

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SURAJ M. GUPTA)	
)	
Petitioner,)	
v.)	No. 14 TT 31
)	Judge Brian Barov
ILLINOIS DEPARTMENT OF)	
REVENUE,)	
)	
Respondent.)	

DEPARTMENT' S ANSWER TO PETITION

NOW COMES the Respondent, the Illinois Department of Revenue (the "Department"), by and through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to Taxpayer' s Petition ("Petition"), hereby states as follows:

PETITIONER:

Suraj M. Gupta
900 Auburn Lane
Bartlett, IL 60103
630-736-0750

Taxpayer ID: XXX-XX-1036

ANSWER: The Department admits the allegations.

PETITIONER' S ATTORNEYS:

Gust W. Dickett and James E. Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558

708-784-3200 (fax 3201)
jdickett@aol.com

ANSWER: The Department admits the allegations.

STATUTORY NOTICE AT ISSUE INCLUDING TAX PERIODS AT ISSUE:

NPL Penalty ID: 1040931
Personal Liability Assessment dated January 15, 2014(copy attached)
For Unpaid Corporate Sales Taxes of Bombay Foods, Inc., (IBT No. 3516-9184)
Amount _ \$94,208.80 (tax = \$59,162.04; penalty = \$20,415.20; interest = \$14,631.56)
Tax Periods at issue: June 2009, March 2010 to December 2010, November 2013

STATEMENT OF FACTS:

1. The Statutory Notice at issue is a personal liability assessment (a.k.a. NPL) issued to the Petitioner on January 15, 2014 for the tax periods ending June 2009, March 2010 to December 2010, and November 2013 (copy attached)("Statutory Notice").

ANSWER: The Department admits the allegations contained in paragraph 1.

2. The Petitioner is an absentee partial owner of the underlying corporation that currently is on a \$2,000 per month payment plan with the Department for the exact same unpaid sales taxes, penalties, and interest that is contained in the Statutory Notice at issue. In particular, the Petitioner pre-signs business checks once a month and then the daily managers (employees) pay the bills. The Petitioner otherwise does not visit the business location nor does the Petitioner participate in the day-to-day operations of the business.

ANSWER: The Department denies the allegations contained in paragraph 2.

SUMMARY OF THE ERRORS OF FACT OR LAW:

3. The Statutory Notice is erroneous because the legal elements of responsibility and willfulness (35 ILCS 735/3-7) are not supported by the facts. In particular, the Petitioner is an absentee partial owner who is not responsible for the filing and payment of sales taxes and who is not willful because the underlying corporation is currently on a \$2,000 per month payment plan with the Department.

ANSWER: Although paragraph 3 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 3.

4. Alternatively, even if the Petitioner is determined to be responsible and willful under 35 ILCS 735/3-7, the Notice is overstated because the statute allows the Department to issue a personal liability assessment only for the unpaid TAXES of the underlying corporation and not for the unpaid penalties and interest of the underlying corporation since only the TAXES were collected (or should have been collected) "in the trust" for the state.

ANSWER: Although paragraph 4 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 4.

RELIEF SOUGHT BY PETITIONER:

5. The Petitioner respectfully requests that the Illinois Independent Tax Tribunal cancel the Statutory Notice at issue in this Petition.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department in this matter;
- B) That the Department's Notice of Penalty Liability be determined to be correct.
- C) That this Tribunal grant such other additional relief it deems just and proper

LISA MADIGAN
ILLINOIS ATTORNEY GENERAL
REVENUE LITIGATION BUREAU
100 W. RANDOLPH ST., RM. 13-216
CHICAGO, IL 60601
By: Michael Coveny (312) 814-6697

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General



By _____
Michael Coveny,
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Michael Coveny, an attorney for the Illinois Department of Revenue, state that I served a copy of the attached Department's Answer to Petitioner's Petition upon:

James Dickett
Romanoff & Dickett, Ltd.
600 Hillgrove Avenue
Suite 1
Western Springs, IL 60558

By email to jdickett@aol.com on April 3, 2014.