

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JOSEPH C. WICKER,)	
Petitioner,)	
)	
)	
v.)	Case No. 16-TT-87
)	
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

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:

INTRODUCTION

1. The Notice was issued on March 10, 2016 assessing \$83,884.00 in tax, \$18,455.00 in penalties and \$7,585.33 in interest, totaling a liability of \$109,924.33. A copy of the notice (“Exhibit A”) is attached hereto.

ANSWER: The Department admits that it issued a Notice of Tax Liability to the Petitioner on March 10, 2016. A copy of the Notice is required by Section 310(a)(1)(D) of the Tax Tribunal Regulations and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

2. The Notice arose out of an examination of the Ninth Circle, Inc., a corporation formed on December 20, 2001 and involuntarily dissolved on May 9, 2008. A copy of the Corporation File Detail Report (“Exhibit B”) is attached hereto.

ANSWER: The Department admits that it conducted an audit of the Ninth Circle, Inc. The Department further admits that a document entitled “Corporation File Detail Report” is attached to the Petition and labelled as “Exhibit B.” The Department lacks sufficient information to either admit or deny the remaining allegations in Paragraph 2 and, therefore, demands strict proof thereof.

3. Petitioner is an individual and resides at 204 East Division Street, Manteno, Illinois 60950-1827. His telephone number is (708) 473-4275.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 3.

4. The examination was for the reporting period of July 1, 2009 through June 30, 2015. Ninth Circle, Inc. was involuntarily dissolved on May 9, 2008, over a year prior to the commencement of the examination.

ANSWER: The Department admits that it audited Ninth Circle, Inc. for the period of July 1, 2009 through June 30, 2015. The Department further admits that Ninth Circle was involuntarily dissolved. The Department lacks sufficient information to either admit or deny the remaining allegations in Paragraph 4 and, therefore, demands strict proof thereof.

5. The assessment is presumably under Section 3-7 Personal Liability Penalty of the Uniform Penalty and Interest Act.

ANSWER: The Department denies the allegations in Paragraph 5.

BACKGROUND AND RELEVANT FACTS

6. Ninth Circle, Inc. was incorporated on December 20, 2001. Petar J. Caljkusic was the sole incorporator. Ninth Circle, Inc. was authorized to issue 10,000 shares of no par stock and issued shares for a total consideration of \$1,000.00. All 1,000 shares were issued to Petar J. Caljkusic.

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

7. At the initial shareholder's meeting, Petar J. Caljkusic elected himself, Charles J. Wicker and Joseph C. Wicker as directors. The Directors then convened a meeting to elect officers. Those minutes were signed by Petar J. Caljkusic; the other signature lines were blank.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 7 and, therefore, demands strict proof thereof.

8. At the shareholder meeting, Petar J. Caljkusic was elected President; Joseph C. Wicker, Vice President and Charles J. Wicker as Secretary. This was the only corporate meeting recorded in the minute book.

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

9. This was the only corporate meeting recorded in the minute book and the only meeting that Petitioner attended.

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

10. Ninth Circle, Inc. was in the business of repairing automobiles up until the time it was involuntarily dissolved.

ANSWER: The Department admits that Ninth Circle, Inc. was in the business of repairing automobiles

11. Petar J. Caljkusic operated the automobile business from that date through the current date.

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

12. Petitioner was not a trained mechanic nor had experience in the automotive repair industry.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and, therefore, demands strict proof thereof.

13. Petitioner was never employed by Ninth Circle, Inc. nor received any form of compensation or benefit. Petitioner was not involved in the operations nor had any power to control the financial decisions of the business.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 13 and, therefore, demands strict proof thereof.

14. Petitioner worked as a landscape contractor. He owned and operated Wicker Landscaping from 2004 to the present day.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 14 and, therefore, demands strict proof thereof.

15. The Department of Revenue never completed its examination. The assessment was based on 50 % of the gross receipts for the sample period multiplied by the tax rate and extrapolated for the period under examination.

ANSWER: The Department denies that its audit was not completed. The Department admits the remaining allegations in Paragraph 15.

16. The Department did not exclude bank deposits from sources other than sales.

ANSWER: The Department denies the allegations in Paragraph 16.

16. The Department did not examine sales invoices to determine the amount of personal property transferred in connection with sale of service.

ANSWER: The Department admits that it was unable to examine sales invoices because the taxpayer failed to provide them to the Department.

17. Petar J. Caljkusic paid sales tax to his suppliers on the purchase price of personal property transferred to customers. The Department did not examine invoices from suppliers to determine the amount of sales tax paid to suppliers.

ANSWER: The Department lacks sufficient information to either admit or deny the allegation in Paragraph 17 that Petar J. Caljkusic paid sales tax to his suppliers on the purchase price of personal property transferred to customers and, therefore, demands strict proof thereof. The Department admits that it was unable to examine invoices from suppliers because the taxpayer failed to provide them to the Department.

ERROR I

18. The Department of Revenue did not establish a prima facie case that Joseph C. Wicker is a responsible party against whom a penalty equal to the total amount of tax[,] interest[,] and penalty can [be] assessed. Section 3-7 of the Uniform Penalty and Interest Act sets certain requisites, which if met, establishes the Department's prima facie case. Those requisites require the individual to be an officer or employee of a taxpayer subject to the provisions of a Tax Act administered by the Department who has control, supervision, or

responsibility of filing returns and making payment of any trust tax imposed in accordance with that Act. As of the time of the inception of the audit, there was no such taxpayer. Ninth Circle, Inc. had been involuntarily dissolved over a year before the commencement of the audit. The Department audited the wrong party. In order to establish a prima facie case, the Department must audit the requisite taxpayer, establish liability and allege that Joseph C. Wicker was an officer or employee of the taxpayer properly under audit.

ANSWER: The Department admits the existence, force and effect of the Uniform Penalty and Interest Act (35 ILCS 735/3-1 *et seq.*) and states that the statute speaks for itself. The Department denies it proceeded against Petar J. Caljkusic pursuant to the Uniform Penalty and Interest Act. The Department denies the remaining allegation in Paragraph 18.

ERROR II

19. The assessment of interest and penalties are an amount in excess of the amount of tax, if any, which may be owed. The assessment against third parties is limited to the actual amount of tax, interest, and penalty. The Department failed to complete its audit and as such, it is impossible to determine which tax, if any, is due from Ninth Circle, Inc. Until that is determined, there can be no assessment against responsible parties.

ANSWER: The Department denies the allegations in Paragraph 19.

ERROR III

20. Joseph C. Wicker is not a responsible party. He did not own stock, work, nor earn money from Ninth Circle, Inc. and did not keep records for Ninth Circle, Inc. He had no ability to determine whether bills were paid or not paid. He had no power to control neither the financial decisions of the business nor the operations of the business. In short, he did not have the ability [to] do anything that would deem him to be a responsible party.

ANSWER: The first sentence of Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore it does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department lacks sufficient information to either admit or deny the remaining allegations in Paragraph 20 and, therefore, demands strict proof thereof.

WHEREFORE, the Department respectfully requests this tribunal deny the Petitioner's request that the Notice issued by the Department be modified or cancelled.

Respectfully submitted,

Lisa Madigan
Attorney General of the State of Illinois

By: s/ Paula M. Hunter
Paula M. Hunter
Special Assistant Attorney General
Illinois Department of Revenue
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601
(312) 814-1633

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

PETAR CALJKUSIC,
Petitioner,

v.

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**
Respondent.

)
)
)
)
)
)
)
)
)
)
)

Case No. 16-TT-102

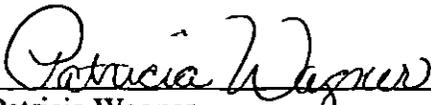
AFFIDAVIT OF PATRICIA WAGNER
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF ILLINOIS
COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Patricia Wagner, 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.
3. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 2, 4, 6, 7, 8, 10, and 14.

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.



Patricia Wagner
Revenue Auditor,
Illinois Department of Revenue
100 West Randolph Street, Level 7-900
Chicago, Illinois 60601

