obligations by infusion of personal funds, does not constitute a misdirection or willful withholding of the tax liability incurred by the tax payer. In re *Montalbano (2013)* 486 B.R.436

WHEREFORE, your Petitioner **ROBERT B. FLANNERY, Jr.**, respectfully requests that the determination of the Illinois Department of Revenue that he is personally liable for the unpaid sales, use and E911 taxes be dismissed against him.

Respectfully submitted,
ROBERT B. FLANNERY, Jr.

By: 
One of His Attorneys

Phillip E. Couri
Couri and Couri
552 Lincoln Avenue
Winnetka, Illinois 60093
847-446-7372
Attorney No. 22363

February 3, 2016



Letter ID: L1285539728

ROBERT B. FLANNERY
601 RALEIGH RD
GLENVIEW IL 60025-4379

Taxpayer ID: XXX-XX-9945
NPL Penalty ID: 1200822



WHITE WAY SIGN & MAINTENANCE C
461 KINGSTON CT
MOUNT PROSPECT IL 60056-6068

**We have determined you are personally liable
for a penalty of \$18,664.53.**

The penalty is equal to the amount of unpaid liability of WHITE WAY SIGN & MAINTENANCE C, due to your status as a responsible officer, partner, or individual of WHITE WAY SIGN & MAINTENANCE C.

Illinois law (35 ILCS 735/3-7) 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.

Pay us \$18,664.53. 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.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this liability is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is April 3, 2016. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement 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.

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

217 782-9904 ext. 31609
217 785-2635 fax

For information about
› how to pay
› submitting proof
› collection actions

Turn page

Ex A

To avoid this collection action

Pay

Your payment must be guaranteed (i.e. cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review.

You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, etc.
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action
Assessment and Notice of Intent



February 3, 2018



Letter ID: L1285539728

ROBERT B. FLANNERY
 601 RALEIGH RD
 GLENVIEW IL 60025 4379

Taxpayer ID: XXX-XX-9945
 NPL Penalty ID: 1200822



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge

Account ID: 0154-8007

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2014	2,118.00	311.80	15.14	-	(2,342.88)	102.08
31-Jul-2014	2,207.00	320.70	96.49	-	-	2,624.19
31-Aug-2014	2,042.00	304.20	83.73	-	-	2,429.03
30-Sep-2014	2,815.00	381.50	108.95	-	-	3,305.45
31-Oct-2014	2,470.00	347.00	89.32	-	-	2,906.32
30-Nov-2014	2,132.00	313.20	71.52	-	-	2,516.72
31-Dec-2014	2,189.00	318.90	68.22	-	-	2,576.12
31-Jan-2015	1,864.00	286.40	53.34	-	-	2,203.74

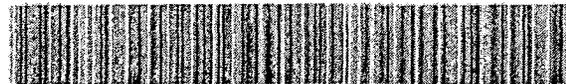
IDOR-SP-NPL (N4/13/07)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L1285539728
 ROBERT B. FLANNERY

Total amount due: \$18,664.53

Write the amount you are paying below.

Mail this voucher and your payment to:
 ILLINOIS DEPARTMENT OF REVENUE
 PO BOX 19035
 SPRINGFIELD IL 62794-9035

\$ _____
 Write your Account ID on your check.