

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

ROBERT W. WYSOCKI)	
)	
Petitioner)	
)	15 TT 87
v.)	
)	
ILLINOIS DEPARTMENT OF REVENUE)	
)	
Respondent)	

AMENDED PETITION

The Petitioner, Robert W. Wysocki, hereby petitions the Illinois Independent Tax Tribunal to review and reverse or in the alternative modify the Collection Action, Assessment and Notice of Intent (Notice) issued by the Illinois Department of Revenue (IDOR), for the reasons set forth below:

PARTIES

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;
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.

JURISDICTION AND VENUE

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.

INTRODUCTION, BACKGROUND AND FACTS

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;

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

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");

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;

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;

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

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;

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;

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;

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;

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;

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;

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);

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;

APPLICABLE LAW

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;

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;

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;

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;

ERROR - Robert W. Wysocki

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

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;

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;

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.

CONCLUSION AND RELIEF REQUESTED

WHEREAS, based on the facts and circumstances, the Petitioner requests that the Notice be modified and/or canceled based on the reasons contained herein, more specifically, as follows:

As to Robert W. Wysocki, he did not act willfully in the failure to remit payments, so the Notice should be canceled.

PETITIONER

By: 

One of Petitioner's Attorneys

Bradley S. McCann
ARDC: 6256358
Spesia & Ayers
1415 Black Road
Joliet, Illinois 60435
(815) 846-2420

Collection Action
Assessment and Notice of Intent



February 20, 2015



Letter ID: L0960344592

ROBERT W. WYSOCKI
4601 GULF SHR BLVD N APT 15
NAPLES FL 34103-2214

Taxpayer ID: XXX-XX-4709
NPL Penalty ID: 2640606



BASSGAR INC
140 S DEARBORN ST
420
CHICAGO IL 60603-5233

**We have determined you are personally liable
for a penalty of \$1,022,240.83.**

The penalty is equal to the amount of unpaid liability of BASSGAR INC, due to your status as a responsible officer, partner, or individual of BASSGAR 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 \$1,022,240.83. 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.

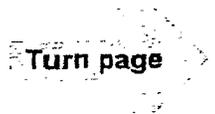
- **If the amount of this liability is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice.** Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- **In all other cases 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 21, 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), 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



Collection Action

Assessment and Notice of Intent



February 20, 2015



Letter ID: L0960344592

ROBERT W. WYSOCKI
4601 GULF SHR BLVD N APT 15
NAPLES FL 34103-2214

Taxpayer ID: XXX-XX-4709

NPL Penalty ID: 2640606



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge

Account ID: 2478-1363

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2013	199,602.00	20,060.20	1,748.62	-	(189,424.97)	31,985.85
31-Jul-2013	172,809.00	17,380.90	5,908.41	-	-	196,098.31
31-Aug-2013	180,830.00	18,183.00	6,182.58	-	-	205,195.58
30-Jun-2014	196,149.00	14,196.10	1,576.95	-	(130,935.58)	80,986.47
31-Jul-2014	178,576.00	17,981.60	2,700.66	-	-	199,258.26
31-Aug-2014	169,053.00	17,005.30	2,097.92	-	-	188,156.22
30-Sep-2014	135,586.00	9,062.94	777.28	-	(58,702.00)	86,724.22
31-Oct-2014	30,234.00	3,373.40	228.52	-	-	33,835.92

IDOR-5P-NPL (N-03/07)

Retain this portion for your records.

Fold and detach on perforation. Return bottom portion with your payment.

Collection Action

(R-12/08) (136)



Letter ID: L0960344592

ROBERT W. WYSOCKI

Total amount due: \$1,022,240.83

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19035
SPRINGFIELD IL 62794-9035

000 006 00571124240 731 123199 4 0000102224083

**NOTICE OF ASSIGNMENT FOR
THE BENEFIT OF CREDITORS
November 5, 2014**

NAME/ADDRESS OF DEBTOR/ASSIGNOR

Bassgar-Illinois Inc.
D/B/A Grants Appliance Electronics & More
321 N Republic Ave.
Joliet, Illinois 60435

ATTORNEY FOR ASSIGNOR

John A. Lipinsky
Coman & Anderson, PC
650 Warrenville Road Suite 500
Lisle, Illinois 60532

NAME/ADDRESS OF ASSIGNEE

Patrick D. Cavanaugh
High Ridge Partners, Inc.
140 S. Dearborn Street, Suite 420
Chicago, IL 60603

ATTORNEY FOR ASSIGNEE

Richard M. Bendix
Dykema Gossett PLLC
10 South Wacker Drive Suite 2300
Chicago, IL 60606

**COMMENCEMENT OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS
OF BASSGAR-ILLINOIS, INC. D/B/A GRANTS APPLIANCE**

On October 23, 2014 Bassgar-Illinois, Inc. d/b/a Grants Appliance ("Grants" or "Assignor"), through one of its duly authorized officers, made an assignment for the benefit of creditors (the "Assignment") to Patrick D. Cavanaugh of High Ridge Partners, Inc., not individually, but solely as Trustee-Assignee for the Benefit of the Creditors ("Trustee-Assignee"). As a fiduciary for the Assignor's creditors, the Trustee-Assignee will liquidate the Assignor's assets and distribute the resulting proceeds to the Assignor's creditors in accordance with the priorities established by law.

BACKGROUND INFORMATION

Grants began business operations in 1923 in a single location as a retail hardware store and expanded its business to include the sale of home appliances in the 1950's. In 1993, Bassgar-Illinois, Inc. purchased Grants and expanded the business to include the sale of home appliances and electronics through twelve retail locations.

Grants business began suffering losses in 2008 when the recession caused both significant declines in the homebuilding and home improvement sectors of the economy and a significant increase in unemployment. Grants attempted to stem those losses by reducing the number of its retail locations from twelve to five. In order to do so, Grants was forced to incur large liabilities to landlords of the stores that Grants closed before the stated expiration dates of leases for those stores. A continuing decline in sales and profits, together with increased liabilities to former landlords, left Grants without sufficient funds to operate its business. As a result, the officers and directors of Grants decided to cease business operations enter into the Assignment.

Bassgar-Illinois Inc.
D/B/A Grants Appliance Electronics
 Estimated Summary of Assets and Liabilities - (A)
 As of 10/23/2014

(\$000s)

Assets:

Cash		-
Accounts Receivable	(B)	41
Inventory - Book Value	(C)	5,321
Furniture, Fixtures and Equipment - Net Book Value	(C)	136
Other	(C)	851
Intangible Assets		unknown
Total Assets		6,349

Liabilities:

Secured Debt - Bank Loan		7,800
Other Secured Debt - PMSI Vendors	(D)	3,077
Due To Taxing Authorities - Estimated		986
Employee Wage Claims		80
Customer Deposits		1,575
Trade Payables		1,402
Other Liabilities		251
Total Liabilities		15,171

Net Worth: (8,822)

(A) The financial information set forth above was compiled from the books and records of the Grants. This financial information was not audited or reviewed. Accordingly, Patrick D. Cavanaugh, as Assignee, does not make any representations or warranties with respect to the accuracy, completeness or any other representation with respect to this information.

(B) Estimated collectible value of accounts receivable as of October 23, 2014.

(C) Listed at book value; actual realization from the liquidation of these assets may be less than book value.

(D) Purchase Money Security Interest of several suppliers in certain inventory; the Assignee-Trustee's legal counsel is investigating the validity of these interests.

AFFIDAVIT OF CLAIM

WE, THE UNDERSIGNED, A CREDITOR OF Bassgar-Illinois Inc. D/B/A Grants Appliance Electronics do hereby acknowledge a certain Trust Agreement and Assignment for the Benefit of Creditors dated October 23, 2014, by and between Bassgar-Illinois Inc. D/B/A Grants Appliance Electronics and Patrick D. Cavanaugh of High Ridge Partners, not individually, but solely as the Trustee-Assignee. The undersigned acknowledges receipt of notification of the Trust Agreement and Assignment for the Benefit of Creditors.

The undersigned hereby represents that the amount set opposite its signature is a true and correct statement of and for the amount owing to the undersigned, as of the date of the execution of the Trust Agreement and Assignment for the Benefit of Creditors, for all credit extended to Bassgar-Illinois Inc. D/B/A Grants Appliance Electronics after making such prior adjustments for credits and set-offs that may be due, a copy of such statement of account being attached hereto and made a part hereof, and marked as Exhibit "A".

PLEASE TAKE NOTICE that the Trustee-Assignee has fixed January 16, 2015, as the Bar Date, or last date for the timely submission of unsecured non-priority claims against Bassgar-Illinois Inc. D/B/A Grants Appliance Electronics. Your claim must be received by the Trustee-Assignee on or before the Bar Date for you to participate in any distribution, unless the Trustee-Assignee, in his sole discretion, extends or waives the Bar Date.

Dated this _____ day of _____, 20__.

(Please fill in the date of your execution of this affidavit)

AMOUNT OF CLAIM

\$ _____
(Claim Must be Stated in U.S. Dollars)
Attach Statement showing date or dates when
debt was incurred and return this form to:

Patrick D. Cavanaugh
As Assignee for the Benefit of Creditors
Of Bassgar-Illinois Inc.
D/B/A Grants Appliance Electronics
HIGH RIDGE PARTNERS, INC.
140 South Dearborn Street, Suite 420
Chicago, Illinois 60603
Telephone 312-551-0257

Name of Creditor

Its Duly Authorized Agent/Title

E-mail Address

Street Address

City, State or Province and Zip or Postal Code

Telephone Number with Area Code

HIGH RIDGE PARTNERS, INC.
140 S. Dearborn Street, Suite 420
Chicago, IL 60603