

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

KAREN L. McINTYRE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendant. )

No.

**RECEIVED**  
AUG 18 2016  
BY:   
1677163

**PETITION**

Petitioner, Karen McIntyre (“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 can be contacted at 3379 Basswood Lane, Dekalb, Illinois, 60115, and can be reached at 847-921-8789.
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 11292066 and her 1002(d) Penalty ID is 11312053.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement of Illinois tax laws. 20 ILCS 5/5-15.

## **NOTICE**

5. On or about September 18, 2009, the Department issued personal liability assessments (“Notices”) to Petitioner for the unpaid sales and withholding taxes of Klockowski Liquors Inc. in the amount of approximately \$81,000. The tax portion of the assessments is greater than \$15,000. The Department’s demands for payment dated June 2, 2016 regarding the Notices are 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 23, 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 is a former employee of Klockowski Liquors Inc. who did not own any portion of the corporation nor did she have any management authority or control over the financial affairs of the corporation.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales and payroll taxes for the corporation during the tax periods at issue because the corporation was 100% owned and managed by someone else.

**COUNT I**

**Petitioner is not a responsible officer who failed to pay the Illinois sales and payroll taxes, penalties, and interest of the corporation.**

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 or supervision for filing or paying Illinois sales and payroll taxes is not personally liable for the corporation's debt. 35 ILCS 5/1002(d).

12. Petitioner was an employee only and was not a corporate officer of the corporation, and she did not have control, supervision, or responsibility for filing Illinois sales and payroll tax returns or making Illinois sales and payroll tax payments and therefore is not personally liable for the corporation's unpaid taxes.

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

## COUNT II

### Petitioner did not willfully fail to pay the Illinois sales and payroll taxes, penalties, and interest of the corporation.

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 Illinois sales and payroll taxes is not personally liable for the unpaid sales tax, penalties, and interest. 35 ILCS 5/1002(d).

16. Petitioner was an employee only and was not a corporate officer, and she did not willfully fail to pay the Illinois sales and payroll taxes, penalties, and interest and therefore is not personally liable for such amounts because she had no knowledge regarding the financial affairs of the business including taxes.

17. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the Illinois sales and payroll taxes, 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 Illinois sales and payroll taxes, 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;
- (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 Illinois payroll 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 taxes to include penalties and interest. 35 ILCS 735/3-7 and 35 ILCS 5/1002(d).

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

21. The unpaid corporate Illinois sales and payroll 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 the corporation is not supported by law.

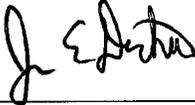
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

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

Thank you for considering this Petition.

Respectfully submitted,

Karen L McIntyre,  
Petitioner

By:   
\_\_\_\_\_  
One of Petitioner's Attorneys

Date: 8/16/16

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**  
**Notice of Intent**

Exhibit 1



June 2, 2016



Letter ID: L1221186192

KAREN L. MCINTYRE  
3379 BASSWOOD LN  
DEKALB IL 60115-8287

Taxpayer ID: XXX-XX-  
NPL Penalty ID: 11292066



KLOCKOWSKI LIQUORS INC  
180 S WESTERN AVE  
CARPENTERSVILLE IL 60110-1738

**Demand for Payment**

**We intend to issue a levy against your assets  
unless you pay us.**

You must pay us \$80,840.53 by June 23, 2016. If you do not, we intend to issue a levy for this amount against your assets without further notice to you.

A levy means we can, by legal authority, take your assets held by someone else. Examples of assets we may levy include your wages, contractual payments, bank accounts, and accounts receivables.

The following pages detail the items that need your immediate attention.

If you have any questions about this notice, please contact us immediately at the address and phone number listed below.

THERESA HAMMOND  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19035  
SPRINGFIELD IL 62794-9035

217 524-4720 ext. 31020  
217 785-2635 fax

- For information about
- › how to pay
  - › what you owe
  - › collection actions



# Collection Action

## Notice of Intent



June 2, 2016



Letter ID: L1221186192

KAREN L. MCINTYRE  
3379 BASSWOOD LN  
DEKALB IL 60115-8287

Taxpayer ID: XXX-XX-~~6789~~  
NPL Penalty ID: 11292066



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

### Sales/Use Tax & E911 Surcharge

Account ID: 3610-8650

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Apr-2008	6,807.00	916.84	1,663.41	0.00	(5,240.36)	4,146.89
31-May-2008	8,870.00	1,164.40	2,215.55	0.00	0.00	12,249.95
30-Jun-2008	8,233.00	1,087.96	2,017.00	0.00	0.00	11,337.96
31-Jul-2008	6,984.00	938.08	1,682.30	0.00	0.00	9,604.38
31-Aug-2008	6,759.00	911.08	1,597.42	0.00	0.00	9,267.50
30-Sep-2008	5,738.00	788.56	1,334.10	0.00	0.00	7,860.66
31-Oct-2008	5,104.00	712.48	1,165.14	0.00	0.00	6,981.62
30-Nov-2008	7,055.00	946.60	1,547.86	0.00	(934.00)	8,615.46
31-Dec-2008	10,744.00	1,389.28	1,326.40	0.00	(12,299.00)	1,160.68
31-Jan-2009	3,799.00	479.90	819.28	0.00	0.00	5,098.18
28-Feb-2009	3,481.00	536.10	736.15	0.00	(236.00)	4,517.25
					<b>Total Balance:</b>	<b>80,840.53</b>

**Collection Action**  
**Notice of Intent**



June 2, 2016



Letter ID: L0508663440

KAREN L. MCINTYRE  
3379 BASSWOOD LN  
DEKALB IL 60115-8287

Taxpayer ID: XXX-XX-  
1002D Penalty ID: 11312053



KLOCKOWSKI LIQUORS INC  
180 S WESTERN AVE  
CARPENTERSVILLE IL 60110-1738

**Demand for Payment**

**We intend to issue a levy against your assets  
unless you pay us.**

You must pay us \$967.90 by June 23, 2016. If you do not, we intend to issue a levy for this amount against your assets without further notice to you.

A levy means we can, by legal authority, take your assets held by someone else. Examples of assets we may levy include your wages, contractual payments, bank accounts, and accounts receivables.

The following pages detail the items that need your immediate attention.

If you have any questions about this notice, please contact us immediately at the address and phone number listed below.

THERESA HAMMOND  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19035  
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**For information about**  
› how to pay  
› what you owe  
› collection actions



**Collection Action**  
**Notice of Intent**



June 2, 2016



Letter ID: L0508663440

KAREN L. MCINTYRE  
3379 BASSWOOD LN  
DEKALB IL 60115-8287

Taxpayer ID: XXX-XX-~~624~~  
1002D Penalty ID: 11312053



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

IL Withholding Income Tax						Account ID: 20-2479044-000
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Sep-2008	1,208.18	78.32	1.39	0.00	(1,208.18)	79.71
31-Mar-2009	1,030.00	203.00	155.19	0.00	(500.00)	888.19
<b>Total Balance:</b>						<b>967.90</b>



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 23, 2016

Karen L. McIntyre  
3379 Basswood Lane  
DeKalb, IL 60015

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**

Account ID: 3610-8650 Klockowski Liquors Inc.

(2) Collection Actions dated September 18, 2009

NPL Penalty ID: 11292066 Letter ID: L0438574144

1002D Penalty ID: 11312053 Letter ID: L1243880512

Dear Ms. McIntyre:

The office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding the above collection actions. 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 collection actions.

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,

Terry D. Charlton  
Chief Administrative Law Judge

TDC:vs