

ILLINOIS INDEPENDENT TAX TRIBUNAL

EIS KALT, LLC)	
)	
Petitioner,)	
)	
v.)	No. 16-TT-119
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

ANSWER

NOW COMES the Illinois Department of Revenue (“Department”), by and through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and Answers the Petition of Eis Kalt, LLC (“Petitioner”) as follows:

JURISDICTION AND VENUE

1. This timely petition involves a Notice of Deficiency that assesses an amount in excess of \$15,000.00 in tax, penalty, and interest under a tax law identified in Section 1-45 of the Tax Tribunal Act. Therefore, the Tax Tribunal has jurisdiction over this petition.

Answer: Paragraph 1 contains legal conclusions, not material allegations of fact. Pursuant to Illinois Independent Tax Tribunal Regulation (“Rule”) 5000.310(b)(2) (“310(x)(x)”) no answer is required. 86 Ill. Adm. Code 5000.310.

2. Eis Kalt, LLC accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

Answer: The allegation in Paragraph 2 is not a material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. Eis Kalt, LLC is located at 1 Transam Plaza Dr, Suite 120, Oakbrook Terrace, IL 60181-

4286. Eis Kalt, LLC's taxpayer ID is 30-0081264.

Answer: The allegation in Paragraph 3 is required by Rule 310(a)(1)(A), is not a material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

To the extent an answer is required, Department admits the factual allegation in Paragraph 3 upon information and belief.

4. Eis Kalt, LLC's primary investment was its holding of Dvorkin Holdings, LLC.

Answer: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 4. Upon information and belief, Eis Kalt, LLC owned 27.7778% of Dvorkin Holdings, LLC.

5. The Illinois Department of Revenue is an executive agency, authorized, among other functions, to administer and enforce the provisions of the Illinois Income Tax Act. 35 ILCS 5/101 *et seq.*

Answer: Department admits the factual allegations in Paragraph 5.

6. On April 11, 2016, the Department issued a Notice of Deficiency for the 2011 tax period assessing tax of \$42,642.00, penalties of \$4,514.20, and interest of \$3,823.68, for a total amount due of \$50,979.88. The NOD is attached as **Exhibit 1**.

Answer: Department admits it issued Petitioner a Notice of Deficiency on April 12, 2016, for unpaid Partnership Replacement Tax for the tax year ending December 31, 2011 assessing tax due of tax of \$42,642.00, penalties of \$4,514.20, and interest of \$3,823.68, for a total amount due of \$50,979.88.

7. For the tax periods at issue, the penalty amounts referenced in paragraph number 6 are comprised of a late-payment penalty of \$4,264.20 and a late-filing penalty of \$250.00, pursuant to Section 3-3(b-20) of the Illinois Uniform Penalty and Interest Act ("UPIA").

Answer: The allegations in Paragraph 7 are vague because the phrase "tax periods at issue" is

undefined. The Notice of Deficiency speaks for itself. Department denies that the subsection of the UPIA cited in Paragraph 7 sets forth the statutory penalty for failure to timely file a tax return. 35 ILCS 735/3-3(a-10), (b-20).

8. The UPIA provides that penalties, other than a fraud penalty, "shall not apply if the taxpayer shows that his failure to . . . pay tax at the required time was due to reasonable cause." 35 ILCS 735/3-8.

Answer: The allegations in Paragraph 8 are legal conclusions, not material allegations of fact.

Pursuant to Rule 310(b)(2) no answer is required. To the extent an answer is required, Department admits the existence, force and effect of the statute cited in Paragraph 8.

9. During the time period when Eis Kalt, LLC would have prepared a timely-filed return, Dvorkin Holdings, LLC was undergoing bankruptcy, during which time it was difficult to get access to accurate financial information because assets were being liquidated by the Bankruptcy Trustee.

Answer: Department admits that Dvorkin Holdings LLC filed a Voluntary Petition for Bankruptcy in the Northern District of Illinois under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. § 1101 et seq.) on August 7, 2012. Department denies the remaining factual allegations in Paragraph 9. Department unequivocally denies that Dvorkin Holdings, LLC's bankruptcy prevented Petitioner from timely filing an Illinois Partnership Replacement Tax return for the tax year ending December 31, 2011.

10. Furthermore, the managing member of Eis Kalt, LLC, Daniel Dvorkin, was arrested during this time, and was kept in jail until he was later convicted and sentenced to eight years in prison, a sentence which Mr. Dvorkin is currently serving.

Answer: Upon information and belief, Department admits that Daniel Dvorkin was arrested July 5, 2012, found guilty of certain crimes, and was later sentenced to eight years in prison.

Department lacks sufficient information to either admit or deny that Daniel Dvorkin was the managing member of Petitioner, that Daniel Dvorkin was kept in jail from July 5, 2012 until his conviction and sentencing, or that Daniel Dvorkin is currently serving an eight year sentence in prison. Department denies that Daniel Dvorkin was the sole person with authority to file Petitioner's tax returns for 2011.

11. The other member of Eis Kalt, LLC was Mr. Dvorkin's wife, Fran Dvorkin, who had no knowledge of Eis Kalt, LLC's business operations and had nothing to do with the criminal acts committed by Mr. Dvorkin. A taxpayer's experience, knowledge, and education, or lack thereof as is the case here, are relevant to whether a taxpayer acted with reasonable cause. *See* 86 Ill. Admin. Code § 700.400(c).

Answer: To the extent Paragraph 11 contains a legal conclusion, not a material allegation of fact, Department is not required to answer pursuant to Rule 310(b)(2). Department lacks sufficient information to either admit or deny that Fran Dvorkin was a member/owner of Petitioner or that Fran Dvorkin had knowledge of or complicity in Daniel Dvorkin's criminal acts. Department denies the remaining factual allegations in Paragraph 11.

12. Ms. Dvorkin, exercising ordinary business care and prudence, retained tax professionals who are diligently working to get Eis Kalt, LLC's Illinois tax return filed.

Answer: To the extent Paragraph 12 contains a legal conclusion, not a material allegation of fact, Department is not required to answer pursuant to Rule 310(b)(2). Additionally, the allegations in Paragraph 12 are ambiguous because no time period or return period are specified. Therefore, Department denies the factual allegations in Paragraph 12.

13. Ms. Dvorkin only recently received access to the information necessary to complete an accurate 2011 Illinois tax return for Eis Kalt, LLC. Furthermore, Eis Kalt, LLC only recently received its Illinois Form K-1 from Dvorkin Holdings, LLC. An inability to

timely obtain records necessary to determine the amount of tax for reasons beyond the taxpayer's control, as was the case here, is an example of reasonable cause sufficient to abate a penalty. *See* 86 Ill. Admin. Code § 700.400(e)(4).

Answer: To the extent Paragraph 13 contains a legal conclusion, not a material allegation of fact, Department is not required to answer pursuant to Rule 310(b)(2). Department denies the factual allegations in Paragraph 13. Ms. Dvorkin's exercise of care, even if shown, does not equate to an exercise of the requisite care by Petitioner.

14. After receiving the information necessary to file a 2011 Illinois tax return, Ms. Dvorkin filed the return within a reasonable time.

Answer: Department denies the factual allegations in Paragraph 14. Additionally, it must be shown that Petitioner, Eis Kalt, LLC, exercised the required care. Ms. Dvorkin's exercise of care, even if shown, does not equate to an exercise of the requisite care by Petitioner.

15. Eis Kalt, LLC, through Ms. Dvorkin, made a good faith effort to report its income tax liability in as timely a manner as possible by exercising ordinary business care and prudence, taking into consideration the external factors (bankruptcy, arrest and conviction of the managing member, and Ms. Dvorkin's lack of knowledge and access to crucial information) that made it impossible to file a timely return.

Answer: Department denies the factual allegations in Paragraph 15.

16. Eis Kalt, LLC therefore acted with reasonable cause and, under Section 3-8 of the UPIA and 86 Ill. Admin. Code § 700.400, no late-filing penalties should apply to Eis Kalt, LLC's 2011 tax return.

Answer: Department denies the factual allegations in Paragraph 16.

WHEREFORE, Department prays that this Tribunal find that Petitioner failed to exercise ordinary business care and prudence, hold that no reasonable cause exists to abate penalties, hold that

the Notice of Deficiency is correct as issued, and enter judgment in favor of the Department and against Petitioner.

Respectfully Submitted,

LISA MADIGAN,
Attorney General, State of Illinois

By: _____

Special Assistant Attorney General

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DATED: July 18, 2016

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AFFIDAVIT OF KEVIN ANGUISH
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

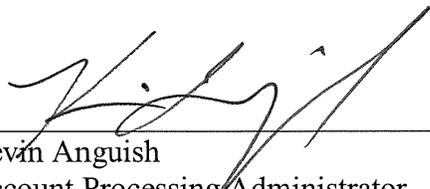
STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Kevin Anguish, 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 Account Processing Administrator, in the Business Processing Division of the Central Processing Bureau.
3. I reviewed the Taxpayer's account, the Petition allegations and Department's Answer to the Petition.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Petition paragraphs 4, 10, and 11.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

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 as aforesaid that he verily believes the same to be true.



 Kevin Anguish
 Account Processing Administrator
 Business Processing Division
 Central Processing Bureau
 Illinois Department of Revenue

Date: 7/15/16