

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

YAN ELYASH,)	
)	
Petitioner,)	
v.)	No. 15 TT 62
)	Judge Brian F. Barov
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

DEPARTMENT’S ANSWER TO PETITION

Respondent, the Illinois Department of Revenue (the “Department”), by and through its attorney, Lisa Madigan, Illinois Attorney General, for its Answer to the Petition (the “Petition”), hereby states 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.

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

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.

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

3. Petitioner’s Social Security Number is xxx-xx-9356.

ANSWER: The Department admits the allegations contained in paragraph 3.

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. 20 ILCS 5/5-15.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 4 and state such provision speaks for itself.

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**.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the documents attached to the Petition as Exhibit A and referred to in paragraph 5 and state that such document speaks for itself.

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 *et seq.*

ANSWER: The Department admits the allegations contained in paragraph 6.

7. The 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: Although paragraph 7 is not an allegation of a material fact but a legal conclusion, the Department admits the allegation/legal conclusion contained in paragraph 7.

BACKGROUND

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

ANSWER: The Department admits the allegations contained in paragraph 8.

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.

ANSWER: The Department admits the allegations contained in paragraph 9.

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.

ANSWER: The Department admits the allegations contained in paragraph 10.

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.

ANSWER: The Department admits the allegations contained in paragraph 11.

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.

ANSWER: The Department admits the allegations contained in paragraph 12.

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.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-12 as if fully set forth herein.

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).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 14 and state such provision speaks for itself.

15. Petitioner does not dispute that he was a responsible person/officer of Yanni Consulting. However, Petitioner did not "willfully" fail to pay the sales/use tax due and owing the Department by Yanni 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.

ANSWER: Although paragraph 15 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 15.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count I of 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

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.

ANSWER: The Department repeats and incorporates its answers to paragraphs 1-13 as if fully set forth herein.

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.

ANSWER: The Department admits the existence, force and effect, at all relevant times of the statutory provision set forth or referred to in paragraph 17 and state such provision speaks for itself.

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).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 18 and state such regulation speaks for itself.

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).

ANSWER: The Department admits the existence, force and effect, at all relevant times of the regulation set forth or referred to in paragraph 19 and state such regulation speaks for itself.

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.

ANSWER: Although paragraph 20 is not an allegation of material fact but a legal conclusion, the Department denies the allegations/legal conclusions contained in paragraph 20.

WHEREFORE, the Department prays:

- A) That Judgment be entered against the Petitioner and in favor of the Department on Count II;
- 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
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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:

Lane M. Gensburg / Anne J. Kim
Dale & Gensburg, P.C.
200 West Adams Street
Suite 2425
Chicago, IL 60601

By email to lgensburg@dandgpc.com and akim@dandgpc.com on May 4, 2015.



Michael Coveny,
Assistant Attorney General