

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JOHN S. CARDWELL,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-196
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

1. Petitioner is an individual who can be contacted at P.O. Box 1070, Decatur, Illinois 62525, and can be reached at 217-454-2929.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(A) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by Romanoff & 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.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(B) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's Taxpayer ID is XXX-XX-7647.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a)(1)(C) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained in Paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax law. 20 ILCS 5/5-15.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

5. Sometime in 2014, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) ("Notice") in the amount of \$48,681 in tax, plus penalties and interest, for the unpaid liability of Cardwell & Randall Hospitality Services for the tax period ending October 31, 2007. The Department's demand for payment regarding the Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the allegations in Paragraph 5.

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.

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

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 October 7, 2014 (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.

ANSWER: With respect to the timeliness of the taxpayer's Petition, Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the remainder of the allegations in Paragraph 7.

8. Petitioner is a corporate officer of Cardwell & Randall Hospitality Services who exited the corporation on September 8, 2006.

ANSWER: The Department admits Petitioner is a corporate officer of Cardwell & Randall Hospitality Services. The Department lacks sufficient information to either admit or deny the remainder of the allegations in Paragraph 8 and therefore demands strict proof thereof.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales tax for the corporation during the audit tax periods at issue because the corporation retained and reasonably relied on an outside accountant for all tax matters including sales tax.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 9 and therefore demands strict proof thereof.

10. The Department began a sales tax audit of Cardwell & Randal Hospitality Services a few years after Petitioner left the corporation. The Department issued an NTL for the sales tax audit on May 24, 2010, and assessed tax that was never collected on mandatory services charges imposed on weddings and banquets.

ANSWER: The Department admits it issued an NTL on May 24, 2010. The Department lacks sufficient information to either admit or deny the allegations regarding the Petitioner's employment and/or involvement with Cardwell & Randall Hospitality Services and therefore

demands strict proof thereof. The remainder of Paragraph 10 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

COUNT I

Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of Cardwell & Randall Hospitality Services.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

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 735/3-7.

ANSWER: Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

13. Petitioner is a corporate officer who did not have control, supervision, 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 and file the corporation's sales tax returns.

ANSWER: The Department admits Petitioner was a corporate officer. The Department lacks sufficient information to either admit or deny whether the corporation retained and

reasonably relied on an outside accountant to prepare and file the sales tax returns and therefore demands strict proof thereof. The remainder of the allegations in Paragraph 13 contain legal conclusions, not material allegations of fact, do not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations, and are therefore denied.

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

ANSWER: Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 14.

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
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

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 allegations made in Paragraph 1 through 14, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 14 as though fully set forth herein.

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 735/3-7.

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the statute speaks for itself.

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 he was no longer associated with the corporation when the audit tax liability was discovered. Moreover, the audit tax liability is based on disallowed deductions whereby the corporation never collected the sales tax and had reasonably relied on its outside accountant regarding the preparation and filing of the sales tax returns.

ANSWER: The Department admits Petitioner was a corporate officer. The assertion that Petitioner bears no liability due to his alleged disassociation from the corporation is a legal conclusion, not a material allegation of fact, does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations and is therefore denied. The Department lacks sufficient information to either admit or deny whether the corporation retained and reasonably relied on an outside accountant to prepare the sales tax returns. Additionally, the Department lacks sufficient information to either admit or deny whether the Petitioner departed from the corporation and therefore demands strict proof thereof. The Department denies the Petitioner's characterization of the audit and all other allegations in Paragraph 17.

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.

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 18.

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
- d. granting such further relief as this Tribunal deems appropriate under the circumstances.

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 allegations made in Paragraphs 1 through 18, inclusive, hereinabove.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 18 as though fully set forth herein.

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

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 20.

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

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 21.

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

ANSWER: The allegations in Paragraph 22 of the petition contain a legal conclusion, not a material allegation of fact, do not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations and are therefore denied.

23. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of the corporation is not supported by law.

ANSWER: Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department denies the legal conclusions/allegations contained in Paragraph 23.

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

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Dated: November 7, 2014

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
Special Assistant Attorney General

Ashley Hayes Forte
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-3514 phone
(312) 814-4344 facsimile
ashley.forte@illinois.gov

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JOHN S. CARDWELL,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-196
)	
)	
DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS,)	
Respondent.)	

**AFFIDAVIT OF TRACI SKEETERS
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Collections Bureau's 100% Penalty Unit.
2. My current title is RTS III.
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 8, 9, 10, 13, and 17.

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.



Traci Skeeters
RTS III
Illinois Department of Revenue

DATED: 10-29-2014