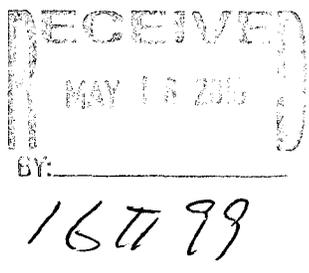


**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

SHIRLEY A. SCOTT, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) STATE OF ILLINOIS )  
 ) DEPARTMENT OF REVENUE, )  
 )  
 ) Defendant. )

No.



**PETITION**

Petitioner, Shirley A. Scott (“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 lives at 811 Tappingo Street, Naperville, Illinois, 60540, and can be reached at 312-735-3881.
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](mailto:jdickett@aol.com).
3. Petitioner’s NPL Penalty ID is 5290053.
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.

## NOTICE

5. On March 24, 2016, the Department issued a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) (“Notice”) to Petitioner in the amount of \$43,668.61, which covers the tax periods ending December 31, 2011 to June 30, 2013. The tax portion of the assessment exceeds \$15,000. 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 timely filed this Petition within 60 days of the Notice.

## BACKGROUND

8. Petitioner was the owner of Bubba’s BBQ Inc. (defunct) formerly located in University Park, Illinois.

9. The NPL at issue herein is based on unpaid sales tax for the corporation, but the Petitioner was an absentee owner who did not operate the business and a portion of the NPL is based on estimated returns prepared by the Department after the business closed for tax periods after the business closed (see Exhibit 1, pages 2-3).

## COUNT I

### **Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of Bubba’s BBQ Inc..**

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, supervision, or responsibility for filing sales tax returns or making sales tax payments is not personally liable for the corporation's unpaid sales tax, penalties, and interest. 35 ILCS 35 ILCS 735/3-7.

12. Petitioner was a corporate officer of Bubba's BBQ Inc. who did not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments and therefore is not personally liable for the corporation's unpaid sales tax, penalties, and interest because she reasonably relied on a daily manager (her husband – now separated) to run the business.

13. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales 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 sales tax, penalties, and interest of the corporation because Petitioner did not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments;
- (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 against the Defendants.

## **COUNT II**

### **Petitioner did not willfully fail to pay the sales tax, penalties, and interest of Bubba's BBQ Inc.**

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 sales tax is not personally liable for the corporation's unpaid sales tax, penalties, and interest. 35 ILCS 35 ILCS 735/3-7.

16. Petitioner was a corporate officer who did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because she did not have knowledge of the unpaid taxes until after the business closed and until then she had reasonably relied on her husband (now separated) to operate the business.

17. Contrary to the Department's determination, Petitioner was not a responsible officer who willfully failed to pay the sales tax, penalties, and interest of Bubba's BBQ Inc.

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

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales 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; and
- (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 sales 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 sales tax to include penalties and interest. 35 ILCS 735/3-7.

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

21. The unpaid corporate sales 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 Bubba’s BBQ Inc. is not supported by law.

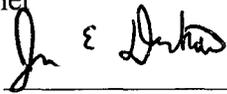
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales 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 against the Defendants and cancels the Notice.

Thank you for considering this Petition.

Respectfully submitted,

Shirley A. Scott,  
Petitioner

By:   
One of Petitioner’s Attorneys

Date: 5-12-16

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

# Collection Action

## Assessment and Notice of Intent



Exhibit 1

SHIRLEY A. SCOTT  
811 TAPPINGO ST APT 208  
NAPERVILLE IL 60540-5137

March 24, 2016



Letter ID: L2143392848

Taxpayer ID: XXX-XX-  
NPL Penalty ID: 5290053



BUBBAS BBQ INC  
811 TAPPINGO ST  
# 208  
NAPERVILLE IL 60540-5137

### We have determined you are personally liable for a penalty of \$43,668.61.

The penalty is equal to the amount of unpaid liability of BUBBAS BBQ INC, due to your status as a responsible officer, partner, or individual of BUBBAS BBQ INC.

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 \$43,668.61. 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 **May 23, 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](http://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.

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

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



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

# Collection Action

## Assessment and Notice of Intent



March 24, 2016



Letter ID: L2143392848

SHIRLEY A. SCOTT  
811 TAPPINGO ST APT 208  
NAPERVILLE IL 60540-5137

Taxpayer ID: XXX-XX-  
NPL Penalty ID: 5290053



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: 4061-8821

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2011	3,414.00	454.24	280.42	-	-	4,148.66
31-Jan-2012	2,026.00	328.48	177.82	-	-	2,532.30
29-Feb-2012	3,337.00	446.32	261.84	-	-	4,045.16
31-Mar-2012	2,890.00	400.00	221.84	-	-	3,511.84
30-Apr-2012	1,599.00	265.96	116.41	-	-	1,981.37
31-May-2012	1,827.00	289.60	131.02	-	-	2,247.62
30-Jun-2012	999.00	203.68	68.67	-	-	1,271.35
31-Jul-2012	1,624.00	268.60	111.53	-	-	2,004.13
31-Aug-2012	1,624.00	268.60	107.94	-	-	2,000.54
30-Sep-2012	1,624.00	268.60	104.26	-	-	1,996.86
31-Oct-2012	1,624.00	268.60	100.91	-	-	1,993.51
30-Nov-2012	1,624.00	268.60	97.42	-	-	1,990.02
31-Dec-2012	1,624.00	268.60	96.15	-	-	1,988.75
31-Jan-2013	1,624.00	268.60	96.15	-	-	1,988.75
28-Feb-2013	1,624.00	268.60	96.15	-	-	1,988.75

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: L2143392848  
SHIRLEY A. SCOTT

Total amount due: \$43,668.61  
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.

# Collection Action

March 24, 2016

**Sales/Use Tax & E911 Surcharge****Account ID: 4061-882**

<b>Period</b>	<b>Tax</b>	<b>Penalty</b>	<b>Interest</b>	<b>Other</b>	<b>Payments/Credits</b>	<b>Balance</b>
31-Mar-2013	1,624.00	268.60	96.16	-	-	1,988.76
30-Apr-2013	1,624.00	268.60	98.15	-	-	1,988.76
31-May-2013	1,624.00	268.60	96.13	-	-	1,988.76
30-Jun-2013	1,624.00	292.60	96.16	-	-	2,012.76