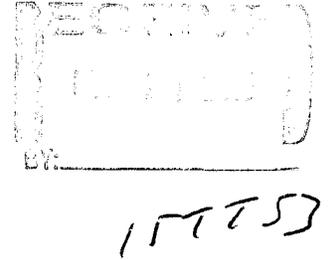


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

GENE LINTON, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
 ) ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 ) Defendant. )

No.



**PETITION**

Petitioner, Gene Linton (“Petitioner”), by and through his attorneys, The Law Office of James E. Dickett, Ltd, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner is an individual who lives at 2812 West 86<sup>th</sup> Place, Chicago, Illinois, 60652 and can be reached at 773-445-2020.
2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).
3. Petitioner’s Taxpayer ID is XXX-XX-2812.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement of Illinois tax laws. 20 ILCS 5/5-15.

## **NOTICE**

5. On January 22, 2015, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) (“Notice”) in the amount of \$231,893.41, for the unpaid liability of M V One Corp. for the tax periods ending June 30, 2009 and June 30, 2010. The Notice is attached hereto as Exhibit 1.

## **JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

## **BACKGROUND**

8. Petitioner is the owner of M V One Corp., which is a banquet hall located on the south side of Chicago.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales tax for M V One Corp. during the tax periods at issue because the business retained and reasonably relied on an outside accountant to prepare the sales tax returns, but the corporation’s outside accountant filed sales tax returns that were understated on their face and not discovered until the audit.

10. The underlying corporation, M V One Corp., is still in business and is in the process of procuring a payment plan for the unpaid corporate sales tax liability.

**COUNT I**

**Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of M V One Corp.**

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. A corporate officer who does not have control or supervision for filing or paying sales tax is not personally liable for the corporation's debt. 35 ILCS 35 ILCS 735/3-7.

13. Petitioner did not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments and therefore is not personally liable for the corporation's unpaid sales tax, penalties, and interest because the corporation retained and reasonably relied on an outside accountant to prepare the sales tax returns.

14. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax of the corporation.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax, penalties, and interest of the corporation because  
Petitioner did not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments; and
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and cancels the Notice.

## COUNT II

### Petitioner did not willfully fail to pay the sales tax, penalties, and interest of M V One Corp.

15. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 14, inclusive, hereinabove.

16. A corporate officer who does not willfully fail to pay the corporation's sales tax is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 35 ILCS 735/3-7.

17. Petitioner did not willfully fail to pay the sales tax, penalties, and interest of the underlying corporation and therefore is not personally liable for such amounts because the corporation reasonably relied on an outside accountant.

18. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the sales tax, penalties, and interest of the corporation.

**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of the corporation because Petitioner did not willfully fail to pay such amounts;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

### COUNT III

#### The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate sales taxes.

19. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 18, inclusive, hereinabove.

20. The Illinois statute regarding personal liability assessments improperly defines unpaid corporate sales tax to include penalties and interest. 35 ILCS 735/3-7.

21. The intent of Illinois statute regarding personal liability assessments for unpaid corporate sales taxes is to allow the state to pursue responsible, willful corporate officers for unpaid corporate sales taxes that were collected “in trust” for the state.

22. The unpaid corporate sales tax penalties and interest contained in the Notice at issue were not collected “in trust” for the state.

23. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of M V One Corp. is not supported by law.

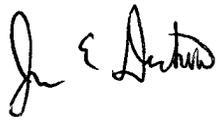
**WHEREFORE**, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of the corporation because such amounts were not collected “in trust” for the state;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

Thank you for considering this Petition.

Respectfully submitted,

Gene Linton,  
Petitioner

By:   
\_\_\_\_\_  
One of Petitioner's Attorneys

Date: 3/17/15

James E. Dickett  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)

FEB1272013 13:40 FROM:IRMSD 113974300 10:11001070001 11:07

# Collection Action

## Assessment and Notice of Intent

Exhibit 1



GENE A. LINTON  
2812 W 86TH PL  
CHICAGO IL 60652-3828

January 22, 2015



Letter ID: L1577477392

Taxpayer ID: XXX-XX-2812  
NPL Penalty ID: 1660572



M V ONE CORP  
1547 W 87TH ST  
CHICAGO IL 60620-4822

**We have determined you are personally liable  
for a penalty of \$231,893.41.**

The penalty is equal to the amount of unpaid liability of M V ONE CORP, due to your status as a responsible officer, partner, or individual of M V ONE CORP.

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 \$231,893.41.** 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 March 23, 2015.** 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

FE81272810 13:42 FROM:MK93 1134434086 10:11001043001 0:11:1

# Collection Action

## Assessment and Notice of Intent



GENE A. LINTON  
2812 W 86TH PL  
CHICAGO IL 60652-3828

January 22, 2015



Letter ID: L1577477392

Taxpayer ID: XXX-XX-2812  
NPL Penalty ID: 1660572



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: 2509-8098

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	97,171.00	39,861.00	19,836.07	-	(5,095.00)	151,773.07
30-Jun-2010	51,828.00	21,624.00	6,668.34	-	-	80,120.34

IDCR-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: L1577477392  
GENE A. LINTON

Total amount due: \$231,893.41  
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 009618822563 731 123199 7 0000023189341