

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

ROBERT W. WYSOCKI,)	
Petitioner)	
)	
V)	No. 15 TT 87
ILLINOIS DEPARTMENT)	Chief Judge James M. Conway
OF REVENUE,)	
Respondent)	
)	

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 the Amended Petition states as follows:

1. Robert W. Wysocki ("Robert") is the owner of 51 percent of the issued and outstanding shares of common stock of Bassgar-Illinois, Inc., an Illinois corporation ("Bassgar"), Robert is a resident of Florida living at 4601 Gulfshore Blvd North, Apt 15, Naples, Florida 34103;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 1 of the petition and therefore neither admits or denies said allegations.

2. Bassgar's operations included home appliances and electronics sales at twelve locations throughout the region; Bassgar is a corporation formed and existing under the laws of the State of Illinois with its principal place of business located at 321 N. Republic, Joliet 60435.

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

3. Jurisdiction for this matter is proper pursuant to *35 ILCS 1101/1-45(a)*, since the aggregate amount at issue exceeds \$15,000.00, exclusive of penalties and interest.

ANSWER: The allegations in paragraph 3 of the petition consist of legal conclusions and are thus denied.

4. The Notice was issued by IDOR to Petitioner on or about February 20, 2015 assessing personal liability for a penalty in the amount of \$1,022,240.83 in tax, penalty and interest for sales tax of Bassgar for the periods ending: March 31, 2013; July 31, 2013; August 31, 2013; June 30, 2013; July 31, 2014; August 31, 2014; September 30, 2014; and October 31, 2014. A copy of this Notice which was issued to one of the Petitioners is attached as Exhibit A;

ANSWER: The Department admits that on or about February 20, 2015 The Notice was issued by IDOR to Petitioner. The Department also admits that a copy of the Notice is attached to the Petition as Exhibit A. The Department states that the Notice speaks for itself and therefore denies the remaining allegations in paragraph 4 of the petition.

5. Bassgar incurred approximately \$883,000 in sales tax for the months beginning in 2013 through October, 2014;

ANSWER: The Department denies the allegations in paragraph 5 of the petition.

6. During the tax periods at issue, Bassgar operated under several assumed names based on various store locations, but in general under the name: Grants Appliances ("Grants");

ANSWER: The Department admits the allegations in paragraph 6 of the petition.

7. The business began operations in 1923 in one location as a retail hardware store and through the many years of operation subsequently expanded into home appliances and electronics at twelve locations throughout the region;

ANSWER: The Department admits the allegations in paragraph 7 of the petition.

8. With the economic recession, Grants began suffering substantial losses due to significant decline in home buildings and home improvements, coupled with the significant increase in unemployment rates at that time. Grants attempted to stave off shutting its doors by reducing its twelve locations to only five;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

9. During this time, Grants also incurred large liabilities to break its leases at these seven locations;

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 and therefore neither admits or denies said allegations.

10. Beginning in the early part of 2013, Grants began to incur substantial losses in its attempt to keep operations going; and notwithstanding its continued losses, in September 2013, entered into an installment agreement with the Illinois Department of Revenue. Due to its prior record of timely filed returns (which it continued to timely file its tax returns), Grants was approved for the installment agreement. Payments were initially made on these liabilities. Based on the closure of a substantial portion of its stores and its revised slimmed structure, Grants believed that it could continue its operations and meet its obligations to the State of Illinois and other creditors;

ANSWER: The Department admits that in September 2013 Grants entered into an installment agreement with the Illinois Department of Revenue. The Department also admits that the installment agreement was approved at least in part on Petitioner's prior record of timely filed

returns, and that Petitioner continued to timely file its tax returns. The Department further admits that payments were initially made on these liabilities. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. Through the last several years of operation of Grants, Petitioner, along with other owners of Grants, had contributed over \$14 million, personally, in order to keep their business as a going concern; however, even with these contributions, the deficits became too substantial to overcome;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the petition and therefore neither admits or denies said allegations.

12. Grants, and its owners (which included Petitioner) were given hope of continued operations and meeting their obligations based on the commitment of Summit to provide a loan of an amount between \$2 and \$3 million (Summit had previously purchased the Grants' debt from First Midwest Bank at a substantial discount, so they had room to provide further financing), which could possibly provide the funding to pay the liability owed to the State, deal with other outstanding creditors, and continue its business;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the petition and therefore neither admits or denies said allegations.

13. Through the entire process, which included reviews of cash flow figures on a daily basis, Summit continued to provide assurances that Grants would receive the loan; however, in October, 2014, with no reason provided to Grants, Summit determined not to provide this loan;

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 and therefore neither admits or denies said allegations.

14. With the substantial decline in sales, the incurrence of substantial liabilities on the closure of several of the locations, the declination by Summit to provide the loan, the limits as to use of cash flow due to the substantial secured interests, and the continued incurrence of fixed costs, Grants was forced to cease operations in October, 2014, on the same day that Summit determined not to provide the loan. On or about November 5, 2014, Grants was forced into an assignment for the benefit of creditors ("Assignment"), which is attached as Exhibit B;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. The Assignment listed the debt owed to the State of Illinois; however, as set forth in the Assignment, most of the assets of Grants were subject to one or more valid and perfected liens and security interests and the debts secured by those liens exceeded the value of Grants' assets; all such liens and security interests had priority in payment, as such debt did during operations of the business;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the petition and therefore neither admits or denies said allegations.

16. In April, 2015, the President of Bassgar (Grants) and the other owners filed a Form BOA-1 Board of Appeals Petition in order to attempt to negotiate a settlement of the tax liabilities with the Illinois Department of Revenue, prior to dealing with the numerous other creditor issues that currently exist (decision on this filing remains pending);

ANSWER: The Department admits the allegations in paragraph 16 of the petition.

17. Robert had previously been the President of Bassgar and intended to retire sometime in 2012, and at that time, ceased having a prominent leading role in the active management of the company. Due to the financial difficulties and distress of Bassgar, he was requested to take a more active role with the company to assist in the hopes of reviving the stores from financial deficit;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 17 of the petition and therefore neither admits or denies said allegations.

18. 35 ILCS 735/3-7 states as follows:

Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who willfully fails to file the return or make the payment to the Department or willfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by taxpayer including interest and penalties thereon. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section;

ANSWER: The Department states that the cited statute speaks for itself and therefore denies the allegations in paragraph 18 of the petition.

19. Personal liability will be imposed only upon a person who: (i) is responsible for filing returns and/or making the tax payments and (ii) willfully fails to file returns or make payments.

ANSWER: The allegations in paragraph 19 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

20. In determining whether an individual was "responsible", courts have indicated that the focus should be on whether the person has significant control over the business affairs of the corporation and whether he or she participates in decisions regarding the payment of creditors and the dispersal of the company's funds; in addition to whether he or she had the ability to sign checks of the company and the ability to hire and fire employees;

ANSWER: The allegations in paragraph 20 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

21. The "willful" requirement is satisfied if the responsible person acts with reckless disregard of a known risk that the funds may not be remitted to the government, or if the responsible person ought to have known of a grave risk of nonpayment and is in a position to easily find out, but does nothing. If the individual does not act willfully, he would not be liable under 35 ILCS 735/3-7;

ANSWER: The allegations in paragraph 21 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are denied.

22. Petitioner repeats and re-alleges paragraphs 1 thru 21 as if fully set forth in this Error;

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 21 as though fully set forth herein.

23. During the tax periods at issue, Robert was requested by his son in law, George Olsen, the acting President at that time, to take a more active role with Bassgar to assist in an attempt to get the company back to a going concern; meeting its obligations. Upon taking on this role, after his review of the books and records, Robert, on behalf of Bassgar, and working with the current President, entered into an installment agreement with the Illinois Department of

Revenue to deal with the outstanding tax liabilities; in addition, he utilized his contacts in an attempt to obtain a loan from Summit to deal with the tax liability and other creditors and to keep the business going;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 of the petition and therefore neither admits or denies said allegations.

24. During the tax periods at issue, Robert contributed substantial amounts of personal funds in an attempt to allow Bassgar to meet its business and tax obligations;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 24 of the petition and therefore neither admits or denies said allegations.

25. Based on his continued attempts to obtain funds to pay the tax liabilities owed to the Department of Revenue (and other creditors) and his continual communications with the Department, Robert does not satisfy the willful requirement to impose personal liability under 35 ILCS 735/3-7, since he did not "willfully" fail to remit the tax liabilities. Up to the last days of operations, he, along with George, attempted to pay on an installment agreement with the Department of Revenue and to obtain a loan, which was continuously assured to be provided, in part, to pay the outstanding obligations. In addition, as set forth in the Assignment, secured liabilities exceeded the value of the assets, so the circumstances were taken from Robert's authority as to allocation to creditors. Robert did not just know of the obligations and ignore it, he came out of retirement to deal with the matter and attempted to pay the obligations that were owed, but based on the circumstances of the economic climate at this time, was unable to do so and was forced to close the doors of the business.

ANSWER: The allegations in paragraph 25 of the petition consist primarily of conclusions and argument 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,

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State of Illinois

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**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

ROBERT W. WYSOCKI)	
)	
v.)	15-TT-87
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

**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 paragraphs 1,8,9,10,11,12,13,14,15,17,23, and 24.

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.



Mark Dyckman
Deputy General Counsel
Illinois Department of Revenue

DATED: 7-14-15