



## NOTICE

5. On February 5, 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 \$2,736,242.44, which covers the tax periods January 1, 2004 to December 31, 2010. 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 obtained a late discretionary hearing from the Department dated June 30, 2016 (copy attached as Exhibit 2), and then timely filed this Petition within 60 days of the Department's letter granting the late discretionary hearing for Petitioner.

## BACKGROUND

8. Petitioner was a partial owner of FF & F Investments.

9. The NPL at issue herein is based on a sales tax audit of FF & F Investments for the tax periods January 1, 2004 to December 31, 2010.

10. However, Petitioner was an absentee partial owner of the business who treated it like an investment and who did not operate the business and who did not even have check signing authority.

11. Moreover, the underlying sales tax audit occurred after the business closed and is 100% based on disallowed interstate sales deductions for the business that sold and leased concrete forms/accessories outside of Illinois during the tax periods at issue.

**COUNT I**

**Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of FF & F Investments.**

12. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 11, inclusive, hereinabove.

13. 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.

14. Petitioner 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 had nothing to do with the day-to-day operations of the business and she did not even have check signing authority.

15. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of FF & F Investments.

**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 FF & F Investments.

16. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 15, inclusive, hereinabove.

17. 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.

18. Petitioner 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 sales tax audit liability until many years *after* the business closed and the underlying sales tax audit liability is 100% based on disallowed deductions that could not be substantiated due to the closure of the business.

19. Contrary to the Department's determination, Petitioner was not a responsible officer who willfully failed to pay the sales tax, penalties, and interest of FF & F Investments.

**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.

20. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 19, inclusive, hereinabove.

21. The Illinois statute regarding personal liability assessments improperly defines unpaid corporate sales tax to include penalties and interest. 35 ILCS 735/3-7.

22. 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.

23. The unpaid corporate sales tax penalties and interest contained in the Notice at issue were not collected "in trust" for the state.

24. The Department's determination that Petitioner personally owes the unpaid penalties and interest of FF & F Investments is not supported by law.

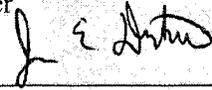
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (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,

Diane Fahey,  
Petitioner

By: 

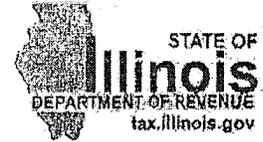
One of Petitioner's Attorneys

Date: 7-5-16

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



February 5, 2016



Letter ID: L1294128272

DIANE FAHEY  
2910 OAK BROOK HILLS RD  
OAK BROOK IL 60523-1632

Taxpayer ID: XXX-XX-XXXX  
NPL Penalty ID: 1760753



FF & F INVESTMENTS  
PO BOX 4654  
OAK BROOK IL 60522-4654

**We have determined you are personally liable  
for a penalty of \$2,736,242.44.**

The penalty is equal to the amount of unpaid liability of FF & F INVESTMENTS, due to your status as a responsible officer, partner, or individual of FF & F INVESTMENTS.

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 \$2,736,242.44. 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 April 5, 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.

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

217 782-9904 ext. 31614  
217 785-2635 fax

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



**Collection Action**  
**Assessment and Notice of Intent**



February 5, 2016



Letter ID: L1294128272

DIANE FAHEY  
 2910 OAK BROOK HILLS RD  
 OAK BROOK IL 60523-1632

Taxpayer ID: XXX-XX-  
 NPL Penalty ID: 1760753



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.

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Nov-2004	47,843.00	21,151.00	47,944.34	-	-	116,938.34
30-Jun-2009	1,021,586.00	435,168.00	711,656.16	-	-	2,168,410.16
31-Oct-2010	293,083.00	62,717.00	46,223.80	-	-	402,023.80
30-Nov-2010	18,139.00	3,978.00	2,344.13	-	-	24,461.13
31-Dec-2010	18,139.00	3,978.00	2,292.01	-	-	24,409.01

Account ID: 3927-0882

IDOR-SP-NPL (N-03/07)

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: L1294128272  
 DIANE FAHEY

Total amount due: \$2,736,242.44  
 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.

000 006 002637556646 731 123199 2 0000273624244



Exhibit 2

**Illinois Department of Revenue  
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

June 30, 2016

Attorney James E. Dickett  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**  
**Diane Fahey**  
Account ID: 3927-0882 FF & F Investments  
Collection Actions dated February 5, 2016  
NPL Penalty ID: 1760753

Dear Mr. Dickett:

The office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for FA Private Equity Fund IV LP regarding the above Notice of Deficiency. Based on the information provided in your request, I believe that **it is appropriate to grant your request** for a late discretionary hearing for the above Notice of Deficiency.

The amount of liability at issue for this protest exceeds the statutory amount for which the Department has jurisdiction. For late discretionary hearings that are granted and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

**The Tax Tribunal's rules provide that when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.**

I recommend that you review the information provided on the Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Charlton".

Terry D. Charlton  
Chief Administrative Law Judge

TDC:vs

70-1206/731 1270

**THE LAW OFFICE OF JAMES E. DICKETT LTD**  
 800 HILLGROVE AVE STE 1  
 WESTERN SPRINGS, IL 60558  
 (708) 784-3200

Date 7-5-16

Pay to the order of Illinois Independent Tax \$ 500.00  
Five hundred & 00/100 Dollars

Security Features  
 Include  
 DWFL on Back

**Heartland Bank and Trust Company**

for filing fee - Stone Fahey NPL J & D

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**OFFICIAL USE**

0558  
06

Postmark  
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07/05/2016

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee as appropriate)	\$2.70
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.99
<b>Total Postage and Fees</b>	<b>\$7.99</b>

Sent To ITTT  
 Street and Apt. No. or PO Box No. 170 N. LaSalle, Room N 506  
 City, State, ZIP+4® Chicago IL 60601

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 0640 0005 2190 4750