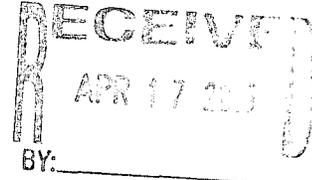


ILLINOIS INDEPENDENT  
TAX TRIBUNAL

VARUGHESE VARGHESE, )  
)  
Petitioner, )  
v. )  
)  
ILLINOIS DEPARTMENT )  
OF REVENUE, )  
)  
Respondent. )

No.



151177

MOTION FOR  
EMERGENCY RELIEF

The Petitioner, VARUGHESE VARGHESE, by his attorney, Michael C. Whelan, requests this Tribunal to grant the relief set forth herein for the reasons set forth below.

1. This Tribunal has the power to grant the relief set forth herein. The Illinois Independent Tax Tribunal Act of 2012 provides at 35 ILCS 1010/1-15(b), in pertinent part:

Except as otherwise limited by this Act, the Tax Tribunal has all of the powers necessary or convenient to carry out the purposes and provisions of this Act . . .

2. The Notice of Penalty Liability (“NPL Notice”) was issued by the Department on December 4, 2013 assessing a personal liability penalty in the total amount of \$79,832.82. A copy of the NPL Notice dated December 4, 2013 is attached to this Motion.

3. 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.”

4. The 60th day after December 4, 2013 was Sunday February 2, 2014 so the deadline for filing was Monday February 3, 2014.

5. The Petitioner's attorney mailed on January 31, 2014, by Priority Mail Express, a protest to the Department at the address set forth on the NPL Notice. A copy of the US Postal Service mailing receipt is attached.
6. On information and belief, the US Postal Service delivered the protest to the Department on Monday February 3, 2014 as indicated on the attached copy of the US Postal Service tracking page.
7. Whether using the postmark date (January 31, 2014) or the actual delivery date (February 3, 2014), either way, the protest was filed with the Department within 60 days.
8. The Department ignored Petitioner's protest and then sent a demand for payment.
9. On or about June 5, 2014, the Department seized the income tax refund of the Petitioner and his wife in the amount of \$1,611.00.
10. 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.
11. Because the underlying tax was paid, the Petitioner, by his attorney, then attempted to seek penalty relief from the Board of Appeals. However, the Board of Appeals determined that it did not have jurisdiction.
12. On August 27, 2014, the Department recorded with the Cook County Recorder of Deeds as document no. 1423901146 its Notice of Tax Lien against the Petitioner.
13. The Petitioner, by his attorney, applied for a late discretionary hearing from the Department's Chief Administrative Law Judge.
14. Petitioner's attorney informed the Department's collection division that there was an application pending before the Department's Chief Administrative Law Judge. In

particular, he informed a Department employee named William Kieffer who works out of the Department's Des Plaines office.

15. The Department issued a notice of levy against the Petitioner's bank account.

Bank of America is scheduled to turn over \$77,038.82 to the Department on April 21, 2015.

16. 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.

17. On April 16, 2015, Petitioner's attorney faxed copies of Judge Charlton's letter to William Kieffer and to his manager David Kafka at the Department.

18. On April 16, 2015, Petitioner's attorney went in person to the Department's office in Des Plaines and was told that the Department was thinking about whether to release the levy of the Petitioner's bank account.

19. Tax Tribunal Rule 5000.310(a)(3) provides:

Protests Improperly Filed with the Office of Administrative Hearings. In the event a taxpayer files a protest within the allowable timeframe for that protest with the Office of Administrative Hearings that is dismissed due to lack of jurisdiction because it should have been filed with the Tribunal, a petition will be considered to be timely filed if the taxpayer files a petition with the Tribunal within 60 days after notice of the dismissal.

20. On information and belief, the Department never processed the protest.

21. Petitioner's attorney never received "notice of the dismissal" of the protest.

22. Because, on information and belief, the Department never gave "notice of the dismissal" of the protest, the Petitioner was wrongfully delayed from filing his Petition with the Tax Tribunal. During this time, the Department has wrongfully: seized

Petitioner's income tax refund, recorded a notice of tax lien, and has issued a notice of levy to seize Petitioner's bank account funds.

WHEREFORE, Petitioner requests the following relief: That the Department be ordered to:

- A. Return the \$1,611.00 income tax refund wrongfully levied upon.
- B. Release the Notice of Tax Lien it wrongfully recorded.
- C. Release its pending wrongful levy of the Petitioner's bank account funds, or in the alternative, this Tribunal order that Bank of America is to disregard the Department's notice of levy.

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

217 782-9904 ext. 31606  
217 785-2635 fax

**For information about**  
› how to pay  
› submitting proof  
› collection actions



**CUSTOMER USE ONLY**

FROM: (PLEASE PRINT) PHONE ( )  
**MICHAEL C WHELAN ATTORNEY AT LAW**  
**2660 S RIVER RD**  
**STE 240**  
**DES PLAINES, IL 60018-6088**



EF 002122925 US



**PRIORITY  
 ★ MAIL ★  
 EXPRESS™**

**PAYMENT BY ACCOUNT (if applicable)**

USPS® Corporate Acct. No. Federal Agency Acct. No. or Postal Service™ Acct. No.

Post Office To Addressee

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SIGNATURE REQUIRED  
 Note: The mailer must check the "Signature Required" box if the mailer: 1) Requires the addressee's signature; OR 2) Purchases additional insurance; OR 3) Purchases COD service; OR 4) Purchases Return Receipt service. If the box is not checked, the Postal Service will leave the item in the addressee's mail receptacle or other secure location without attempting to obtain the addressee's signature on delivery.  
 Delivery Options:  
 No Saturday Delivery (delivered next business day)  
 Sunday/Holiday Delivery Required (additional fee, where available)  
 \*Refer to USPS.com or local Post Office™ for availability.

**ORIGIN (POSTAL SERVICE USE ONLY)**

<input type="checkbox"/> 1-Day	<input type="checkbox"/> 2-Day	<input type="checkbox"/> Military	<input type="checkbox"/> DPO
PO ZIP Code <b>60056</b>	Scheduled Delivery Date (MM/DD/YY) <b>2/3/14</b>	Postage <b>\$ 19.95</b>	
Date Accepted (MM/DD/YY) <b>1/31/14</b>	Scheduled Delivery Time <b>3</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Insurance Fee \$	COD Fee \$
Time Accepted <b>8:58</b> <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> Loss Guarantee Only	Return Receipt Fee \$	
Weight <b>2.7</b> ozs.	<input type="checkbox"/> Live Shipment	Total Postage & Fees \$	
	<input type="checkbox"/> Sunday/Holiday Premium	Acceptance Emp. Initials <i>[Signature]</i>	

TO: (PLEASE PRINT) PHONE ( )  
**Both Winter**  
**100% Penalty Unit**  
**Illinois Department of Revenue**  
**P.O. Box 19035**  
**Springfield, IL**  
**62794**

**DELIVERY (POSTAL SERVICE USE ONLY)**

Delivery Attempt (MM/DD/YY)	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature
Delivery Attempt (MM/DD/YY)	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Employee Signature

■ For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.

■ \$100.00 insurance included.

*Varghese.1*

LABEL 11-F, JULY 2013

PSN 7650-02-000-9998

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English

Customer Service

USPS Mobile

Register / Sign In



# USPS Tracking™



**Customer Service >**  
Have questions? We're here to help.

Tracking Number: EF002122925US

**On Time**  
Scheduled Delivery Day: Monday, February 3, 2014, 3:00 pm  
Money Back Guarantee  
Signed for By: W THOMAS // SPRINGFIELD, IL 62794 // 8:49 am

## Product & Tracking Information

<b>Postal Product:</b> Priority Mail Express™	<b>Extra Svc:</b> PO to Addressee	Up to \$100 insurance included Restrictions Apply
--	--------------------------------------	--

## Available Actions

Proof of Delivery

DATE & TIME	STATUS OF ITEM	LOCATION
February 3, 2014 , 8:49 am	Delivered	SPRINGFIELD, IL 62794

Your item was delivered at 8:49 am on February 3, 2014 in SPRINGFIELD, IL 62794 to REVENUE 19007. The item was signed for by W THOMAS.

February 1, 2014 , 10:57 am	Available for Pickup	SPRINGFIELD, IL 62794
February 1, 2014 , 10:18 am	Arrived at Post Office	SPRINGFIELD, IL 62703
February 1, 2014 , 10:14 am	Departed USPS Facility	SPRINGFIELD, IL 62703
February 1, 2014 , 10:07 am	Arrived at USPS Facility	SPRINGFIELD, IL 62703
February 1, 2014 , 5:23 am	Departed USPS Facility	PEORIA, IL 61601
February 1, 2014 , 1:32 am	Arrived at USPS Facility	PEORIA, IL 61601
January 31, 2014 , 8:07 pm	Departed Post Office	MOUNT PROSPECT, IL 60056
January 31, 2014 , 6:57 pm	Acceptance	MOUNT PROSPECT, IL 60056

## Track Another Package

Tracking (or receipt) number

Track It

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**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](http://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 written in a cursive style with a large initial "T".

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

TDC