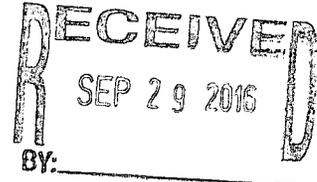


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

MUSLEH ALQUHSHI,)
)
 Petitioner,)
)
)
 v.)
)
 ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.



16 TT 197

PETITION

Petitioner, Musleh Alquhshi (“Petitioner”), by and through his attorneys, Dale & Gensburg, P.C., for his Petition before the Illinois Independent Tax Tribunal (the “Tribunal”) hereby complains of the Defendant, the Illinois Department of Revenue (the “Department”), and alleges as follows:

PARTIES

1. Petitioner is an individual who resides at 2217 Bellwort Drive in Rockford, Illinois 61108, and can be reached at 815-378-5559.
2. Petitioner is represented by attorneys Lane M. Gensburg and Anne J. Kim of Dale & Gensburg, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@dandgpc.com. Anne J. Kim can be reached at 312-263-2200 or akim@dandgpc.com.
3. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. See 20 ILCS 5/5-15.

NOTICES

Personal Liability Penalty

4. On August 5, 2016, the Department issued a Notice of Penalty Liability (the “NPL”) to Petitioner asserting a “Penalty Liability” of \$94,492.17 in connection with a Retailer’s Occupation Tax (“ROT”) liability that has been assessed against North 2nd Discount Store Inc. (“North 2nd Discount”) (the “ROT Liability”). The total Penalty Liability consists of \$62,088 in tax due, \$24,936 in late filing and payment and negligence penalties and \$7,469.17 in interest. A copy of the NPL is attached hereto as **Exhibit A**.

JURISDICTION

5. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the “Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*

6. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the issuance of the NPL.

COUNT I

The Department Erred in Imposing the Penalty Liability

7. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 6 above as and for this paragraph 7.

8. Petitioner is a co-owner and manager of North 2nd Discount, which is a retailer of tobacco products and other general merchandise. The Department audited North 2nd Discount’s books and records for the period July 9, 2010 through December 31, 2012 (the “period at issue”), ultimately resulting in the ROT Liability upon which the Penalty Liability herein is based.

9. Section 3-7 of the Illinois Uniform Penalty and Interest Act, 35 ILCS 735/3-7 provides:

“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 wilfully fails to file the return or make the payment to the Department or wilfully 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.” See 35 ILCS 735/3-7(a).

10. The Department erred in imposing the Penalty Liability on Petitioner because Petitioner did not willfully fail to file or pay or willfully attempt to evade or defeat North 2nd Discount’s ROT Liability.

11. The ROT Liability was attributable primarily to Petitioner’s lack of education, training and experience concerning operating a retail business, and lack of familiarity with the records required to be maintained by Illinois retailers and not due to any willfulness on Petitioner’s part. To wit:

- a. Petitioner was born in rural Yemen and raised in a small farming village by the name of Alshar. Petitioner’s father was a farmer. Petitioner received his entire formal education in Yemen.
- b. Petitioner immigrated to the United States when he was just 16 years old, and the only education he received in the United States was one year of English language classes.

- c. Petitioner learned to operate a retail business in Illinois through trial and error. He never received training or was otherwise instructed on books and records requirements under the Retailers' Occupation Tax Act.

12. Petitioner reserves the right to raise additional arguments as may be supported by the applicable facts and law.

WHEREFORE, Petitioner prays that the Tribunal:

- (a) Enters judgment in favor of Petitioner and against the Department and cancels the NPL;
- (b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NPL; and
- (c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

MUSLEH ALQUHSHI,
Petitioner

Lane M. Gensburg
Anne J. Kim
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
T – 312-263-2200
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lgensburg@dandgpc.com
akim@dandgpc.com

By:



One of Petitioner's Attorneys

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

MUSLEH ALQUHSHI,)	
)	
Petitioner,)	
)	
)	No.
v.)	
)	
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

TO: Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, IL 60601

I, Anne J. Kim, an attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5 p.m. on Thursday, September 29, 2016.



Anne J. Kim

Lane M. Gensburg
Anne J. Kim
Dale & Gensburg, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
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lgensburg@dandgpc.com
akim@dandgpc.com

Collection Action Assessment and Notice of Intent



August 5, 2016



Letter ID: L1847277648

MUSLEH S. ALQUHSHI
2217 BELLWORT DR
ROCKFORD IL 61108-8175

Taxpayer ID: XXX-XX-7499
NPL Penalty ID: 3450116



NORTH 2ND DISCOUNT STORE INC
5930 N 2ND ST
LOVES PARK IL 61111-4647

We have determined you are personally liable for a penalty of \$94,492.17.

The penalty is equal to the amount of unpaid liability of NORTH 2ND DISCOUNT STORE INC, due to your status as a responsible officer, partner, or individual of NORTH 2ND DISCOUNT STORE 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 \$94,492.17. 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 4, 2016**. 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.

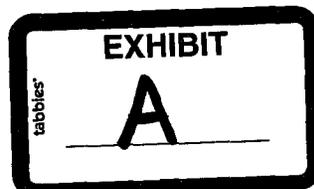
If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

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

For information about
› how to pay
› submitting proof
› collection actions



217 782-9904 ext. 31613
217 785-2635 fax



Collection Action

Assessment and Notice of Intent



MUSLEH S. ALQUHSHI
2217 BELLWORT DR
ROCKFORD IL 61108-8175

August 5, 2016



Letter ID: L1847277648

Taxpayer ID: XXX-XX-7499

NPL Penalty ID: 3450116



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: 3999-3450

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2012	62,088.00	24,936.00	7,469.17	-	(1.00)	94,492.17

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: L1847277648
MUSLEH S. ALQUHSHI

Total amount due: \$94,492.17

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035