

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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<b>DVORKIN HOLDINGS, LLC</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>No. 16-TT-120</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Respondent.</b>	)	

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**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 Dvorkin Holdings, 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(b)(2)”) no answer is required. 86 Ill. Adm. Code 5000.310.**

2. Dvorkin Holdings, 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 allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).**

3. Dvorkin Holdings, LLC is located at 1 Transam Plaza Dr, Suite 120, Oakbrook Terrace, IL 60181-4286. Dvorkin Holdings, LLC's taxpayer ID is 36-4192898.

**Answer: The allegations in Paragraph 3 are required by Rule 310(a)(1)(A), are not**

**material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, upon information and belief, Department admits the factual allegations in Paragraph 3.**

4. Dvorkin Holdings, LLC held investments, primarily in real estate.

**Answer: Department denies the allegations in Paragraph 4. According to its Schedule B filed in bankruptcy case No. 12-31336 in the Northern District of Illinois, Petitioner's primary assets were "interests in partnerships or joint ventures."**

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 \$101,167.00, penalties of \$10,366.70, and interest of \$9,063.25, for a total amount due of \$120,596.95. The NOD is attached as Exhibit 1.

**Answer: Department admits it issued Petitioner a Notice of Deficiency on April 11, 2016, for unpaid Partnership Replacement Tax for the tax year ending December 31, 2011 assessing tax due of \$101,167.00, penalties of \$10,366.70, and interest of \$9,063.25, for a total amount due of \$120,596.95.**

7. For the tax periods at issue, the penalty amounts referenced in paragraph number 6 are comprised of a late-payment penalty of \$10,116.70 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.**

9. During the time period when Dvorkin Holdings, LLC would have prepared and tendered payment with a timely-filed return, the entity 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.**

10. Furthermore, the managing member of Dvorkin Holdings, 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 Dvorkin Holdings, LLC was Mr. Dvorkin's wife, Fran Dvorkin, who had no knowledge of Dvorkin Holdings, 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 Dvorkin Holdings, LLC 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 worked diligently to prepare and file Dvorkin Holdings, LLC's Illinois tax return.

**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 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. Loran Eatman, Vice President of President of DH-EK Management Corp, Petitioner's management company, acted for Petitioner in its Chapter 11 Bankruptcy by signing the voluntary petition and disclosures on behalf of Petitioner. Additionally, Francine Dvorkin is identified in Petitioner's bankruptcy disclosures as**

**“President of DH-EK Management Corp.,” and “Manager of Debtor,” Dvorkin Holdings, LLC. Beverly Dvorkin and Rachel Dvorkin are also identified in the bankruptcy disclosures as managing members of Petitioner.**

14. After receiving the information necessary to file a 2011 Illinois 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, Dvorkin Holdings, LLC, exercised the required care. Ms. Dvorkin’s exercise of care does not equate to an exercise of the requisite care by Petitioner.**

15. Dvorkin Holdings, 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. Dvorkin Holdings, 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 Dvorkin Holdings, LLC's 2011 tax return.

**Answer: Department denies the allegations in Paragraph 16. Petitioner’s failure to file Illinois Partnership Replacement Tax returns was in violation of federal law, applicable in bankruptcy cases, which holds that the debtor is “subject to all Federal, State and local taxes applicable to such business . . .” which “. . . shall be paid on or before the due date of the tax under applicable nonbankruptcy law.” 28 U.S.C. § 960(a), (b). Additionally, Petitioner failed to include the Department as a creditor in its Chapter 11 bankruptcy petition thereby depriving Department of notice of Petitioner’s bankruptcy, its opportunity to file a proof of claim, attend the meeting of creditors, or ultimately be paid under the Chapter 11 Bankruptcy plan in**

**violation of U.S. Bankruptcy law. 11 U.S.C. § 1129(a)(9)(C); Fed. R. Bankr. P. 2002(a)(1).**

**Because the Petitioner failed to adhere to the bankruptcy laws by failing to timely file and pay pre-petition taxes and failing to act to provide notice to the Department of its creditor status, the actions of the Petitioner, Dvorkin Holdings LLC, were not in good faith or an exercise of ordinary business care and prudence. Therefore, Petitioner's failure to timely file and pay Illinois Partnership Replacement Tax cannot be reasonable.**

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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ILLINOIS DEPARTMENT OF REVENUE,	)	
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Respondent.	)	
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**AFFIDAVIT OF KEVIN ANGUISH  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

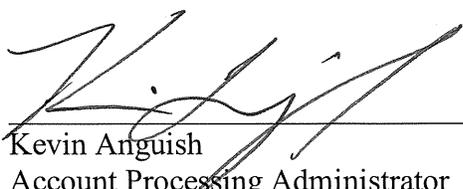
STATE OF ILLINOIS

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 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