

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

DIEP NGUYEN,)	
Petitioner)	
)	
V)	No. 14 TT 171
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

ANSWER

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

INTRODUCTON

DEPARTMENT RESPONSE: The Department admits that the statutory notices at issue are attached to the petition. The Department further states that the notices speak for themselves and therefore deny Petitioner’s description and characterization thereof.

BACKGROUND AND RELEVANT FACTS

DEPARTMENT RESPONSE: The Department admits that Lamm Partners used the business address of 1629 Patriot Blvd. in Glenview Illinois, but states that it did business as Maywood Citgo in Maywood Illinois. The Department admits the remaining

allegations in the first paragraph of this section of Petitioner's Petition. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in this section of Petitioner's Petition and therefore neither admits or denies said allegations.

NUMBERED PARAGRAPHS

1. The Department erroneously determined Petitioner to be a responsible person. However, all significant control, supervision or responsibilities as to the filing of returns and as to the payment of the subject taxes were in the company president-majority shareholder Huy Nguyen. Petitioner did not control, supervise or have responsibility for the filing of returns and the payment of the subject Sales/Use Tax & E911 Surcharge and is not liable for the personal liability penalty of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a) set forth in the "first Notice".

ANSWER: The allegations in paragraph 1 of the petition consist primarily of legal and/or factual conclusions and are denied.

2. The Department erroneously determined Petitioner to be willful in failing to file returns or in paying taxes. Petitioner was not aware of the company president-majority shareholder's failure to file returns and/or pay the subject taxes during the time the taxes were incurred. Petitioner did not willfully fail to file any returns or pay the subject taxes or in any other manner evade or defeat the subject Sales/Use Tax & E911 Surcharge and is not liable for the personal liability of Section 3-7(a) of the Uniform Penalty and Interest Act (35ILCS 735/3-7(a) set forth in the first notice.

ANSWER: The Department denies that it erroneously determined Petitioner to be willful in failing to file returns or in paying taxes. The Department lacks knowledge or

information sufficient to form a belief as to the truth or falsity of the allegations that Petitioner was not aware of the company president-majority shareholder's failure to file returns and/or pay the subject taxes during the time the taxes were incurred and therefore neither admits or denies said allegations. The remaining allegations in paragraph 2 of the Petition consist primarily of legal and /or factual conclusions and are denied.

3. The Department erroneously determined Petitioner to be a responsible person.

However, all significant control, supervision or responsibilities as to the filing of returns and as to the payment of the subject taxes were in the company president-majority shareholder Huy Nguyen. Petitioner did not control, supervise or have responsibility for the filing of returns and the payment of the subject IL Withholding Income Taxes and is not liable for the penalty of Section 1002d of the Illinois Income Tax Act (35ILCS 5/1002(d) set forth in the "second Notice".

ANSWER: The allegations in paragraph 3 of the Petition consist primarily of legal and /or factual conclusions and are denied.

4. The Department erroneously determined Petitioner to be willful in failing to file returns or in paying the subject taxes. Petitioner was not aware of the company president-majority shareholder's failure to file returns and/or pay the subject taxes during the time the taxes were incurred. Petitioner did not willfully fail to file any returns or pay the subject IL Withholding Income Taxes and is not liable for the penalty of Section 1002d of the Illinois Income Tax Act (35 ILCS 5/1002(d) set forth in the "second Notice".

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations that Petitioner was not aware of the company president-majority shareholder's failure to file returns and/or pay the subject taxes during

the time the taxes were incurred and therefore neither admits or denies said allegations.

The remaining allegations in paragraph 4 of the Petition consist primarily of legal and /or factual conclusions and are denied.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability and 1002D Notice at issue are correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: 

George Foster
Special Assistant Attorney General

George Foster
Illinois Department Of Revenue
100 W. Randolph Street, Level 7
Chicago, Illinois 60601
312-814-3493
george.foster@illinois.gov

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

DIEP NGUYEN

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

)
)
)
)
)
)

14 TT 171

**AFFIDAVIT OF MARK DYCKMAN
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 2 and 4, as well as the Background and Relevant Facts section of the Petitioner's Petition.

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 that he (she) verily believes the same to be true.



Mark Dyckman
Deputy General Counsel
Illinois Department of Revenue

DATED: 10-1-14

CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on October 1, 2014 a copy of the Department's ANSWER was served on Michael C. Whelan, Attorney at Law by causing a copy to be sent by electronic mail to mcwhelanlaw@yahoo.com.

A handwritten signature in black ink, appearing to read "George Foster", is written over a horizontal line.