ILLINOIS INDEPENDENT
TAX TRIBUNAL

BLAIR MINTON,	)	
Petitioner	)	
	)	
V	)	**No. 14 TT 188**
ILLINOIS DEPARTMENT	)	**Chief Judge James M. Conway**
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:

1. The Notice was issued by the Department on August 25, 2014 assessing a penalty in the amount of $192,609.55 to Petitioner as a responsible officer, partner, or individual, for unpaid tax liabilities of GB Invest, LLC (the "Taxpayer") for taxable periods June 30, 2009 and December 31, 2010. A copy of the Notice is attached to this Petition as Exhibit 1.

ANSWER: The Department states that the attached notice speaks for itself and therefore denies the allegations in paragraph 1 of the petition.

2. Petitioner is an individual, his social security number is known to the Department and is not supplied here for privacy protection.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. The principal place of business of the Taxpayer was 1475 Harvard Drive, Suite D, Kankakee, Illinois. The Taxpayer's Account No. stated on the Notice from the Department is 3952-5058.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

4. Petitioner is not a responsible person of the Taxpayer as defined in 35 ILCS 735/3-7 (the "Act"), and is not liable for the tax liabilities and penalties being assessed by the Department.

ANSWER: The allegations in paragraph 4 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

5. Petitioner received a Notice of Intent dated March 11, 2013 regarding the Department's intent to hold him personally responsible for sales and use tax liabilities of the Taxpayer. Exhibit 2 attached.

ANSWER: The Department admits the allegations in paragraph 5 of the petition.

6. Prior to receipt of the Notice of Intent, Petitioner did not receive any previous notices, correspondence, documents, or inquiries regarding the Taxpayer's sales tax liabilities from the Department or any other party, and had no previous knowledge of the sales tax liabilities allegedly owed by the Taxpayer.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the petition and therefore neither admits or denies said allegations.

7. Petitioner responded to the Notice of Intent by providing documents and information to the Department to prove that he was not, and is not a responsible officer, partner or individual of the Taxpayer. Exhibit 3 attached.

ANSWER: The Department admits that Petitioner provided the documents attached as Exhibit 3 to the Department but states that the documents speak for themselves and denies all other allegations in paragraph 7 of the petition.

8. During the period relevant Petitioner was the sole member for Toulouse Investments, LLC (Toulouse), and Toulouse became a Member of GB Invest, LLC on or about February 5, 2009.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

9. Petitioner became a Co-Manager of GB Invest, LLC on or about February 5, 2009. Greg Yates was the other Co-Manager of GB Invest, LLC at that time.

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

10. Petitioner never had control, supervision or responsibility for filing returns or making payments on behalf of GB Invest, LLC, those were the responsibility of and actually done by Greg Yates.

ANSWER: The allegations in paragraph 10 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

11. Petitioner never had any authority to sign checks on behalf of the Taxpayer and was not a signatory on the bank accounts of the Taxpayer, and Petitioner never acted in any manner to disburse funds of Taxpayer.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the petition and therefore neither admits or denies said allegations.

12. All management decisions, sales activities, financial matters, reporting requirements, filing responsibilities, payment responsibilities, and day-to-day operations were during the entire period Petitioner was involved with GB Invest, LLC, the responsibility of and performed by Greg Yates, the other Manager of Taxpayer

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the petition and therefore neither admits or denies said allegations.

13. Petitioner resigned as Manager of GB Invest, LLC on July 1, 2009. Exhibit 4 attached.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the petition and therefore neither admits or denies said allegations.

14. Toulouse Investment, LLC assigned its Membership Interest in GB Invest, LLC on July 1, 2009 to Quality Concepts, LLC. Exhibit 5 attached

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. From and after July 1, 2009, Petitioner had no ownership interest in, no position with, no relationship with, nor any connection whatsoever, with the Taxpayer, GB Invest, LLC.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the petition and therefore neither admits or denies said allegations.

16. Personal liability under 35 ILCS 735/3-7 is imposed on one who is "responsible" for the filing of tax returns and payment of taxes shown to be due thereon, who willfully fails to file and/or pay such taxes. Neither this provision nor its predecessor provision, define "responsible" person or "willful" conduct. However, the Illinois Supreme Court, in cases where it has considered responsible person personal liability, the Court has referenced and applied interpretations of similar language in section 6672 of the Internal Revenue Code (26 U.S.C. §6672), which imposes liability on corporate officers who willfully fail to collect, account for, or pay over employees' social security and Federal income withholding taxes. Branson v. Department of Revenue, 168 Ill 2d 247 (1995); Department of Revenue v. Heartland Investments, Inc., 106 Ill. 2d 19 (1985); Department of Revenue v. Joseph Bublick & Sons, Inc., 68 Ill. 2d 568 (1977).

ANSWER: The allegations in paragraph 16 of the petition consist of legal conclusions and are thus denied.

17. Federal courts have addressed officer/employee liability with respect to who is considered "responsible" for §6672 purposes. The courts have considered specific facts in determining whether individuals were "responsible" for the payment of employee taxes, to wit: 1) the duties of the officer as outlined in the corporate by-laws; 2) the

ability of the individual to sign checks of the corporation; 3) the identity of the officers, directors, and shareholders of the corporation; 4) the identity of the individuals who hired and fired employees; and, 5) the identity of the individuals who were in control of the financial affairs of the corporation. Monday v. United States, 421 F. 2d 1210 (7th Cir. 1970), cert. den. 400 U.S. 821 (1970); Gephart v. United States, 818 F. 2d 469 (6th Cir. 1987); Peterson v. United States, 758 F. Supp. 1209 (N.D. Ill. 1990). As the facts set forth above show Petitioner did not act in a manner that meets the criteria to be held responsible for unpaid tax of Taxpayer.

ANSWER: The allegations in paragraph 17 of the petition consist of legal conclusions and are thus denied.

18. The Department erroneously assessed the penalty against Petitioner for the tax period ended June 30, 2009. Petitioner had no involvement in the day-to-day operations of Taxpayer, and had no control, supervision, or responsibility of filing returns or making payments for Taxpayer for this period. All such control, supervision and activity were the responsibility of Greg Yates. Petitioner never disbursed any funds of Taxpayer.

ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

19. The Department erroneously assessed the penalty against Petitioner for the tax period ended December 31, 2010. Petitioner resigned as Manager and assigned and conveyed his interest through the LLC in Taxpayer on July 1, 2009. Petitioner had no economic interest in, no ownership in, no management position in, nor

control, supervision, or responsibility of filing returns for making payments on behalf of the Taxpayer any time after July, 2009.

ANSWER: The allegations in paragraph 16 of the petition consist primarily of factual and legal conclusions and argument and are therefore denied.

20. Petitioner is not a responsible person of the Taxpayer under 35 ILCS 735/3-7 and is not liable for the tax liabilities and penalties being assessed by the Department.

ANSWER: The allegations in paragraph 20 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

21. The full penalty in the amount of $192,609.55 being assessed under 35 ILCS 735/3-7 should be abated.

ANSWER: The allegations in paragraph 16 of the petition consist primarily of factual and legal conclusions and argument and are therefore 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 at issue is 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, ILLLINOIS

BLAIR MINTON	)	
	)	
v.	)	**14-TT-188**
	)	
STATE OF ILLINOIS	)	
DEPARTMENT OF REVENUE	)	

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 6,8,11,12,13,14, and 15.

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: 11/12/14

CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on November 12, 2014 a copy of the Department's ANSWER was served on Thomas F. Brett II by causing a copy to be sent by electronic mail to tfbrett@uhlaw.com.