

ILLINOIS INDEPENDENT
TAX TRIBUNAL

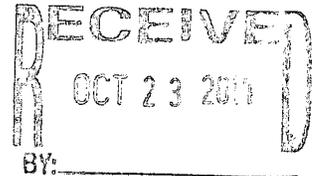
PAMELA HALVERSON,

Petitioner,

vs.

ILLINOIS DEPARTMENT
OF REVENUE,

Respondent.



PETITION

The Petitioner, PAMELA HALVERSON, (“Petitioner”), hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Tax Liability (“Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

INTRODUCTION

1. The “Notice” was issued by the Department on August 21, 2014, assessing personal liability in the amount of \$143,913.82 for the unpaid tax debt of Cardinal EMS, Ltd. (“Cardinal”). A copy of the “Notice” is attached to this Petition.

2. Petitioner is an individual with an address of N873 Club Circle Drive, Pr Du Sac, Wisconsin, and a telephone number of (608) 644-2356. The Taxpayer ID is [REDACTED].

3. Petitioner is a shareholder with a 24% ownership interest in Nottus, Inc, a Washington corporation ("Nottus"). Nottus' Taxpayer Account Number (FEIN) is 27-3533018.

4. Nottus has filed a timely Petition with the Illinois Independent Tax Tribunal to review and reverse and/or modify the Notice of Tax Liability issued by the Illinois Department of Revenue against it. The case is known as Nottus, Inc. v. Illinois Department of Revenue, 14-TT-167.

5. The Illinois Income Tax Act permits a purchaser to be held personally liable for any debt incurred by a seller where the purchaser acquires a major part of a taxpayer's assets.

6. Petitioner should not be held personally liable for the unpaid tax debt of Cardinal because Nottus did not purchase or acquire a major part of Cardinal's assets.

7. Furthermore, the penalty imposed upon Petitioner by the Department is not supported by the plain language of the Illinois Bulk Sales Act.

8. According to the Bulk Sales Act, a purchaser who fails to file proper notice of sale with the Department shall be personally liable for the amount owed but unpaid up to the amount of the reasonable value of the property acquired by the purchaser.

9. Therefore, in the event that the Act is found to be applicable to Nottus's purchase or transfer of any of Cardinal's assets, personal liability against the Petitioner should be limited to no more than the reasonable value of the property acquired.

BACKGROUND AND RELEVANT FACTS

10. On August 21, 2014, the Department issued a "Collection Action - Assessment and Notice of Intent" to Petitioner for the unpaid tax debt of Cardinal. The determination letter provides that Petitioner is personally liable in the amount of \$143,913.82 for failing to properly

notify the Illinois Department of Revenue's Bulk Sales Unit of Nottus' purchase of certain Cardinal assets.

11. Nottus has not purchased or transferred any of Cardinal's assets, or in the alternative, has purchased or transferred less than \$143,913.82 of Cardinal's assets.

APPLICABLE LAW

12. Illinois law permits a purchaser to be held personally liable for any debt incurred by a seller if the purchaser does not comply with the bulk sale reporting requirement. However, the Income Tax Act only applies to circumstances where a purchaser acquires a major part of a taxpayer's assets.

13. The Illinois Income Tax Act reads in pertinent part:

“If any taxpayer, outside the usual course of his business, sells or transfers the **major part** of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 business days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department. . . .”

35 ILCS 5/902 (West 2014) (emphasis added).

14. The Illinois courts have held that the purchase of a major part of a company's business assets refers to the purchase of greater than fifty percent of the assets. *Zenith Radio Distributing Corporation v. Mateer* (1941), 311 Ill.App.263, 266, 35 N.E.2d 815; see also *Continental Casualty Co. v. Burlington Truck Lines, Inc.* (1966), 70 Ill.App.2d 405, 217 N.E.2d 293.

15. This rationale is evidenced in *U.S. v. Goldblatt Bros.* (1942), 128 F.2d 576. In *Goldblatt*, defendant was charged by the trial court with violation of the Act for failure to

report a transfer of assets to the plaintiff creditor. Defendant, owner of a chain of department stores, purchased the bulk of assets owned by a shoe repair company in a sale outside the regular course of business. The appellate court determined that the purchase – which included all of the physical assets, machinery and equipment used for the shoe repair business – constituted purchase of a major part of the company’s assets, and was subject to the bulk sales reporting requirement. Thus, the defendant was found to have violated the Act and the decision of the trial court was affirmed.

16. The Illinois Bulk Sales Act also places a financial limit on any liability imposed upon a purchaser of another company’s assets. The Act reads in pertinent part:

“If the purchaser or transferee fails to file the above described notice of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable to the Department for the amount owed hereunder by the seller or transferor but unpaid, **up to the amount of the reasonable value of the property acquired** by the purchaser or transferee.”

35 ILCS 5/902 (West 2014) (emphasis added).

ERROR I

17. Petitioner was erroneously held personally liable by the Department for the unpaid tax debt of Cardinal. Petitioner should not be held liable because Nottus did not purchase or transfer a major part of Cardinal’s assets.

18. Considering the plain language of the Income Tax Act as cited above, there is no evidence that Nottus purchased or transferred a major part of Cardinal’s assets. As such, notice was not required by Nottus to the Department under the Act, and personal liability of Cardinal’s debts should not attach to Petitioner.

19. The Illinois case law provided above also establishes that a purchase of a major part

of a company's business assets refers to the purchase or transfer of greater than fifty percent of that company's assets.

20.The *Goldblatt* case cited herein is also easily distinguishable from the Petitioner's case. *Goldblatt* involved the purchase of *all* of the physical assets, machinery and equipment used for the business. Here, Nottus has not purchased or transferred any such assets.

ERROR II

21.Even if the Act is found to be applicable to Nottus's purchase of certain Cardinal assets, the Department erroneously exceeded the limit of Petitioner's personal liability as set forth in the Illinois Bulk Sales Act.

22.According to the Act, personal liability should be limited to no more than the reasonable value of the property acquired or transferred.

23.As such, if the Income Tax Act is determined to apply to Nottus's purchase of any of Cardinal's assets, which no such evidence exists as of this Petition, Petitioner would at most be liable to the Department for no more than the reasonable value of the assets acquired by Nottus from Cardinal.

CONCLUSION AND RELIEF REQUESTED

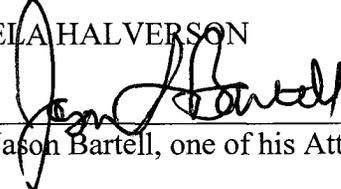
24.As indicated by both statutory and case law, the Income Tax Act was intended to apply to circumstances in which a purchaser acquires a major part of a company's assets. A purchase or transfer equaling significantly less than fifty percent of the assets, as is the case with Nottus, is not subject to the provisions or penalties of the Act. Therefore, Petitioner requests that the Illinois Department of Revenue rescind its collection action and assessment of

personal liability against Petitioner in the amount of \$143,913.82, and release Petitioner from any further liability related thereto.

25. In the alternative, in the event that the Act is found to be applicable to Nottus's purchase of any of Cardinal's assets, personal liability should be limited against Petitioner to no more than the reasonable value of the property acquired. Therefore, Petitioner requests that the Illinois Department of Revenue rescind its collection action and assessment of personal liability against Petitioner in the amount of \$143,913.82, issue a new collection action for an amount not to exceed the reasonable value of the assets acquired by Nottus from Cardinal, and upon taxpayer's payment of the same, release Petitioner from any further liability related thereto.

WHEREAS, Petitioner requests that the "Notice" be modified or canceled for the reasons contained herein.

PAMELA HALVERSON

By: 

Jason Bartell, one of his Attorneys

Representatives:

Jason Bartell
ARDC #: 6255602
Bartell Powell, LLP
10 E. Main St.
Champaign, IL 61820
PH: 217-352-5900
FAX: 217-352-0182

"Notice"

Collection Action

Assessment and Notice of Intent



August 21, 2014



Letter ID: L1914977296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PR DU SAC WI 53578-9560

Taxpayer ID: XXX-XX-4355
1002D Penalty ID: 2740465



CARDINAL EMS LTD-
PO BOX 111
MONTICELLO IL 61856-0111

We have determined you are personally liable for a penalty of \$143,913.82.

The penalty is equal to the amount of unpaid liability of CARDINAL EMS LTD, due to your status as a responsible officer, partner, or individual of CARDINAL EMS LTD.

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 \$143,913.82. 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 October 20, 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.

BETH WINTER
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext 31606
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.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 5/10C2(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.

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.

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



August 21, 2014



Letter ID: L1914977296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PR DU SAC WI 53578-9560

Taxpayer ID: XXX-XX-4355
1002D Penalty ID: 2740465



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: 20-4723820-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2010	85,066.91	8,628.69	6,945.77	-	-	100,641.37
30-Jun-2012	17,961.55	774.05	213.85	-	(11,221.09)	7,728.36
30-Sep-2012	18,659.00	2,589.08	450.86	-	-	21,698.94
31-Dec-2012	12,281.77	1,328.18	235.20	-	-	13,845.15

IDOR-SP-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: L1914977296
PAMELA HALVERSON

Total amount due: \$143,913.82

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 017065153447 731 123199 0 0000014391382

Taxpayer Statement



August 22, 2014



Letter ID: L0942689296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PRAIRIE DU SAC WI 53578-9560

Taxpayer ID: 27-3533018
Total amount due: \$26,006.20



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: 27-3533018-000

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2013	-	-	-	-	-	Not Included*
* File and pay this return.						
31-Mar-2014	11,595.04	1,391.40	105.78	-	-	13,092.22
30-Jun-2014	12,398.67	495.94	19.37	-	-	12,913.98

SOC

Retain this portion for your records.

P-000095

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: L0942689296
PAMELA HALVERSON

Total amount due: \$26,006.20

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PO BOX 19035
SPRINGFIELD IL 62794-9035

\$ _____
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Collection Action

Notice of Intent



August 22, 2014



Letter ID: L1168331280

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PRAIRIE DU SAC WI 53578-9560

Taxpayer ID: 27-3533018



NOTTUS, INC
2149 SHADY REST RD
MONTICELLO IL 61856-8099

You have been identified as a responsible officer, partner, or individual of NOTTUS, INC.

Illinois law provides that we may hold you personally liable for a penalty equal to the total tax, penalty, and interest due from NOTTUS, INC.

The following pages detail the current amount of debt we are pursuing against NOTTUS, INC. This debt must be paid immediately. 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 this debt is not paid, we intend to issue a penalty against you for the full amount of the debt. Once the penalty becomes final, we can take further collection action against you personally which may include the seizure and sale of your assets and levy of your wages and bank accounts.

If you believe you are not personally responsible for this debt, send us written proof within 10 days. If the information you submit is insufficient, we may continue to issue the penalty.

If you have any questions, please write or call our office weekdays from 8:30 a.m. to 4:30 p.m.

BETH WINTER
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31606
217 785-2635 fax

- For information about
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 - › submitting proof
 - › what you owe
 - › 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.

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.

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

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What other collection actions may we take?

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- referral to a collection agency.
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- 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



August 21, 2014



Letter ID: L1914977296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PR DU SAC WI 53578-9560

Taxpayer ID: XXX-XX-4355
1002D Penalty ID: 2740465



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PO BOX 111
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- 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 October 20, 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.

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BETH WINTER
100% PENALTY UNIT
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31606
217 785-2635 fax

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 › submitting proof
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Collection action information

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Collection Action

Assessment and Notice of Intent



August 21, 2014



Letter ID: L1914977296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PR DU SAC WI 53578-9560

Taxpayer ID: XXX-XX-4355
1002D Penalty ID: 2740465



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Account ID: 20-4723820-000

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31-Dec-2012	12,281.77	1,328.18	235.20	-	-	13,845.15

IDOR-5P-NPL (N-03/07)

Retain this portion for your records.

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Collection Action

(R-12/08) (136)



Letter ID: L1914977296
PAMELA HALVERSON

Total amount due: \$143,913.82

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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 017065153447 731 123199 0 0000014391382

Taxpayer Statement



August 22, 2014



Letter ID: L0942689296

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PRAIRIE DU SAC WI 53578-9560

Taxpayer ID: 27-3533018
Total amount due: \$26,006.20



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IL Withholding Income Tax

Account ID: 27-3533018-000

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SOC

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P-000095

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Taxpayer Statement (R-12/08) (136)



Letter ID: L0942689296
PAMELA HALVERSON

Total amount due: \$26,006.20

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SPRINGFIELD IL 62794-9035

\$ _____

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000 006 015912356641 731 123199 2 0000002600620

Collection Action
Notice of Intent



August 22, 2014



Letter ID: L1168331280

PAMELA HALVERSON
N873 CLUB CIRCLE DR
PRAIRIE DU SAC WI 53578-9560

Taxpayer ID: 27-3533018



NOTTUS, INC
2149 SHADY REST RD
MONTICELLO IL 61856-8099

You have been identified as a responsible officer, partner, or individual of NOTTUS, INC.

Illinois law provides that we may hold you personally liable for a penalty equal to the total tax, penalty, and interest due from NOTTUS, INC.

The following pages detail the current amount of debt we are pursuing against NOTTUS, INC. This debt must be paid immediately. 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.

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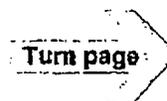
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PO BOX 19035
SPRINGFIELD IL 62794-9035

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- For information about
- › how to pay
 - › submitting proof
 - › what you owe
 - › 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.

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.

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 documentation so that we can correct our records.

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.