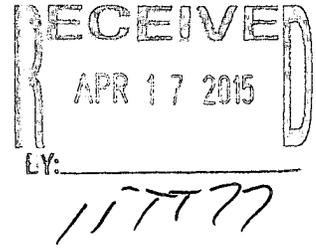


ILLINOIS INDEPENDENT
TAX TRIBUNAL

VARUGHESE VARGHESE,)
)
Petitioner,)
v.) No.
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)



PETITION

The Petitioner, VARUGHESE VARGHESE, hereby petitions the Illinois Independent Tax Tribunal to review and reverse/and or modify the Notice of Penalty Liability (“NPL Notice”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

INTRODUCTION

The NPL Notice was issued by the Department on December 4, 2013 assessing a personal liability penalty in the total amount of \$79,832.82. Petitioner’s attorneys do not have the detail page from that NPL Notice breaking down the amounts, however from another notice issued on June 5, 2014 it appears the amounts with additional six months of accruals were: \$73,175.00 in tax, \$58,690.00 in penalty and \$21,192.82 in interest, less payments/credits of \$73,175.00, resulting in a penalty liability of \$79,882.82 for sales/use tax & E911 surcharge of Kay Four Inc. as of June 5, 2014. The taxable periods were periods January 1, 2007 through February 28, 2009. A copy of the NPL Notice dated December 4, 2013 and a copy of a notice dated June 5, 2014 showing the breakdown among tax, penalty and interest are attached to this Petition.

The NPL Notice dated December 4, 2013 stated that the Petitioner may file a “protest and request an administrative hearing within 60 days of the date of this notice.” The Petitioner, by his attorney, then, on January 31, 2014, filed by mail, a protest with the Department at the address set forth on the NPL Notice.

The Department ignored Petitioner’s protest and then sent a demand for payment.

When Petitioner’s attorney contacted the Department asking why it demanded payment after the protest was filed, he was informed that the Department did not process the protest because Petitioner should have filed his action with the Tax Tribunal.

Because the underlying tax was paid, the Petitioner then attempted to seek penalty relief from the Board of Appeals. However, the Board of Appeals determined that it did not have jurisdiction.

Then the Petitioner applied for a late discretionary hearing from the Department’s Chief Administrative Law Judge. On April 14, 2015, Chief Administrative Law Judge Terry D. Charlton granted the request for late discretionary hearing. Attached is a copy of Judge Charlton’s letter granting the late discretionary hearing.

Petitioner is an individual who resides at 511 Jon Lane, Des Plaines, IL 60016. His phone number is (847) 390-8345.

BACKGROUND AND RELEVANT FACTS

Petitioner is stated by the Department to be a responsible person for Kay Four Inc. The business and property were foreclosed on at the end of February 2009.

Petitioner was the president of Kay Four Inc. Petitioner believed that the subject tax of Kay Four Inc. was being paid timely. The Department conducted an audit of Kay

Four Inc. Shortly after the Department determined that Kay Four Inc. had not fully paid its tax, Petitioner paid it. The amount then due from Kay Four Inc., which forms the substance of the personal liability penalty, consists of Kay Four Inc.'s penalties and interest.

Petitioner did not willfully fail to pay the subject tax.

APPLICABLE LAW

The personal liability penalty is at Section 3-7(a) of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a)).

ERRORS OF FACT OR LAW

1. The Department erroneously determined Petitioner to be willful in failing to file returns or in paying the subject taxes. Petitioner was not aware of the company's failure to pay the subject taxes during the time the taxes were incurred. Petitioner did not willfully fail to file any returns or pay the subject taxes or in any other manner evade or defeat the subject Sales/Use Tax & E911 Surcharge and is not liable for the personal liability penalty of Section 3-7(a) of the Uniform Penalty and Interest Act (35 ILCS 735/3-7(a) set forth in the NPL Notice.

CONCLUSION AND RELIEF REQUESTED

WHEREAS, Petitioner requests that the Illinois Independent Tax Tribunal find that VARUGHESE VARGHESE did not willfully fail to pay the tax and that the NPL Notice be cancelled for the reasons contained herein.

VARUGHESE VARGHESE

By: _____

One of the Attorneys Representing Petitioner

Representatives:

Michael C. Whelan, ARDC no. 6195511
E. Thomas Ryder, ARDC no. 6278366
Attorneys at Law
2860 River Road, Suite 240
Des Plaines, IL 60018

Phone: (847) 298-9275
Email: mcwhelanlaw@yahoo.com

Collection Action
Assessment and Notice of Intent



December 4, 2013



Letter ID: L1086856032

VARUGHESE VARGHESE
511 JON LN
DES PLAINES IL 60016-1001

Taxpayer ID: XXX-XX-9917
NPL Penalty ID: 1200451



KAY FOUR INC
511 JON LN
DES PLAINES, IL 60016-1001

**We have determined you are personally liable
for a penalty of \$79,832.82.**

The penalty is equal to the amount of unpaid liability of KAY FOUR INC , due to your status as a responsible officer, partner, or individual of KAY FOUR INC .

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 \$79,832.82. 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 that you are personally responsible for all or any of this liability, you may file a protest and request an administrative hearing within 60 days of the date of this notice. If you do not file a protest within the time allowed, you will give up your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding that is conducted under the rules of evidence. An administrative law judge will preside over this hearing. You may be represented by your attorney. A protest of this notice does not preserve your rights under any other tax notice.

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.

BETH WINTER
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. 31606
217 785-2635 fax

Collection Action

Assessment and Notice of Intent



June 5, 2014



Letter ID: CNXXX152929328X1

#BWNKMGV
#CNXX X152 9293 28X1#
VARUGHESE VARGHESE
511 JON LN
DES PLAINES IL 60016-1001

Taxpayer ID: XXX-XX-9917
NPL Penalty ID: 1200451



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed.

Sales/Use Tax & E911 Surcharge

Account ID: 3560-3224

| Period | Tax | Penalty | Interest | Other | Payments/Credits | Balance |
|-------------|-----------|-----------|-----------|-------|-----------------------|------------------|
| 28-Feb-2009 | 73,175.00 | 58,690.00 | 21,192.82 | 0.00 | (73,175.00) | 79,882.82 |
| | | | | | Total Balance: | 79,882.82 |



Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street – Level 5SW
Springfield, IL 62702
(217)782-6995

April 14, 2015

Michael C. Whelan
Attorney at Law
2860 S. River Road, Suite 240
Des Plaines, IL 60018

Re: **Late Discretionary Hearing Granted – Tribunal Jurisdiction**
Varughese Varghese
Notice of Penalty Liability (NPL)
NPL Penalty ID: 1200451
Letter ID: L1086856032, dated December 4, 2014

Dear Mr. Whelan:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Varughese Varghese regarding the above NPL. Based on the information provided in your request, I believe that it is appropriate to grant your request for a late discretionary hearing for Varughese Varghese regarding the above NPL.

The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest) or (\$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website (www.illinois.gov/taxtribunal) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's

rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Charlton". The signature is fluid and cursive, with the first name "Terry" and last name "Charlton" clearly distinguishable.

Terry D. Charlton
Chief Administrative Law Judge
Illinois Department of Revenue

TDC