

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

The Windsor Venture, an Illinois Limited Partnership,)	
)	
Petitioner,)	16 TT 132
v.)	Judge James M. Conway
)	
THE STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

INTRODUCTION

1. The first “Notice” is with regard to the tax year ending December 31, 2010. The Taxpayer Statement shows taxes due of \$10,000.00, \$2,300.00 in penalties and \$1,201.09 in interest as of February 26, 2016. A copy of this notice is attached to this Petition as Exhibit A.

ANSWER: The information contained in paragraph 1 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the interest in the Notice is \$1,207.09 not \$1,201.09; the Department admits the remaining factual allegations contained in Paragraph 1.

2. The second “Notice” is with regard to the tax year ending December 31, 2011. The Notice shows taxes due of \$16,766.00, \$3,603.20 in penalties and \$1,438.65 in interest as of February 26, 2016. A copy of this notice is attached to this Petition as Exhibit B.

ANSWER: The information contained in paragraph 2 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 2.

3. By letter dated April 25, 2016, a copy of which is attached as Exhibit C, Chief Administrative Law Judge Terry D. Charlton, on behalf of the Department dismissed the protest and request for administrative hearing by the Petitioner and started the 60 day period for the filing of this Petition.

ANSWER: The information contained in paragraph 3 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 3.

4. Petitioner is an Illinois limited liability partnership, with its registered office in Illinois in Chicago, Illinois.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4.

5. Petitioner is located at One North Franklin, Suite 700, in Chicago, Illinois 60606, c/o Moran & Company. Its phone number is 312-407-6700 The Taxpayer Account Number is 05031-05792.

ANSWER: The Department admits the factual allegations contained in Paragraph 5.

6. Petitioner is represented by Mark D. Anderson of Aronberg Goldgehn Davis & Garmisa located at 330 N. Wabash Ave., Suite 1700, Chicago, Illinois 60611, who can be reached at 312-755-3163, or manderson@agdglaw.com.

ANSWER: The Department admits the factual allegations contained in Paragraph 6.

BACKGROUND AND RELEVANT FACTS

7. Petitioner is in the business of owning and operating multi-family housing in Minneapolis, Minnesota. Petitioner is registered to do business in Minnesota. Petitioner conducts no other business.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7.

8. Petitioner timely filed 2010 federal and Minnesota tax returns. Petitioner did not file any 2010 Illinois tax returns.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity as to whether Petitioner timely filed a 2010 federal and Minnesota returns; the Department admits that Petitioner did not file any 2010 Illinois tax returns.

9. Petitioner timely filed 2011 federal and Minnesota tax returns. Petitioner did not file any 2011 Illinois tax returns.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity as to whether Petitioner timely filed a 2011 federal and Minnesota returns; the Department admits that Petitioner did not file any 2011 Illinois tax returns.

10. The Department contends that the Petitioner owes Illinois Replacement Taxes on its Minnesota rental income.

ANSWER: Paragraph 10 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, the Department admits that Petitioner owes Illinois Replacement Tax, however, the Department denies that it is for Minnesota rental income and demands strict proof thereof.

11. Prior correspondence on this was sent by the State of Illinois to the former office of the General Partner of the Petitioner, not to the current address.

ANSWER: Two letters (one dated 8/18/2014 & one dated 10/6/2014) were sent to 1 E. Wacker Dr, Chicago, Illinois. Upon notification that this address was not valid, the Department sent one letter to a New York address. Upon contact from the New York address, all remaining letters were sent to 1 N Franklin St, Chicago, Illinois for the remainder of all 2010 and included the 2011 Letters and Notices until issuance of the 2011 Notice of Deficiency (“NOD”). Upon the fourth notification of undeliverable mail, information from federal sources provided the Minnesota address which was then used to issue the 2011 NOD. (The post office returned only four of the 15 letters issued by the Department as undeliverable-12/8/2014 (Wacker Dr); 2/5/2015 (Franklin St.); 4/13/2015 (Franklin St.); and 1/26/2016 (Franklin St.)). 35 ILCS 5/1402 states in pertinent part: “Whenever notice is required by this Act, such notice may, if not otherwise provided, be given or issued by mailing it by first-class mail addressed to the person concerned at his last known address.”; see also 35 ILCS 5/902(a) which states: “...Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to the person's last known address.”

12. Petitioner only became aware of this problem when a notice was finally sent to the property address of the Petitioner in Minneapolis. At that point, Petitioner responded promptly.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12.

13. On or about April 27, 2016, the Department executed on a Levy and seized \$35,319.94 from a bank account of Petitioner in payment of the taxes, penalties and interest listed above.

ANSWER: Department admits the factual allegations contained in Paragraph 13.

APPLICABLE LAW

14. The Personal Property Tax Replacement Income Tax is imposed and measured by the net income of every partnership on the privilege of earning or receiving income in or as a resident in this State. 35 ICLS 5/201 (c).

ANSWER: Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding this objection or waiving same, the Department admits the statutes referred to in Paragraph 14 exist and are in effect and states that such statutes speak for themselves.

15. Rents from real property are allocable to his State only if the property is located in this State. 35 ILCS 5/503(c)(1).

ANSWER: Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding this objection or waiving same, the Department admits the statutes referred to in Paragraph 15 exist and are in effect and states that such statutes speak for themselves.

16. Gross receipts from the rental of real property are in this State only if the real property is located in this State. Illinois Income Tax Regulations Section 100.3370(c)(3)(D)(i).

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding this objection or waiving same, the Department admits the regulations referred to in Paragraph 16 exist and are in effect and states that such regulations speak for themselves.

ERROR I

17. The Department wrongfully assessed Illinois Personal Property Tax Replacement Income Tax for 2010 on non-Illinois (Minnesota) income.

ANSWER: The Department denies the allegations contained in Paragraph 17.

ERROR II

18. The Department wrongfully assessed Illinois Personal Property Tax Replacement Income Tax for 2011 on non-Illinois (Minnesota) income.

ANSWER: The Department denies the allegations contained in Paragraph 18.

ERROR III

19. The Department wrongfully seized \$35,319.94 from the bank account of Petitioner.

ANSWER: The Department denies the allegations contained in Paragraph 19.

CONCLUSION AND RELIEF REQUESTED

20. Petitioner respectfully requests reversal of the assessment of any taxes for 2010.

ANSWER: The Department denies the allegations contained in Paragraph 20; see relief requested below.

21. Petitioner respectfully requests reversal of the assessment of any taxes for 2011.

ANSWER: The Department denies the allegations contained in Paragraph 21; see relief requested below.

22. Petitioner respectfully requests the return of the \$35,319.94 that was wrongfully seized from the bank account of Petitioner.

ANSWER: The Department denies the allegations contained in Paragraph 22; see relief requested below.

WHEREFORE, the Department respectfully requests this Tribunal to:

- a. deny each prayer for relief in Petitioner's Petition;
- b. find that the Department's levy on or about April 27, 2016 was proper;
- c. find that the Notices of Deficiency contain the correct amount of tax; are valid; and should be upheld;
- d. enter judgment in favor of the Department and against the Petitioner; and
- e. grant any further relief this Tribunal deems just and appropriate.

Dated: August 9, 2016

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

/s/Sean P. Cullinan/s/
Sean P. Cullinan,
Special Assistant Attorney General

Sean P. Cullinan
Special Assistant Attorney General
Illinois Department of Revenue
100 W. Randolph St., Level 7-900
Chicago, Illinois 60601
Phone: 312-814-3078
Fax: 312-814-4344
Email: sean.cullinan@illinois.gov

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

THE WINDSOR VENTURE, an Illinois)	
Limited Partnership,)	
Petitioner,)	
)	
v.)	No. 16 TT 132
)	
THE STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE,)	
)	
Defendants.)	

AFFIDAVIT OF LAURIE EVANS
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, Laurie Evans, 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 Audit Supervisor for Income Tax, Audit Planning & Technical Support.
3. One of my duties is to maintain income tax audit files.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 4, 7, 12 and for parts of paragraphs 8 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 as aforesaid that he verily believes the same to be true.



Laurie Evans
Revenue Audit Supervisor
Income Tax, Audit Planning &
Technical Support
Illinois Department of Revenue

Date: 8-9-2016