

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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PAMELA HALVERSON,

Petitioner,

vs.

ILLINOIS DEPARTMENT  
OF REVENUE,

Respondent.

14 77 255



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**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 October 28, 2014, assessing personal liability in the amount of \$24,672.02 for the unpaid tax debt of Nottus, Inc. ("Nottus"). 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' Taxpayer Account Number (FEIN) is 27-3533018.

4. *735 ILCS 735/3-7* permits a responsible officer to be held personally liable for willful failure to pay required taxes.

5. Petitioner should not be held personally liable for the unpaid tax debt of Nottus because she is not a responsible officer and he did not act willfully.

### **BACKGROUND AND RELEVANT FACTS**

6. On October 28, 2014, the Department issued a "Collection Action - Assessment and Notice of Intent" to Petitioner for the unpaid tax debt of Nottus. The determination letter provides that Petitioner is personally liable in the amount of \$24,672.02 for being a responsible officer of Nottus.

7. Petitioner is not a responsible officer of Nottus, did not act willfully, and is therefore not personally responsible for this tax liability.

### **APPLICABLE LAW**

8. *35 ILCS 735/3-7* can hold a responsible officer of a corporation personally liable for a tax liability due to willful non-payment.

9. *35 ILCS 735/3-7* reads in pertinent part:

“Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department of willfully attempts in any other manner to

evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon. . .”

35 ILCS 735/3-7.

10. In order to be considered a responsible officer under the act, a person should have significant authority and control of the business affairs of the company. *Cerone v. State*, 974 N.E.2d 377, 383 (Ill. App. Ct. 1st Dist. 2012). In *Cerone*, the court found that a part owner of a restaurant was a responsible officer due to holding a 75% interest, regularly visiting the restaurant, speaking with the restaurant managers concerning business affairs, holding check signing authority, and participating in significant business decisions. *Id.*

11. *Branson v. Department of Revenue* is another relevant case that deals with the issue of willfulness. *Branson* states, “Willful failure to pay taxes has generally been defined as involving intentional, knowing and voluntary acts or, alternatively, reckless disregard for obvious or known risks.” 168 Ill. 2d 247, 255 (Ill. 1995). In other words, a responsible officer must intentionally withhold payment of taxes with full knowledge of its consequences, or recklessly fail to pay taxes in the face of obvious or known risks. *Id.*

### **NOT A RESPONSIBLE OFFICER**

12. Petitioner was erroneously held personally liable by the Department for the unpaid tax debt of Nottus. Petitioner should not be held liable because she is not a responsible officer as defined under the statute.

13. Petitioner, being only a 24% shareholder in Nottus, does not have significant authority or control over the business affairs of the company.

14. Additionally, unlike in the cited *Cerone* case, Petitioner did not participate in

significant business decisions with the company.

15. As such, due to Petitioner not having the responsibility to pay taxes for Nottus, and due to Petitioner not having significant control over the business affairs of Nottus, she should not be held liable for this tax liability.

#### **NO WILFULLNESS**

16. In addition to not being a responsible officer as defined by statute and case law, Petitioner did not act willfully in any non-payment of taxes on the part of Nottus.

17. Because Petitioner did not significantly participate in the operation of the business, she did not intentionally or knowingly withhold payment of taxes.

18. Additionally, due to the nature of Petitioner's limited involvement in Nottus, she did not exhibit any reckless disregard for any obvious or known risks.

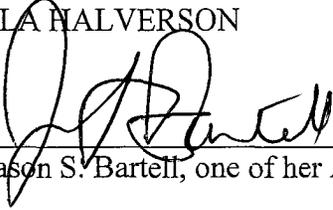
#### **CONCLUSION AND RELIEF REQUESTED**

19. As indicated by both statutory and case law, the 735 ILCS 735/3-7 was intended to apply to responsible officers of a company who willfully fail to pay required taxes. In the present case, Petitioner is neither a responsible officer nor has she demonstrated willfulness in any failure to pay taxes. Therefore, Petitioner requests that the Illinois Department of Revenue rescind its collection action and assessment of personal liability against Petitioner in the amount of \$24,672.02, and 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 S. Bartell, one of her Attorneys

Representatives:

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

"Notice"

# Collection Action

## Assessment and Notice of Intent



October 28, 2014



Letter ID: L1947300880

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

Taxpayer ID: XXX-XX-4355  
1002D Penalty ID: 800652



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

### We have determined you are personally liable for a penalty of \$24,672.02.

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

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 \$24,672.02. 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 December 27, 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](http://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



**Collection Action**  
**Assessment and Notice of Intent**



October 28, 2014



Letter ID: L1947300880

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

Taxpayer ID: XXX-XX-4355

1002D Penalty ID: 800652



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-Mar-2014	11,595.04	1,491.40	160.88	-	(2,652.50)	10,594.82
30-Jun-2014	12,398.67	1,587.83	90.70	-	-	14,077.20

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: L1947300880  
PAMELA HALVERSON

**Total amount due: \$24,672.02**

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 007891124647 731 123199 0 0000002467202