

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

KEITH KURZBAND,)	
)	
Petitioner,)	
)	
v.)	Case No. 14-TT-210
)	
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. Jurisdiction before the Illinois Independent Tax Tribunal (hereinafter the “Tribunal”) is proper and mandated by 35 ILCS 1010/1-50.

ANSWER: Paragraph 1 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.

2. Petitioner resides at 6519 W. 34th Street, Berwyn, Illinois 60402.

ANSWER: The information contained in Paragraph 2 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 2.

3. Petitioner’s phone number is (708) 638-0242.

ANSWER: The information contained in Paragraph 3 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 3.

4. Petitioner is currently appearing *pro se*.

ANSWER: The Department admits the factual allegations in Paragraph 4.

5. A copy of the Statutory Notice (Letter ID L0408278032) is attached hereto as Exhibit A and by this reference incorporated herein.

ANSWER: The Department admits the factual allegations in Paragraph 5.

6. The periods involved in the imposition of personal liability are for the months ending February 2012 through May 2012 (the “Assessment Period”).

ANSWER: The Department admits the factual allegations in Paragraph 6.

7. Petitioner is not subject to personal liability under 35 ILCS 735/3-7 for the tax obligations of Exhibitors Carpet Service Inc. (the “Taxpayer”) for the reasons set forth below.

ANSWER: 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.

8. Petitioner is not now, and has never been a shareholder of the Taxpayer.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 8 and therefore demands strict proof thereof.

9. Petitioner is not now, and has never been, an officer of the Taxpayer.

ANSWER: The Department denies the allegations contained in Paragraph 9.

10. Petitioner does not now, and has never had, possession of the books and records of the Taxpayer.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 10 and therefore demands strict proof thereof.

11. Petitioner does not now, and during the period for which liability is sought to be imposed, did not have the authority to issue checks or direct the issuance of checks on behalf of the Taxpayer.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 11 and therefore demands strict proof thereof.

12. Petitioner is not now, and has never been, a person who has the control, supervision or responsibility of filing returns and making payments of the amount of any trust tax imposed in accordance with the Illinois Tax Act.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 12 and therefore demands strict proof thereof.

13. Petitioner's employment during the Assessment Period was limited to working in the Taxpayer's warehouse and assisting in the cutting, storing, and shipping of carpet ordered by customers of the Taxpayer.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 13 and therefore demands strict proof thereof.

14. Until receiving Exhibit A, Petitioner had no knowledge that taxes due to the State of Illinois remain unpaid.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 14 and therefore demands strict proof thereof.

15. Because Petitioner was unaware that the Taxpayer had failed to pay taxes due to the State of Illinois, it is impossible for Petitioner to have willfully failed to file a return or make the

payment to the Illinois Department of Revenue or to willfully attempt in any other manner to evade or defeat the taxes due by the Taxpayer.

ANSWER: Paragraph 15 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.

16. On information and belief, during the assessment period, the Taxpayer was being operated by CFO Pros, Inc., 233 S. Wacker Drive, Chicago, Illinois 60606 (phone: 312-893-7254) at the direction of First Midwest Bank (the “Bank”), which had provided financing to the Taxpayer. The Bank’s willingness to forbear from calling its outstanding loans due was conditioned upon allowing CFO Pros to operate the Taxpayer during all relevant periods.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 16 and therefore demands strict proof thereof.

17. CFO Pros, Inc. contracted with Tom Gilmore to provide day to day management of the Taxpayer during the Assessment period.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 17 and therefore demands strict proof thereof.

18. On information and belief, all funds collected by the Taxpayer during the Assessment period were turned over to First Midwest Bank, which determined which operating expenses could be paid by CFO Pros, Inc. and Tom Gilmore.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 18 and therefore demands strict proof thereof.

19. Petitioner requested a copy of the agreement between the Bank and CFO Pros, Inc. in place during the Assessment Period, but the Bank refused to release a copy of said agreement.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 19 and therefore demands strict proof thereof.

20. On information and belief, CFO Pros, Inc. charged the Taxpayer \$10,000 per week to oversee the operations of the Taxpayer during the Assessment Period.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 20 and therefore demands strict proof thereof.

21. CFO Pros, Inc.'s responsibilities included maintaining the books and records of the Taxpayer during the Assessment Period and filing periodic reports with First Midwest Bank.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 21 and therefore demands strict proof thereof.

22. Accordingly, CFO Pros, Inc. and First Midwest Bank would have been aware that trust fund tax obligations due from the Taxpayer were not being paid and that First Midwest Bank was retaining collected tax revenue along with all other funds collected by CFO Pros, Inc. and Tom Gilmore.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 22 and therefore demands strict proof thereof.

23. Immediately after the Assessment Period, on June 8, 2012, Tom Gilmore formed a new company, ECS Acquisitions LLC, and used it to buy all the assets of the Taxpayer.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 23 and therefore demands strict proof thereof.

24. Pursuant to the Asset Purchase Agreement signed by Tom Gilmore and ECS Acquisitions LLC, the purchaser of the assets assumed certain legalities of the Taxpayer including:

- a. Under Section 1.3(a)(iii): "All accounts payable of (Taxpayer) as of the Closing

Date....incurred in the ordinary course of business...”; and

- b. Under Section 1.3(a)(viii): “Any liability of (Taxpayer) arising from any action taken by Gilmore, Purchaser, or any of its directors, officers, shareholders or affiliates, either directly or on behalf of (Taxpayer), prior to the Closing Date.”

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 24, in its entirety, including subparagraphs (a) and (b), and therefore demands strict proof thereof.

25. Trust fund tax obligations were incurred in the ordinary course of business prior to the Closing Date of June 8, 2012 purchase agreement and were therefore assumed by the purchaser of the Taxpayer’s assets.

ANSWER: The Department lacks sufficient information to either admit or deny the allegations in Paragraph 25 and therefore demands strict proof thereof. Further, with respect to whether the taxes were incurred in the ordinary course of business and assumed by the purchaser of the Taxpayer’s assets, Paragraph 25 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.

26. Tom Gilmore’s failure to turn over the trust fund tax obligations collected while he was managing the Taxpayer on behalf of CFO Pros, Inc. and First Midwest Bank created a liability assumed under the June 8, 2012 purchase agreement.

ANSWER: Paragraph 26 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. Further, the Department lacks sufficient information to either admit or deny the allegations concerning Tom Gilmore, CFO Pros, Inc. and First Midwest Bank in Paragraph

26 and therefore demands strict proof thereof.

27. The conduct and knowledge of First Midwest Bank, CFO Pros, Inc. and Tom Gilmore during the Assessment Period and Tom Gilmore's specific assumption of the Taxpayer's trust fund tax obligations under the terms of the June 8, 2012 asset purchase agreement make First Midwest Bank, CFO Pros, Inc., Tom Gilmore and ECS Acquisitions, LLC liable for the tax obligations under 35 ILCS 735/3-7(h).

ANSWER: Paragraph 27 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.

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 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.

Date: November 26, 2014

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Ashley Hayes Forte
Ashley Hayes Forte
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**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, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26.

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: Nov 25, 2014