

IIT: Answer

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

THOMAS V. CHAFFIN)	
<i>Petitioner,</i>)	
)	15-TT-11
)	
STATE OF ILLINOIS)	Chief Judge James M. Conway
DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

ANSWER

NOW COMES THE Department of Revenue of the State of Illinois (“Department”) through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its answer to Taxpayer’s Petition respectfully pleads as follows:

INTRODUCTION

1. The “Notice” was issued by the Department on June 26, 2014 assessing a personal liability penalty in the amount of \$24,560.50 (\$11,262 in tax; \$5,426.88 in penalty and \$8,771.62 in interest) for unpaid payroll taxes for Stargate.com, Inc. (FEIN 32-006067) for taxable periods June 30, 2005, Sept 30, 2005 and December 31, 2005.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(a)(D) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 1, except that the total penalty is \$4,526.88.

2. A copy of the “Notice” is attached to this Petition as Exhibit A.

ANSWER: The information contained in Paragraph 2 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(a)(D) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 2.

3. Petitioner is an individual residing at 131 Brookwood Lane East in Bolingbrook, IL 60440 who previously worked for Stargate.com, Inc.

ANSWER: The information contained in Paragraph 3 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(a)(A) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 3.

4. Petitioner filed a Protest to the Illinois Department of Revenue’s Office of Administrative Hears August 19, 2014. (Copy attached as Exhibit B)

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

5. On November 25, 2014, the Office of Administrative Hearings notified the Petitioner that the Protest was timely filed, that it did not have jurisdiction and that the Petition and Request for Administrative hearings was dismissed. (Copy of letter attached as Exhibit C)

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

6. This Petition is being filed within sixty (60) days of the Department’s Notice of Dismissal, pursuant to Section 5000.310(a)(3) of the Tax Tribunal Rules.

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

BACKGROUND AND RELEVANT FACTS

7. On November 6, 2003, Stargate.com, Inc. (the “corporation”) filed Chapter 7 bankruptcy in 2003 and received a discharge in U.S. Bankruptcy Court in 2011.

ANSWER: Department denies the allegations contained in paragraph 7. The Bankruptcy Court records, posted on line, state that the corporation filed a bankruptcy action under Chapter 11 on November 6, 2003. This was converted to a Chapter 7 bankruptcy action on October 5, 2005, and the corporation was discharged in bankruptcy on February 2, 2012.

8. During the pendency of the bankruptcy, the Bankruptcy Trustee and Bankruptcy Court had sole authority and responsibility for the operation of the Corporation and the payment of the Corporation’s expenses including taxes.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, and demands strict proof thereof. The Trustee in Bankruptcy, Alex Moglis, states that he did not become the Trustee of the Corporation until October 6, 2005 and prior to that time the management of the Corporation was in control of Stargate.com Inc.

9. The Corporation was out of business and had no employees or payroll during any part of 2005 or at any time thereafter.

ANSWER: The information contained in Paragraph 9 is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2)(A). Respondent denies the factual allegation contained in paragraph 9. Whether Corporation was out of business is irrelevant to the issue of whether it had employees and the issue of whether the corporation had unpaid withholding taxes for employees has been determined by Respondent in a prior proceeding and is not subject to review in this case.

10. The Corporation's amended payroll tax returns (forms IL941X) for June 30, 2005, September 30, 2005 and December 31, 2005 were filed in August 2014 and reported no payroll during the aforesaid quarters. (Copies attached hereto as Exhibits D-F, respectively)

ANSWER: The information contained in Paragraph 10 is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2)(A).

Respondent denies the factual allegation contained in paragraph 10. The corporation's liability for payroll taxes during the second, third and fourth quarters of 2005 have been determined by Respondent and that conclusion is not subject to review by this Court as the corporation is not a party before this Court. Also the amended forms IL941X bear what appears to be the signature of the Petitioner. If Petitioner had no responsibility or control over the corporation in 2005 and presumably therefore had no control over the corporation in 2014 when the amended Forms 941X were signed how did he have the authority to sign the returns?

11. Thomas V. Chaffin did not have any authority to sign checks or make decisions about the payment of company expenses including taxes at any time during 2005 or thereafter.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11, and demands strict proof thereof.

APPLICABLE LAW

12. Personal liability only exists when a person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, willfully fails to do so. 35 ILCS 1010/1-1 et seq.

ANSWER: Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 12 and demands strict proof thereof.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, since Petition did not have control, supervision or responsibility for filing returns or making payments on behalf of the Corporation and since the Corporation was out of business and did not have any actual liabilities for the tax periods in question, Petitioner respectfully requests that the Notice be canceled for the reasons set forth herein, and that all liability in connection with the Notice be removed from Petition's account.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of any allegations contained in the Paragraph labeled "Conclusion and Relief Requested," and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

1. Deny Petitioner's prayer for relief;
2. Find that Petitioner was a responsible officer of the corporation under 35 ILCS1010/1 et seq. during the second, third and fourth quarters of 2005.
3. Find that the Notice correctly reflects Petitioner's liability for withholding tax, penalty and interest for the quarters ending June 30, 2005, September 30, 2005 and December 31, 2005.
4. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and

5. Grant any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /S/ Ralph Bassett
Ralph Bassett
Special Assistant Attorney General
ARDC No. 6180788

Ralph Bassett, SAAG
Special Assistant Attorney General
Illinois Department of Revenue
Office of legal Services
100 W. Randolph St., 7th Floor
Chicago, IL 60601
Telephone: 312-814-7039
Facsimile: 312-814-4344
Email: ralph.bassett@illinois.gov

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

THOMAS V. CHAFFIN)	
<i>Petitioner,</i>)	
)	15-TT-11
)	
STATE OF ILLINOIS)	Chief Judge James M. Conway
DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

AFFIDAVIT OF DEBBIE PAONI
PURSUANT TO TRIBUNAL RULE 5000.310(B)(3)

STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedures, 735 ILCS §5/1-109, I, Debbie Paoni, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Tax Specialist 3.
3. I reviewed documents related to Thomas V. Chaffin for the second, third and fourth quarters of 2005 regarding his position as a responsible officer of Stargate.com Inc.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition Paragraphs 8, 9, 10, 11 and Conclusion and Relief Requested paragraph.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

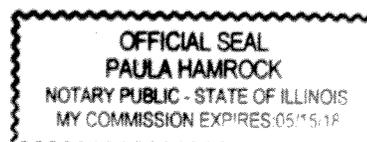
Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statement set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Debbie Paoni
Debbie Paoni
Revenue Tax Specialist 3
Illinois Department of Revenue

Subscribed and sworn to this 24 day
of February, 2015.

Paula Hamrock
Notary Public
My Commission: 5/15/2018
(Stamp)

DATED:



ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

THOMAS V. CHAFFIN)	
<i>Petitioner,</i>)	
)	15-TT-11
)	
STATE OF ILLINOIS)	Chief Judge James M. Conway
DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

AFFIDAVIT OF ALEX D. MOGLIA, ESQ.
PURSUANT TO TRIBUNAL RULE 5000.310(B)(3)

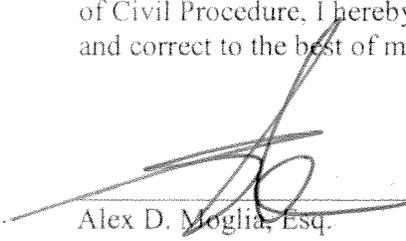
STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedures, 735 ILCS §5/1-109, I, Alex D. Moglia, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed as a panel Bankruptcy trustee by the United States Trustee's Office, United States Department of Justice, for the Northern District of Illinois.
2. My current title is Bankruptcy Trustee.
3. I was the Bankruptcy Trustee for Stargate.com Inc-commencing October 6, 2005 until the bankruptcy case was closed February 2, 2012.
4. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.


Alex D. Moglia, Esq.
Bankruptcy Trustee
United States Trustee's
Office, US Department of Justice

Subscribed and sworn to this 23rd day
of February, 2015.

Notary Public
My Commission: _____
(Stamp)

DATED:

