

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>BHAVESH C. GANDHI,</b>	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 15 TT 64</b>
<b>ILLINOIS DEPARTMENT</b>	)	<b>Judge Brian Barov</b>
<b>OF REVENUE,</b>	)	
<b>Respondent</b>	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. Petitioner is an individual who lives at 206 W Streamwood Boulevard, Streamwood, Illinois 60107, and can be reached at 630-518-6032.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

2. Petitioner is represented by the Fish Law Firm, P.C. attorney David J. Fish, located at 200 E 5<sup>th</sup> Ave Suite 123, Naperville, Illinois 60563 and can be reached at 630-355-7590 or [dfish@fishlawfirm.com](mailto:dfish@fishlawfirm.com).

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. Petitioner’s Taxpayer ID is XXX-XX-9041.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

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 allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

5. On March 4, 2015, Petitioner, received a Collection Action Assessment and Notice of Intent for a personal liability penalty and NPL Penalty ID of 1740539 in the amount of \$657,087.69, which covers the tax periods ending June 30, 2009, and which is comprised of \$460,825.00 dollars in tax due, \$9262.50.00 in penalties, and \$103,628.59 in interest. The Notice is attached hereto as Exhibit A.

ANSWER: The Department admits that the Collection Action Assessment and Notice of Intent at issue is attached to the Petition as Exhibit A and that it was received by the Petitioner on March 4, 2015. The Department states that the Notice speaks for itself and denies the remaining allegations in paragraph 5 of the petition.

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: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

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: The allegations in paragraph 7 of the petition consist of legal conclusions and are thus denied.

8. Petitioner was the President of a corporation named AMI Oil Corporation (“AMI Oil”).

ANSWER: The Department admits the allegations in paragraph 8 of the Petition.

9. Petitioner relied on upon an outside accounting for the filing, preparation, and payment of Illinois sales taxes for AMI Oil. Furthermore, the evidence in this case shows that there was no intent to defraud and that Administrative Law Judge White previously ruled that the Department “disregarded evidence that may have provided a more innocent explanation. ...The record does not include clear and convincing evidence that Taxpayer filed returns with an intent to defraud”. See Recommended Disposition, attached as Exhibit B. Issue Preclusion and res judicata preclude the re-litigation of this issue.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition that Petitioner relied upon an outside accounting (firm) for the filing, preparation, and payment of Illinois sales taxes for AMI Oil and therefore neither admits or denies said allegations. The Department states that the Recommended Disposition attached as Exhibit B speaks for itself and therefore denies the Petitioner’s description and characterization thereof. The Department denies the conclusions and all other remaining allegations in paragraph 9 of the petition.

10. As of the date of the issuance of the Notice, AMI Oil allegedly owed \$657,087.69 to the Department, for the tax periods ending June 30, 2009 and October 31, 2009 and that amount is comprised of \$460,825.00 dollars in tax due, \$9262.50.00 in penalties, and \$103,628.59 in interest.

ANSWER: The Department states that the Notice speaks for itself and therefore denies the allegations in paragraph 10 of the petition.

### COUNT I

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, supervision, or responsibility for filing sales tax returns or making sales tax payments is not personally liable for the corporation's unpaid sales tax penalties and interest. 35 ILCS 35 ILCS 735/3-7.

ANSWER: The allegations in paragraph 12 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

13. Petitioner is a corporate officer of AMI Oil who relied upon the advise of outside accounting expertise in preparing the tax returns and therefore is not personally liable for the corporation's unpaid sales tax penalties and interest.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the petition that Petitioner is a corporate officer who relied upon the advise (sic) of outside accounting expertise in preparing the tax returns and therefore neither admits or denies said allegations. The remaining allegations in paragraph 13 of the petition consist not of material allegations of fact, but primarily of legal and /or factual conclusions, and are denied.

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

ANSWER: The allegations in paragraph 14 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;

- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and granting such further relief as this Tribunal deems appropriate under the circumstances.

## COUNT II

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: The allegations in paragraph 16 of the petition consist of legal conclusions and are denied.

17. Petitioner is a corporate officer of AMI Oil who did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts.

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are 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 AMI Oil.

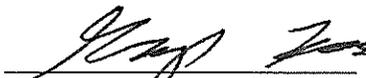
ANSWER: The allegations in paragraph 18 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

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

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: 

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Special Assistant Attorney General

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**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>BHAVESH C. GANDHI</b>	)	
	)	
v.	)	<b>15-TT-64</b>
	)	<b>Judge Brian F. Barov</b>
<b>STATE OF ILLINOIS</b>	)	
<b>DEPARTMENT OF REVENUE</b>	)	

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**AFFIDAVIT OF MARK DYCKMAN  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraph 9 and 13.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.

  
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Mark Dyckman  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 5-4-15