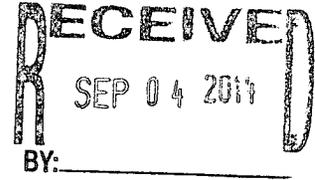


ILLINOIS INDEPENDENT
TAX TRIBUNAL

DIEP NGUYEN,)
)
Petitioner,)
v.)
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)

No.



14TT171

PETITION

The Petitioner, DIEP NGUYEN, hereby petitions the Illinois Independent Tax Tribunal to review and reverse/and or modify the Notice of Penalty Liability (“first Notice”) and the section 1002D Notice (“second Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

INTRODUCTION

The “first Notice” was issued by the Department on July 7, 2014 assessing in the amount of \$262,404.00 in tax, \$80,133.97 in penalties and \$71,860.52 in interest for taxable periods of 2007 through 2012, less payments/credits of \$17,712.11, resulting in a proposed penalty liability of \$396,686.38 for sales/use tax & E911 surcharge of Lamm Partners Inc. A copy of the “first Notice” is attached to this Petition.

The “second Notice” was issued by the Department on July 7, 2014 assessing in the amount of \$286.00 in tax, \$314.32 in penalty and \$4.16 in interest for taxable period ended December 31, 2012 for IL withholding income tax of Lamm Partners Inc. A copy of the “second Notice” is attached to this Petition.

Petitioner is an individual who resides at 1712 Charles Drive, Wheeling, IL 60090. His phone number is (847) 736-5960.

BACKGROUND AND RELEVANT FACTS

Petitioner is stated by the Department to be a responsible person for Lamm Partners Inc. The business is now closed. It was located at 1629 Patriot Blvd., Glenview, IL 60026-7712. To the best of Petitioner's knowledge, the phone number of Lamm Partners Inc. is disconnected.

Petitioner was an investor in Lamm Partners Inc. Although Petitioner was given a titular title of vice president and allocated 40 percent of the stock, the business was operated by its president Huy Nguyen who owned 60 percent of the stock. All significant decisions as the filing of returns and as to the payment of the subject taxes were made by Huy Nguyen.

Although Petitioner and Huy Nguyen have the same last name, to the best of Petitioner's knowledge, they are not related. Nguyen is a common name for those of Vietnamese ancestry.

APPLICABLE LAW

The personal liability penalty is at Section 3-7(a) of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a)).

Personal liability for withheld income tax is at Section 1002d of the Illinois Income Tax Act (35 ILCS 5/1002(d)).

ERRORS OF FACT OR LAW

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(a) of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a) set forth in the “first Notice”.

2. 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 taxes or in any other manner evade or defeat the subject Sales/Use Tax & E911 Surcharge and is not liable for the personal liability penalty of Section 3-7(a) of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a) set forth in the “first Notice”.

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 (35 ILCS 5/1002(d) set forth in the “second Notice”.

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”.

CONCLUSION AND RELIEF REQUESTED

WHEREAS, Petitioner requests that the Illinois Independent Tax Tribunal find that Diep Nguyen is not responsible and willful for the unpaid taxes in both Notices and that both notices be cancelled for the reasons contained herein.

DIEP NGUYEN

By:



One of the Attorneys Representing Petitioner

Representatives:

Michael C. Whelan, ARDC no. 6195511
E. Thomas Ryder, ARDC no. 6278366
Attorneys at Law
2860 River Road, Suite 240
Des Plaines, IL 60018

Phone: (847) 298-9275
Email: mcwhelanlaw@yahoo.com

Collection Action
Assessment and Notice of Intent



July 7, 2014



Letter ID: L1641295584

DIEP NGUYEN
1712 CHARLES DR
WHEELING IL 60090-6776

Taxpayer ID: XXX-XX-0180
NPL Penalty ID: 4210014



LAMM PARTNERS INC
1629 PATRIOT BLVD
GLENVIEW, IL 60026-7712

**We have determined you are personally liable
for a penalty of \$396,686.38.**

The penalty is equal to the amount of unpaid liability of LAMM PARTNERS INC , due to your status as a responsible officer, partner, or individual of LAMM PARTNERS 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 \$396,686.38. 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 5, 2014**. 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**



To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review. You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action
Assessment and Notice of Intent



July 7, 2014



Letter ID: L1641295584

DIEP NGUYEN
1712 CHARLES DR
WHEELING IL 60090-6776

Taxpayer ID: XXX-XX-0180
NPL Penalty ID: 4210014



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: 3630-7238
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	156,861.00	63,183.00	64,802.30	-	-	284,846.30
31-Dec-2009	30,459.00	6,192.00	3,871.43	-	-	40,522.43
29-Feb-2012	34,665.00	7,033.00	2,777.19	-	-	44,475.19
31-Mar-2012	843.00	269.00	30.97	-	-	1,142.97
30-Apr-2012	851.00	270.00	28.84	-	(0.21)	1,149.63
31-May-2012	795.00	189.00	25.94	-	(0.37)	1,009.57
30-Jun-2012	822.00	244.00	24.11	-	-	1,090.11
31-Oct-2012	17,892.00	98.05	2.72	-	(17,711.53)	281.24
31-Dec-2012	19,216.00	2,655.92	297.02	-	-	22,168.94

IDOR-5P-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: L1641295584
DIEP NGUYEN

Total amount due: \$396,686.38

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.

Collection Action

Assessment and Notice of Intent



July 7, 2014



Letter ID: L0108938720

DIEP NGUYEN
1712 CHARLES DR
WHEELING IL 60090-6776

Taxpayer ID: XXX-XX-0180
1002D Penalty ID: 4370016



LAMM PARTNERS INC
1629 PATRIOT BLVD
GLENVIEW, IL 60026-7712

We have determined you are personally liable for a penalty of \$604.48.

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

Illinois law (35 ILCS 5/1002(d)) 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 \$604.48. 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 5, 2014**. 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
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› collection actions



To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review.

You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 5/1002(d) of the Withholding Income Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action
Assessment and Notice of Intent



July 7, 2014



Letter ID: L0108938720

DIEP NGUYEN
1712 CHARLES DR
WHEELING IL 60090-6776

Taxpayer ID: XXX-XX-0180
1002D Penalty ID: 4370016



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.

IL Withholding Income Tax

Account ID: 20-3046811-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2012	286.00	314.32	4.16	-	-	604.48

IDOR-5P-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: L0108938720
DIEP NGUYEN

Total amount due: \$604.48

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 012086190248 731 123199 9 0000000060448



IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. **Do not send this form separately.**

Step 1: Complete the following taxpayer information

1 Diep Nguyen
Taxpayer's name

2 586-48-0180
Taxpayer's identification number(s)

3 1712 Charles Dr.
Taxpayer's street address

Wheeling IL 60090
City State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

<u>Michael C. Whelan</u> Name	<u>E. Thomas Ryder</u> Name	 Name
 Name of firm	 Name of firm	 Name of firm
<u>2860 S. River Rd., Suite 240</u> Street address	<u>2860 S. River Rd., Suite 240</u> Street address	 Street address
<u>Des Plaines</u> <u>IL</u> <u>60018</u> City State ZIP	<u>Des Plaines</u> <u>IL</u> <u>60018</u> City State ZIP	 City State ZIP
<u>(847) 298-9275</u> Daytime phone number	<u>(847) 298-9275</u> Daytime phone number	 Daytime phone number
 E-mail address	 E-mail address	 E-mail address
<u>w.t/rot 2007-13</u> Specific tax type Year or period	<u>rot/ent 2007-2013</u> Specific tax type Year or period	 Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

- The attorneys-in-fact named above **do not** have the power to – *Check only the items below you do not wish to grant.*
- endorse or collect checks in payment of refunds.
 - receive checks in payment of any refund of Illinois taxes, penalties, or interest.
 - execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
 - execute consents extending the statutory period for assessments or collection of taxes.
 - delegate authority or substitute another representative.
 - file a protest to a proposed assessment.
 - execute offers in compromise or settlement of tax liability.
 - represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
 - obtain a private letter ruling on behalf of the taxpayer.
 - perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

 Name	 Name	 Name
 Street address	 Street address	 Street address
 City State ZIP	 City State ZIP	 City State ZIP
 Daytime phone number	 Daytime phone number	 Daytime phone number
 Date granted	 Date granted	 Date granted



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

Michael C. Whelan

Name
2860 S. River Rd., Suite 240
 Street address
Des Plaines IL 60018
 City State ZIP
(847) 298-9275
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Name
 Street address
 City State ZIP
 Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

[Handwritten Signature] Taxpayer's signature Title, if applicable *[Handwritten Signature]* Date **8/27/14**

Spouse's signature Title, if applicable Date

If corporation or partnership, signature of officer or partner Title, if applicable Date

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

- I declare that I am not currently under suspension or disbarment and that I am
- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
 - duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
 - enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

Attorney/C.P.A.	IL	<i>[Handwritten Signature]</i>	8/29/14
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Attorney/C.P.A.	IL	<i>[Handwritten Signature]</i>	Aug 29, 2014
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer
 _____ is known to and this document is signed in the presence of
 _____ the two disinterested witnesses whose signatures appear here.

Signature of witness Date
 Signature of witness Date

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary Date

Notary seal