



## 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.

## 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.

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.

## 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.

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.

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.

## 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.

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.

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.

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.

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

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax, penalties, and interest of the corporation because Petitioner does not have control, supervision, or responsibility for filing sales tax returns or making sales tax payments;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice.

**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.

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.

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.

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.

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

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax, penalties, and interest of the corporation because Petitioner did not willfully fail to pay such amounts;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice; and
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice.

### **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.

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

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.

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

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

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

- (a) finds and declares that Petitioner is not personally liable for the unpaid sales tax penalties and interest of the corporation because such amounts were not collected “in trust” for the state;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;
- (c) enters judgment in favor of Petitioner and against the Defendants; and
- (d) grants such further relief as the Tribunal deems appropriate.

Thank you for considering this Petition.

Respectfully submitted,

Hasmukh Patel,  
Petitioner

By:  4/16/15  
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One of Petitioner’s Attorneys

James E. Dickett  
Romanoff & Dickett, Ltd.  
600 Hillgrove Avenue, Suite 1  
Western Springs, IL 60558  
708-784-3200 (fax 3201)

**Collection Action**  
**Assessment and Notice of Intent**

Exhibit 1



February 19, 2015



Letter ID: L1694958560

HASMUKH PATEL  
 2040 COBBLEBROOK LN  
 NAPERVILLE IL 60565-6804

Taxpayer ID: XXX-XX-6559  
 NPL Penalty ID: 2520194



MY KRISHNA INC  
 2040 COBBLEBROOK LN  
 NAPERVILLE IL 60565-6804

**We have determined you are personally liable  
 for a penalty of \$255,190.54.**

The penalty is equal to the amount of unpaid liability of MY KRISHNA INC, due to your status as a responsible officer, partner, or individual of MY KRISHNA 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 \$255,190.54.** 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, you may contest this notice by following the instructions listed below.**

- **If the amount of this liability is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal**, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within **60 days** of the date of this notice, which is **April 20, 2015**. Your request must be in writing, clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://tax.illinois.gov)), and file a complaint with the circuit court for a review of our determination.

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.

DMITRI CORNELIER  
 100% PENALTY UNIT  
 ILLINOIS DEPARTMENT OF REVENUE  
 PO BOX 19035  
 SPRINGFIELD IL 62794-9035

217 782-9904 ext. 31613  
 217 785-2635 fax

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

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