

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>HASMUKH PATEL,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No. 15-TT-83</b>
	)	
<b>STATE OF ILLINOIS</b>	)	<b>Judge Brian F. Barov</b>
<b>DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant.</b>	)	

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**ANSWER**

The Department of Revenue of the State of Illinois, by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, answers the Taxpayer’s Petition as follows:

**PARTIES**

1. Petitioner is an individual who lives at 2040 Cobblebrook Lane, Naperville, Illinois, 60565, and can be reached at 630-301-2507.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, the Department admits the factual allegations contained within Paragraph 1.

2. Petitioner is represented by The Law Office of James E. Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or [jdickett@aol.com](mailto:jdickett@aol.com).

**ANSWER:** The information contained in Paragraph 2 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, the Department admits the factual allegations contained within Paragraph 2.

3. Petitioner's Taxpayer ID is XXX-XX-6559.

**ANSWER:** The information contained in Paragraph 3 is required by Illinois Tax Tribunal Regulations Section 310(a) (86 Ill. Admin. Code §5000.310) and is not a material allegation of fact that requires an answer under Section 310(b)(2) of the Tax Tribunal Regulations. Further answering, the Department admits the factual allegations contained within 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:** Paragraph 4 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

### **NOTICE**

5. On February 19, 2015, the Department issued a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) ("Notice") against the Petitioner in the amount of \$255,190.54. The Notice is attached hereto as Exhibit 1.

**ANSWER:** The Department admits the factual allegations contained within Paragraph 5.

## **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.

**ANSWER:** Paragraph 6 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

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:** Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

## **BACKGROUND**

8. Petitioner was neither an owner nor corporate officer of the underlying corporation, My Krishna Inc., which was located in Peoria and is now defunct.

**ANSWER:** The Department denies that the Petitioner was neither an owner nor corporate officer of the underlying corporation, My Krishna Inc. Otherwise, the Department admits the factual allegations contained within Paragraph 10.

9. Petitioner was never involved in the day-to-day operations of the business nor was he ever involved in the filing, preparation, and payment of Illinois sales tax for the underlying corporation.

**ANSWER:** Paragraph 9 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

To the extent an answer is required, denied.

10. Petitioner's only involvement with the underlying corporation was that he was granted Power of Attorney by the owner to sign the purchase closing documents and registration of the business because the owner had to leave the country due to the illness of a family member.

**ANSWER:** The Department denies that the Petitioner was not an owner of the underlying corporation. The Department is without sufficient knowledge or information to either admit or deny the other factual allegations contained within Paragraph 10. The Department demands factual support for the factual allegations contained within Paragraph 10.

### **COUNT I**

#### **Petitioner is not a responsible officer who failed to pay the sales tax, penalties, and interest of My Krishna Inc.**

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

**ANSWER:** The Department incorporates its responses to the Petition paragraphs 1-10 in answer to this paragraph 11.

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:** Paragraph 12 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself.

13. Petitioner was never a corporate officer and never had control, supervision, or responsibility for filing sales tax returns or making sales tax payments and therefore is not personally liable for the corporation's unpaid sales tax, penalties, and interest.

**ANSWER:** Paragraph 13 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required, 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 the corporation.

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required, denied.

**WHEREFORE,** the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

## COUNT II

### Petitioner did not willfully fail to pay the sales tax, penalties, and interest of My Krishna Inc.

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:** Paragraph 16 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself. To the extent an answer is required, denied.

17. Petitioner was never a corporate officer, and he did not willfully fail to pay the sales tax, penalties, and interest and therefore is not personally liable for such amounts because he had nothing to do with the business – zero.

**ANSWER:** Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required, 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 the corporation.

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required, denied.

**WHEREFORE**, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

### **COUNT III**

#### **The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate sales taxes.**

19. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 18, inclusive, hereinabove.

**ANSWER:** The Department incorporates and repeats its answers to Paragraphs 1 through 18 as though fully set forth herein.

20. The Illinois statute regarding personal liability assessments improperly defines unpaid corporate sales tax to include penalties and interest. 35 ILCS 735/3-7.

**ANSWER:** Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. The Department admits the existence, force and effect of Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735 *et seq.*), and states that the Act speaks for itself. The Department further objects to the term “improperly defines.”

21. The intent of Illinois statute regarding personal liability assessments for unpaid corporate sales taxes is to allow the state to pursue responsible, willful corporate officers for unpaid corporate sales taxes that were collected “in trust” for the state.

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

22. The unpaid corporate sales tax penalties and interest contained in the Notice at issue were not collected “in trust” for the state.

**ANSWER:** Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations.

23. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of the corporation is not supported by law.

**ANSWER:** Paragraph 23 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer under Section 310(b)(2) of the Tax Tribunal Regulations. To the extent an answer is required, denied.

**WHEREFORE**, the Department respectfully requests this Tribunal:

- a. Deny each prayer for relief in the Petition;
- b. Find that the Department's Notice correctly reflects the Petitioner's liability;
- c. Enter judgment in favor of the Department and against the Petitioner; and
- d. Grant any further relief this Tribunal deems just and appropriate.

Dated: May 15, 2015

Respectfully submitted,  
Illinois Department of Revenue

By: /s/ Seth Jacob Schriftman  
Seth Jacob Schriftman  
Special Assistant Attorney General

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	)	
<b>Defendant.</b>	)	

**AFFIDAVIT OF TRACI SKEETERS  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Traci Skeeters, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. I work in the Department's 100% Penalty Unit.
3. I compiled the information regarding the assessment asserted in the Collection Action Assessment and Notice of Intent subject of Taxpayer's Petition.
4. I lack the personal knowledge required to either admit or deny some of the allegations contained in Paragraph 10 of Taxpayer's Petition.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Traci Skeeters  
100% Penalty Unit

Date 5-15-15