

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>ROBERT B. FLANNERY, JR.,</b>	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 16 TT 64</b>
<b>ILLINOIS DEPARTMENT</b>	)	<b>Judge Brian F. Barov</b>
<b>OF REVENUE,</b>	)	
<b>Respondent</b>	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition 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.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

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](mailto:pec@courilaw.com).

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. White Way Sign and Maintenance Company Inc., FIN # 36-2694048.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. Petitioner, Robert B. Flannery, Jr. received a Notice of Determination of Personal Liability, a copy of which is attached hereto as Exhibit A.

ANSWER: The Department admits the allegations in paragraph 4 of the petition.

5. The liability assessed against Petitioner, is for sales/use tax and E911 surcharges for the period June 30, 2014 through January 31, 2015.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

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.

ANSWER: The Department admits that Petitioner was the President and CEO of the tax payer. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 6a of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6b of the petition and therefore neither admits or denies said allegations.

c) Petitioner was neither directly nor indirectly involved with the accounting department.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6c of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The allegations in paragraph 6d of the petition are vague and conclusory and are denied.

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.

ANSWER: The allegations in paragraph 6e of the petition are vague and conclusory and are denied.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6f of the petition and therefore neither admits or denies said allegations.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6g of the petition and therefore neither admits or denies said allegations.

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)

ANSWER: The allegations in paragraph 7 of the petition consist primarily of legal conclusions and are denied.

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

ANSWER: The allegations in paragraph 8 of the petition consist primarily of legal and / or factual conclusions and are denied.

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.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

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.111.1996 202 B.R.429.

ANSWER: The allegations in paragraph 10 of the petition consist primarily of legal conclusions and are denied.

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

ANSWER: The allegations in paragraph 11 of the petition consist primarily of legal and / or factual conclusions and are denied.

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.*

ANSWER: The allegations in paragraph 12 of the petition consist primarily of legal conclusions and are denied.

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

ANSWER: The allegations in paragraph 13 of the petition consist primarily of legal and / or factual conclusions and are denied.

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

ANSWER: The allegations in paragraph 14 of the petition consist primarily of legal and / or factual conclusions and are denied.

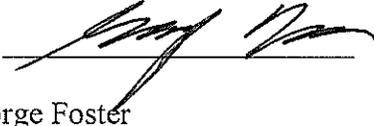
**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
  - b. ordering judgment in favor of the Department and against the Petitioner; and  
granting such further relief as this Tribunal deems appropriate under the  
circumstances.
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Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

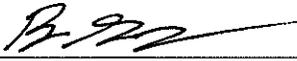
By: \_\_\_\_\_

  
George Foster  
Special Assistant Attorney General

George Foster  
Illinois Department of Revenue  
100 W. Randolph Street, Level 7  
Chicago, Illinois 60601  
312-814-3493  
[george.foster@illinois.gov](mailto:george.foster@illinois.gov)

VERIFICATION

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.

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\_\_\_\_\_

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

<b>ROBERT B. FLANNERY, JR.</b>	)	
	)	
v.	)	16-TT-64
	)	<b>Judge Brian F. Barov</b>
<b>STATE OF ILLINOIS</b>	)	
<b>DEPARTMENT OF REVENUE</b>	)	

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**AFFIDAVIT OF BRIAN GOLDBERG  
PURSUANT TO TRIBUNAL RULE 5000.310(b) (3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
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 ( a) (b) (c) (f) (g) and 9.

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.

  
\_\_\_\_\_  
Brian Goldberg  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 5/3/16