

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

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|----------------------------------------|---|------------------------------------|
| MAHBOOD ABBAS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 15-TT-55 |
| |) | |
| ILLINOIS DEPARTMENT OF REVENUE, |) | Chief Judge James M. Conway |
| |) | |
| Defendant. |) | |

ANSWER

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer's Petition as follows:

PARTIES

1. Petitioner is an individual who lives at 6 Todor Court, Burr Ridge, Illinois, 60527, and can be reached at 773-507-7162.

ANSWER: The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 1, except the listed phone number. Further answering, the Department is without sufficient information to admit or deny the other factual allegations contained within Paragraph 1.

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.

ANSWER: The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 2.

3. Petitioner's Taxpayer ID is XXX-XX-0486.

ANSWER: The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the factual allegations contained within Paragraph 3.

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.

ANSWER: Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

NOTICE

5. On March 4, 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 \$742,809.73 for the unpaid liability of Jet Inc. for the tax periods ending June 30, 2009 and May 31, 2011. The Notice is attached hereto as Exhibit 1.

ANSWER: The Department admits the factual allegations contained within Paragraph 5.

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.

ANSWER: Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

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.

ANSWER: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

BACKGROUND

8. Petitioner was the owner of Jet Inc., which operated as a petroleum retailer on the south side of Chicago and which was audited by the Department for sales tax.

ANSWER: The Department admits the factual allegations contained within Paragraph 8.

9. Petitioner was not involved in the filing, preparation, and payment of Illinois sales tax for Jet Inc. during the tax periods at issue because the business retained and reasonably relied on an outside accountant to prepare the sales tax returns.

ANSWER: Paragraph 9 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

10. The underlying corporation, Jet Inc., also has a request for late discretionary hearing pending with the Department regarding the corporate sales tax audit liability at issue in this personal liability assessment which we believe is overstated.

ANSWER: The Department is without sufficient information or knowledge to either admit or deny the factual allegations contained within Paragraph 10. Otherwise, Paragraph 10 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

COUNT I

Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of Jet Inc.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 10 as though fully set forth herein.

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.

ANSWER: Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself. To the extent an answer is required for this Petition, denied.

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.

ANSWER: Paragraph 13 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

COUNT II

Petitioner did not willfully fail to pay the sales tax, penalties, and interest of Jet Inc.

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

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 14 as though fully set forth herein.

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.

ANSWER: Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself. To the extent an answer is required for this Petition, denied.

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.

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

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.

ANSWER: Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and 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.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 18 as though fully set forth herein.

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

ANSWER: Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself. To the extent an answer is required for this Petition, denied.

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.

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

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

ANSWER: Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

23. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of Jet Inc. is not supported by law.

ANSWER: Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required for this Petition, denied.

WHEREFORE, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: April 22, 2015

Respectfully submitted,
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman
Seth Jacob Schriftman
Special Assistant Attorney General

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

STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 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. I work in the Department's 100% Penalty Unit.
3. I compiled the information regarding the assessment asserted in the Collection Action Assessment and Notice of Intent subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some of the allegations contained in Paragraph 1 and 10 of Taxpayer's Petition.
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 statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

Debbie Paoni
Debbie Paoni
100% Penalty Unit

4/14/15
Date