IN THE ILLINOIS INDENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

PRAFUL CHOKSHI,	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

RECEIVED
AUG 18 2016
BY:
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PETITION

Petitioner, Praful Chokshi ("Petitioner"), by and through his 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 lives at 1327 C Modaff Road, Apartment C3, Naperville, Illinois, 60565, and can be reached at 815-975-5129.

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.

3. Petitioner's Taxpayer ID is XXX-XX-XXXX (redacted).

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 July 26, 2016, the Department issued a Collection Action Assessment and Notice of Intent letter for a personal liability penalty (a.k.a. NPL) ("Notice") to Petitioner in the amount of $39,173.86. The tax amount is greater than $15,000. 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 timely filed this Petition within 60 days of the Notice.

BACKGROUND

8. Petitioner was the owner of P & P Brothers Inc. (mini-mart) that closed on November 13, 2013 without assets.

9. The personal liability assessment is based on a sales tax audit of the corporation after the business closed, and the basis for the audit liability is unknown at this time because the corporation's outside accountant who prepared the monthly sales tax returns also handled the audit but was unable to provide audit workpapers to Petitioner.

10. The underlying corporation's sales tax audit was finalized a few years after the business closed.

COUNT I

Petitioner is not a responsible officer who failed to pay the sales tax of P & P Brothers Inc.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. A corporate officer who does not have control or supervision for filing or paying sales tax is not personally liable for the corporation's debt. 35 ILCS 35 ILCS 735/3-7.

13. Petitioner was a corporate officer who did not have control 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 the corporation retained and reasonably relied on an outside accountant to prepare the Illinois sales tax returns.

14. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax 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 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; 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 sales tax, penalties, and interest of the corporation.

15. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 14, inclusive, hereinabove.

16. 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.

17. Petitioner was a corporate officer who did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because the audit occurred after the business was closed (and defunct) and Petitioner had no knowledge of the corporation's audit liability until several years after the business closed without assets.

18. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the sales tax, 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 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 cancels the Notice.

COUNT III

The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate sales taxes.

19. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 18, inclusive, hereinabove.

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

21. 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.

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

23. The Department's determination that Petitioner personally owes the unpaid penalties and interest of P & P Brothers Inc. is not supported by law.

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

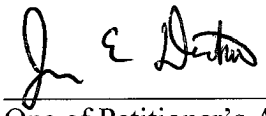
(a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of the corporation because such amounts were not collected "in trust" for the state; and

(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.

Thank you for considering this Petition.

Respectfully submitted,

Praful Chokshi, 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

Collection Action

Assessment and Notice of Intent

Exhibit 1

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

July 26, 2016

Letter ID: L0887677072

PRAFUL CHOKSHI
1327 C MODAFF ROAD APT C3
NAPERVILLE IL 60565

Taxpayer ID: XXX-XX-[redacted]
NPL Penalty ID: 2980230

P & P BROTHERS INC
1327C MODAFF RD
C3
NAPERVILLE IL 60565-6118

We have determined you are personally liable for a penalty of $39,173.86.

The penalty is equal to the amount of unpaid liability of P & P BROTHERS INC, due to your status as a responsible officer, partner, or individual of P & P BROTHERS INC.

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 $39,173.86. 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 **September 24, 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**), 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

STATE OF Illinois
tax.illinois.gov

July 26, 2016

Letter ID: L0887677072

PRAFUL CHOKSHI
1327 C MODAFF ROAD APT C3
NAPERVILLE IL 60565
815-975-5129

Taxpayer ID: XXX-XX-[redacted]
NPL Penalty ID: 2980230

To Jim Dickert

2 Pages.

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.

Sales/Use Tax & E911 Surcharge **Account ID: 3194-3217**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Nov-2013	26,064.00	10,591.00	2,518.86	-	-	39,173.86

IDOR-6P-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: L0887677072
PRAFUL CHOKSHI

Total amount due: $39,173.86
Write the amount you are paying below.

$_____

Write your Account ID on your check

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

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