IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RECEIVED
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BY:

MARION GLICKSBERG, Petitoner	)	
V.	)	TAXPAYER ID: XXX-XX-9495
	)	NPL PENALTY ID: 3770006
ILLINOIS DEPARTMENT OF REVENUE, Respondent	)	

PETITITION PROTESTING THE DEPARTMENT OF REVENUE'S DETERMINATION IMPOSING PERSONAL LIABILTY FOR TAXES AND PENALTY DUE AND OWING FROM EXHIBITORS CARPET SERVICE INC.

TO: Illinois Independent Tax Tribunal and Illinois Department of Revenue

COMES NOW Marion Glicksberg, Petitioner herein, and, pursuant to 35 ILCS 1010/1-50, files this petition protesting the Illinois Department of Revenue's imposition of personal liability for a penalty of $40,260.67 for the tax liability of Exhibitors Carpet Service Inc.

1.) Jurisdiction before the Illinois Independent Tax Tribunal (hereinafter the "Tribunal") is proper and mandated by 35 ILCS 1010/1-50.

2.) Petitioner resides at 860 Villas Court, Highland Park, Illinois 60035.

3.) Petitioner's phone number is (847) 780-3220.

4.) Petitioner is currently appearing *pro se.*

5.) A copy of the Statutory Notice (Letter ID L0368680672) is attached hereto as Exhibit A and by this reference incorporated herein.

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

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

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

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

10.) Petitioner is not now, and has never been, an employee of the Taxpayer.

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

12.) Petitioner does not now, and has never had, the authority to issue checks, or direct the issuance of checks, on behalf of the Taxpayer.

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

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

15.) Because Petitioner was unaware that the Taxpayer had failed to pay taxes due 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.

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's), 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.

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

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.

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.

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.

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

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.

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.

24.) Pursuant to the Asset Purchase Agreement signed by Tom Gilmore and ECS Acquisitions LLC, the purchaser of the assets assumed certain liabilities 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."

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

26.) Tom Gilmore's failure to turn over 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.

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 obligation under 35 ILCS 735/3-7(h).

WHEREFORE, Petitioner respectfully requests that the Tribunal sustain Petitioner's protest of the imposition of personal liability for the tax obligations of Exhibitors Carpet Service Inc. and find that Petitioner is not a responsible person under 35 ILCS 735/3-7(a).

Dated: November 3, 2014

Marion Glicksberg, Petitioner

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Collection Action

Assessment and Notice of Intent

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
tax.illinois.gov

September 5, 2014

Letter ID: L0368680672

MARION GLICKSBERG
PO BOX 94
DEERFIELD IL 60015-0094

Taxpayer ID: XXX-XX-9495
NPL Penalty ID: 3770006

EXHIBITORS CARPET SERVICE INC
1745 LILLY CT
HIGHLAND PARK IL 60035-5523

We have determined you are personally liable for a penalty of $40,260.67.

The penalty is equal to the amount of unpaid liability of EXHIBITORS CARPET SERVICE INC, due to your status as a responsible officer, partner, or individual of EXHIBITORS CARPET SERVICE INC.

Illinois law (35 ILCS 735/3-7) 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 $40,260.67. 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 **November 4, 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.

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

217 782-9904 ext. 31614
217 785-2635 fax

For information about
- **how to pay**
- **submitting proof**
- **collection actions**

Turn page

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.

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.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation 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**.

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

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
tax.illinois.gov

September 5, 2014

Letter ID: L0368680672

MARION GLICKSBERG
PO BOX 94
DEERFIELD IL 60015-0094

Taxpayer ID: XXX-XX-9495
NPL Penalty ID: 3770006

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.

Sales/Use Tax & E911 Surcharge **Account ID: 0245-1069**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
29-Feb-2012	10,161.00	1,319.32	434.08	-	(271.00)	11,643.40
31-Mar-2012	8,920.00	1,170.40	368.78	-	-	10,459.18
30-Apr-2012	7,234.00	968.08	280.63	-	-	8,482.71
31-May-2012	8,281.00	1,093.60	300.78	-	-	9,675.38

IDOR-5P-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: L0368680672
MARION GLICKSBERG

Total amount due: $40,260.67
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.