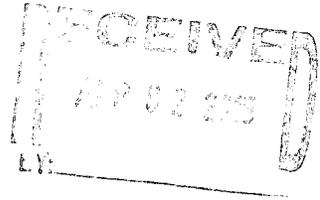


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

YAN ELYASH, )  
 )  
                   Petitioner, )  
 )  
                   v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
                   Defendant. )

No.



15 7162

**PETITION**

Petitioner, Yan Elyash (“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 residing at 3636 Oak Avenue, Northbrook, Illinois 60062, and can be reached by telephone at 224-875-2500.
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](mailto:lgensburg@dandgpc.com). Anne J. Kim can be reached at 312-263-2200 or [akim@dandgpc.com](mailto:akim@dandgpc.com).
3. Petitioner’s Social Security Number is [REDACTED].
4. 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

### Responsible Officer Liability (Personal Penalty Liability)

5. On February 6, 2015, the Department issued an Assessment and Notice of Intent (the “Notice”) proposing to assess Petitioner a responsible officer liability under 35 ILCS 735/3-7 in the amount of \$60,248.55, arising from the unpaid sales/use tax liability of Yanni Consulting Wholesale and Resale, Inc. (“Yanni Consulting”) (IBT No. 2870-4576) for the period July 2007 through September 2009. A copy of the Notice is attached hereto as **Exhibit A**.

## JURISDICTION

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

7. 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 Notice.

## BACKGROUND

8. Yanni Consulting was incorporated in 2003, and provided event consulting services including comprehensive event design, planning and production services (the “Consulting Services”).

9. In addition and incidental to the broad array of Consulting Services, Yanni Consulting also created and sold custom floral arrangements and centerpieces. Also incidental to its Consulting Services, Yanni Consulting rented various items and setups to its customers to be used in connection with the event being planned.

10. The Department conducted a sales/use tax audit of Yanni Consulting for the period July 2007 through September 2009 (the “Audit”), and issued Notices of Tax Liability

dated November 22, 2011, proposing to assess Petitioner a sales tax liability based primarily on the Department's position that Yanni Consulting was a retailer subject to the Retailer's Occupation Tax Act and should have charged and collected sales tax on its total revenues, including Yanni Consulting's consulting and rental fees.

11. Yanni Consulting contended in the Audit that it was a serviceman subject to the Service Occupation Tax Act under 35 ILCS 115/2 *et seq.* and not a retailer, and as such, was only obligated to charge sales tax on the sale of the floral arrangements, which essentially constituted the only tangible personal property that the company sold.

12. Yanni Consulting contested the Notices of Tax Liability through filing a protest to the Notice, and an administrative case was initiated titled *Department of Revenue v. Yanni Consulting Wholesale and Resale, Inc.*, Docket No. 11-ST-0579. The administrative case was ultimately settled through the issuance of an Order of Disposition Pursuant to Settlement dated December 31, 2013. The liability pursuant to the settlement conformed to Yanni Consulting being treated as a serviceman and not a retailer, with most of the liability consisting of a service occupation tax liability based on the difference between Yanni Consulting's costs of the flowers it sold and the selling price for those flowers. The Department subsequently proposed to assess Petitioner, individually, with a responsible officer liability (personal liability penalty) under 35 ILCS 735/3-7.

## COUNT I

### **Defendant is not Liable for the Responsible Officer Liability under 35 ILCS 735/3-7**

13. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 12 above as and for this paragraph 13.

14. Section 3-7 of the Illinois Uniform Penalty and Interest Act (35 ILCS 735/3-7) provides, in part, that 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 payments to the amount of any trust tax imposed in accordance with that Act and who

*willfully fails to file the return or make payment to the Department or willfully attempts any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of the tax unpaid by the taxpayer including penalties and interest thereon (emphasis added).*

15. Petitioner does not dispute that he was a responsible person/officer of Gianni Consulting. However, Petitioner did not “willfully” fail to pay the sales/use tax due and owing the Department by Gianni Consulting in connection with the Audit, or willfully attempt in any other manner to evade or defeat any tax that was determined to be due and owing the Department.

WHEREFORE, Petitioner prays that the Tribunal:

- (a) Enters judgment in favor of Petitioner and against Defendant and cancels the Notice;
- (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 Notice; and
- (c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

## COUNT II

### All Failure to Pay Penalties should be Abated for Reasonable Cause

16. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 15 as and for this paragraph 16.

17. Illinois law provides that failure to pay penalties do not apply if a taxpayer shows that the failure to pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

18. The most important factor to be considered in making a determination to abate a late payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

19. A taxpayer will be considered to have made a good faith effort to determine, file and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. See 86 Ill. Admin. Code 700.400(c).

20. Yanni Consulting's failure to timely pay its sales/use tax liabilities during the period at issue was due to reasonable cause warranting abatement of the late payment penalties which are a part of the personal liability penalty proposed against Petitioner pursuant to the Notice.

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

(a) Finds and declares that all late payment penalties should be abated for reasonable cause;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to pay penalties stated in the Notice; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

YAN ELYASH,  
Petitioner

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

Lane M. Gensburg  
Anne J. Kim  
Dale & Gensburg, P.C.  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606  
T – 312-263-2200  
F – 312-263-2242  
[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
[akim@dandgpc.com](mailto:akim@dandgpc.com)

P:\Clients\Yanni Design\Petition (4-2-15) -Independent Tax Tribunal.doc

# Collection Action

## Assessment and Notice of Intent



February 6, 2015



Letter ID: L1646308624

YAN ELYASH  
3636 OAK AVE  
NORTHBROOK IL 60062-4917

Taxpayer ID: XXX-XX-9356  
NPL Penalty ID: 1081214



YANNI CONSULTING WHOLESALE & R  
500 QUAIL HOLLOW DR  
WHEELING IL 60090-2651

### We have determined you are personally liable for a penalty of \$60,248.55.

The penalty is equal to the amount of unpaid liability of YANNI CONSULTING WHOLESALE & R, due to your status as a responsible officer, partner, or individual of YANNI CONSULTING WHOLESALE & R.

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 \$60,248.55. 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 April 7, 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.

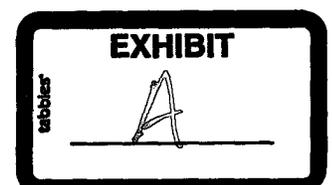
If the debt remains unpaid and this penalty becomes final, we intend to take collection enforcement action against you personally to collect this debt. Collection action can include the seizure and sale of your assets, and levy of your wages and bank accounts.

TRACI SKEETERS  
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. 31614  
217 785-2635 fax



## To avoid this collection action

### **Pay**

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

### **If you believe you are not personally responsible, send us proof**

Send us written proof, documents, or testimony for review.

You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

### **Federal Bankruptcy Court**

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

### **Correct our records**

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

## Collection action information

### **Applicable Illinois law**

Illinois law (35 ILCS 735/3-7 of the Retailers' Occupation Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at [tax.illinois.gov](http://tax.illinois.gov).

### **What other collection actions may we take?**

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
  - Professional license,
  - Certificate of Registration,
  - Liquor license,
  - Corporate Charter with the Secretary of State, or
  - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

**Collection Action**  
**Assessment and Notice of Intent**



February 6, 2015



Letter ID: L1646308624

YAN ELYASH  
3636 OAK AVE  
NORTHBROOK IL 60062-4917

**Taxpayer ID:** XXX-XX-9356  
**NPL Penalty ID:** 1081214



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: 2870-4576**

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	33,516.00	6,803.00	10,196.98	-	(159.36)	50,356.62
30-Sep-2009	7,259.00	1,552.00	1,080.93	-	-	9,891.93

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: L1646308624  
YAN ELYASH

**Total amount due: \$60,248.55**  
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.



Illinois Department of Revenue

# Authority to Levy Statutory References and Taxpayers' Bill of Rights

## Authority to Levy

*From 35 ILCS 5/1109 of the Income Tax Act and 35 ILCS 120/5f of the Retailers' Occupation Tax Act.*

In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment. Levy shall not be made until the Department has caused a demand to be made on the taxpayer in the manner provided above. In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director, may levy upon the salary, wages, commissions and bonuses of any employee, including officers, employees, or elected officials of the United States as authorized by Section 5520a of the Government Organization and Employees Act (5 U.S.C. 5520a), but not upon the salary or wages of officers, employees, or elected officials of any state other than this State by serving a notice of levy on the employer, as defined in Section 701(d). Levy shall not be made until the Department has caused a demand to be made on the employee in the manner provided above. The provisions of Section 12-803 of the Code of Civil Procedure relating to maximum compensation subject to collection under wage deduction orders shall apply to all levies made upon compensation under this Section. To the extent of the amount due on the levy, the employer or other person making payments to the taxpayer shall hold any non-exempt wages or other payments due or which subsequently come due. The levy or balance due thereon is a lien on wages or other payments due at the time of the service of the notice of levy, and such lien shall continue as to subsequent earnings and other payments until the total amount due upon the levy is paid, except that such lien on subsequent earnings or other payments shall terminate sooner if the employment relationship is terminated or if the notice of levy is rescinded or modified. The employer or other person making payments to the taxpayer shall file, on or before the return dates stated in the notice of levy (which shall not be more often than bimonthly) a written answer under oath to interrogatories, setting forth the amount due as wages or other payments to the taxpayer for the payment periods ending immediately prior to the appropriate return date. A lien obtained hereunder shall have priority over any subsequent lien obtained pursuant to Section 12-808 of the Code of Civil Procedure, except that liens for the support of a spouse or dependent children shall have priority over all liens obtained hereunder.

*Illinois law (735 ILCS 5/12-803 of the Code of Civil Procedure) and Federal law (15 U.S.C. 1673) define "maximum wages subject to collection."*

Federal law places a ceiling of 25% of the amount of an employee's disposable earnings subject to garnishment, so long as state law does not prohibit garnishment or provide for more limited garnishment than is allowed by federal law.

"The maximum wages, salary commissions, and bonuses subject to collection under a deduction order, for any work week shall not exceed the lesser of (1) 15% of such gross amount paid for that week, or (2) the amount by which *disposable earnings* (emphasis added) for a week exceed 45 times the Federal Minimum Hourly Wage prescribed by Section 206(a)(1) of Title 29 of the United States Code, as amended, in effect at the time the amounts are payable.... The term "*disposable earnings*" (emphasis added) means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." (735 ILCS 5/12-803)

## Taxpayers' Bill of Rights

- You have the right to call the Illinois Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond within specified time periods to our notices by asking questions, paying the amount due, or providing proof to refute our findings.
- You have the right to appeal our decisions in many instances within specified time periods by asking for our review or by taking the
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment, within certain time periods.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 *et seq.*

For more information about these rights and other departmental procedures, visit our Web site at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact us at the address or telephone numbers below.

call: 1 800 732-8866  
1 217 782-3336  
1 800 544-5304 (TDD-telecommunications device for the deaf)

write: ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19044  
SPRINGFIELD IL 62794-9044

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

YAN ELYASH, )  
 )  
 Petitioner, )  
 )  
 ) No.  
 v. )  
 )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendant. )

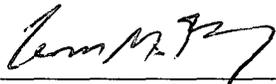
**NOTICE OF FILING**

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

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> of April, 2015, the undersigned filed the attached Petition before the Illinois Independent Tax Tribunal, located at 160 N. LaSalle St. Room N506 Chicago, Illinois 60601, a copy of which is hereby served upon you.

Respectfully submitted,

YAN ELYASH,  
Petitioner

By:   
One of Petitioner's Attorneys

Lane M. Gensburg  
Anne J. Kim  
Dale & Gensburg, P.C.  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606  
T – 312-263-2200  
F – 312-263-2242  
[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
[akim@dandgpc.com](mailto:akim@dandgpc.com)

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

YAN ELYASH )  
 )  
 Petitioner, )  
 )  
 ) No.  
 v. )  
 )  
 ILLINOIS DEPARTMENT OF REVENUE, )  
 )  
 Defendants. )

**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 Friday, April 3, 2015.

  
\_\_\_\_\_  
Anne J. Kim

Lane M. Gensburg  
Anne j. Kim  
Dale & Gensburg, P.C.  
200 West Adams Street, Suite 2425  
Chicago, Illinois 60606  
T - 312-263-2200  
F - 312-263-2242  
[lgensburg@dandgpc.com](mailto:lgensburg@dandgpc.com)  
[akim@dandgpc.com](mailto:akim@dandgpc.com)