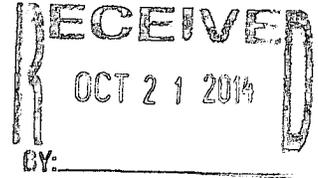


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

JOHN S. CARDWELL,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



1477196

PETITION

Petitioner, John S. Cardwell (“Petitioner”), by and through his attorneys, Romanoff & Dickett, Ltd, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

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.
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.
3. Petitioner’s Taxpayer ID is XXX-XX-7647.
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. 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 periods ending October 31, 2007. The Department’s demand for payment regarding 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 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.

BACKGROUND

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

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.

10. The Department began a sales tax audit of Cardwell & Randall 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.

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 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, 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.
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 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 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.

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;
- (c) enters judgment in favor of Petitioner and against the Defendants.

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 the corporation 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;
- (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;
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

Thank you for considering this Petition.

Respectfully submitted,

John S. Cardwell,
Petitioner

By: 

One of Petitioner's Attorneys

Date: 10/17/14

James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200 (fax 3201)

**Collection Action
Notice of Intent**

Exhibit 1



August 20, 2014



Letter ID: L1856487392

JOHN S. CARDWELL
1108 CONSTITUTION DR
EDINBURGH IN 46124-9258

Taxpayer ID: XXX-XX-7647
NPL Penalty ID: 1440281



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

Sales/Use Tax & E911 Surcharge						Account ID: 3053-0105
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Oct-2007	48,681.00	19,618.00	33,628.64	0.00	0.00	101,927.64
Total Balance:						101,927.64



Exhibit 2

Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

October 7, 2014

James Dickett
Romanoff & Dickett Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
John S. Cardwell, Responsible Officer of Cardwell & Randall Hospitality Service
Account ID: 3053-0105
NPL: 1440281
Letter ID: CNXXXX66X6664XX5, dated April 27, 2011

Dear Mr. Dickett:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing regarding John S. Cardwell and the above notice. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for the above notice.

The amount of liabilities at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax

Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC:vs