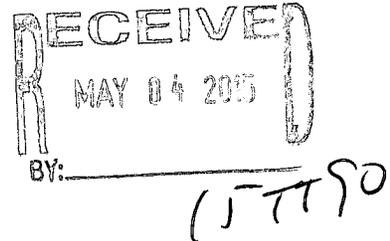


ILLINOIS INDEPENDENT TAX TRIBUNAL

THOMAS W. BROWN,)
Petitioner,)
v.)
ILLINOIS DEPARTMENT OF REVENUE,)
Respondent.)



PETITION

Petitioner, Thomas W. Brown, hereby petitions the Illinois Independent Tax Tribunal to review and reverse and/or modify the Collection Action – Assessment and Notice of Intent (“Notice”) issued to him by the Illinois Department of Revenue (“Department”), for the reasons stated below and herein:

INTRODUCTION

1. The Notice was issued by the Department on March 27, 2015, assessing personal liability to the Petitioner in the amount of \$97,744.32 for Illinois withholding income taxes, interest, and penalties for the following taxable periods:

Period	Tax	Penalty	Interest
Oct. 1, 2013 - Dec. 31, 2013	\$24,550.29	2,905.03	682.45
Jan 1, 2014 - March 31, 2014	\$12,131.43	1,555.77	328.68
April 1, 2014 - June 30, 2014	\$10,998.30	1,419.80	215.97
July 1, 2014 - Sept. 30, 2014	\$13,439.31	1,443.93	162.22
Oct. 1, 2014 - Dec. 31, 2014	\$48,839.93	732.14	72.22

A true and correct copy of the Notice is attached hereto as Exhibit A to this Petition.

2. Petitioner is an individual who resides in Lake Zurich, Illinois.
3. The corporate taxpayer responsible to withhold and pay the income taxes at issue is Holmes Testing, Inc. (“Taxpayer”), which has its principal place of business at 170 Shepard Avenue in Wheeling, Illinois. Its Taxpayer Account Number is 45-3822317-000.
4. Petitioner is not personally responsible for the tax liability of the Taxpayer because he was not an employee or an officer of Taxpayer during the periods at issue, and he had no authority, responsibility, or ability to pay the taxes at issue.

BACKGROUND AND RELEVANT FACTS

5. Petitioner was formerly employed by Taxpayer as its Controller.
6. Petitioner was summarily terminated from his employment with Taxpayer on November 27, 2013, one month *before* the earliest period ending on the Notice. Petitioner has not been employed with Taxpayer since his termination, and his only involvement with Taxpayer was to institute a Wage Claim against Taxpayer for unpaid compensation.
7. As the Controller, Petitioner did not make any financial decisions for Taxpayer. He was directed in all aspects of any financial decisions by Taxpayer’s President, Jerome Dykstra.
8. Mr. Dykstra was and is the principal individual responsible for the financial decisions, the payment of taxes, and the filing of tax returns at Taxpayer.
9. Petitioner has never been an owner, shareholder, officer, or director of Taxpayer.
10. Because he was never an owner, shareholder, officer, or director, Petitioner does not have any “resignation” papers, or documents showing that he divested any shares or certificates. Petitioner was never in a position to resign from anything, nor divest anything he did

not own in the first place. Petitioner was verbally informed of his termination of employment by Mr. Dykstra.

11. Petitioner has never signed any corporate income tax returns on behalf of Taxpayer.

12. While Petitioner was Controller of Taxpayer, he did on occasion sign the quarterly payroll tax returns (such as Form 941). The last such return that he signed on behalf of Taxpayer was for the quarter ending September 30, 2013, and all appropriate amounts were reported and paid at that time.

13. Petitioner did not prepare, oversee, sign, or file the payroll tax return for the quarter ending December 31, 2013, or for any other periods thereafter.

14. Petitioner had no ability to oversee, control, affect, or impact the payment of payroll taxes, income taxes, withholdings, or any other taxing requirements by Taxpayer after his termination on November 27, 2013.

15. Moreover, Petitioner had very limited ability to affect any financial decisions for Taxpayer, including the payment of taxes, prior to his termination. The tax returns he did sign were accurate, the payments were up to date, and there is no outstanding amount due or liability for them.

16. Taxpayer has apparently made some payments toward the past due taxes, as evidenced by the "credits" listed on the Notice. However, over \$14,000 of these credits have been applied not to the oldest liability, but to more recent taxes due.

APPLICABLE LAW

17. Illinois law provides as follows:

Personal Liability Penalty.

(a) 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 the taxpayer including interest and penalties thereon.

35 ILCS 735/3-7(a), *emphasis added*.

ERROR I

18. From November 27, 2013, and at all times thereafter, Petitioner was not an officer or an employee of Taxpayer.

19. Accordingly, for the periods ending March 31, 2014, June 30, 2014, Sept. 30, 2014, and Dec. 31, 2014, all of which encompassed time periods when Petitioner was not an employee of Taxpayer, Petitioner has no personal liability for payment of those taxes.

ERROR II

20. Prior to November 27, Petitioner was an employee of Taxpayer. However, he had no control or supervision over, or responsibility for, filing the return for the period ending December 31, 2013.

21. Accordingly, for the period ending December 31, 2013, Petitioner has no personal liability for payment of those taxes.

ERROR III

22. The returns for the period ending December 31, 2013 were due to be filed on or after December 31, 2013, to account for all the taxes withheld throughout that period.

23. Petitioner did not have knowledge about Taxpayer's failure to remit these taxes until he received the collection notice from the Department, many months after his termination of employment.

24. Petitioner had no access to the Taxpayer's funds at the time payments for this period were due. Petitioner had no access to Taxpayer's corporate records at the time the return filing for this period was due.

25. Petitioner did not willfully fail to file the return for the period ending December 31, 2013, nor willfully fail to make the payment to the Department, nor willfully attempt in any other manner to evade or defeat the tax due for this period. Petitioner was incapable of filing the return or making the payment due to his termination of employment on November 27, 2013.

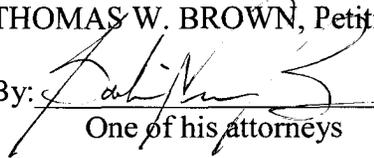
26. Accordingly, for the period ending December 31, 2013, Petitioner has no personal liability for payment of those taxes.

CONCLUSION AND RELIEF REQUESTED

27. Petitioner is not responsible to pay the taxes that are due from Taxpayer to the Department. Petitioner should not be held personally liable for such taxes.

WHEREAS, Petitioner requests that the Notice be modified to remove him as a responsible party, and/or cancelled as issued against him, for the above and foregoing reasons.

THOMAS W. BROWN, Petitioner

By:  _____
One of his attorneys

Saskia Nora Bryan, ARDC No. 06255682
LATIMER LeVAY FYOCK LLC
55 W. Monroe Street, Suite 1100
Chicago, Illinois 60603
(312) 422-8000
(312) 422-8001 (fax)

EXHIBIT A

Collection Action

Assessment and Notice of Intent



March 27, 2015



Letter ID: L1065247504

THOMAS W. BROWN
569 CORTLAND DR
LAKE ZURICH IL 60047-2335

Taxpayer ID: XXX-XX-5419
1002D Penalty ID: 2560179



HOLMES TESTING INC
170 SHEPARD AVE
A
WHEELING IL 60090-6061

We have determined you are personally liable for a penalty of \$97,744.32.

The penalty is equal to the amount of unpaid liability of HOLMES TESTING INC, due to your status as a responsible officer, partner, or individual of HOLMES TESTING INC.

Illinois law (35 ILCS 5/1002(d)) 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 \$97,744.32. 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 **May 26, 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.

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

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



217 782-9904 ext. 31607
217 785-2635 fax

To avoid this collection action

Pay

Your payment must be guaranteed (*i.e.* cashier's check, money order) and made payable to the Illinois Department of Revenue.

If you believe you are not personally responsible, send us proof

Send us written proof, documents, or testimony for review. You may provide one or all of the following:

- copies of notarized resignation papers.
- corporate minutes where your resignation was accepted.
- copy of signed agreement to transfer stocks and bonds to another party.
- a notarized affidavit from someone whom we recognize as knowledgeable of the business' operation stating that you were not responsible for filing returns and paying taxes.
- the name of the person who was responsible for filing returns and paying taxes.

Federal Bankruptcy Court

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligations to file tax returns.

Correct our records

If our records are not correct, send us proof of your prior payment, a copy of the return you filed, or other documentations so that we can correct our records.

Collection action information

Applicable Illinois law

Illinois law (35 ILCS 5/1002(d) of the Withholding Income Tax Act) 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. The penalty is equal to the amount of tax due including penalty and interest.

More information is on our website at tax.illinois.gov.

What other collection actions may we take?

Additional collection action includes, but is not limited to:

- levy of wages and bank accounts.
- withholding of your state payments, tax refunds, lottery winnings, contractual service vouchers, *etc.*
- seizure and sale of your assets.
- referral to a collection agency.
- civil judgments.
- referral for non-renewal or revocation of your
 - Professional license,
 - Certificate of Registration,
 - Liquor license,
 - Corporate Charter with the Secretary of State, or
 - Lottery license.
- prosecution for bad checks and deceptive practice.
- filing a tax lien against your property (the filing of a lien may damage your credit rating for up to seven years, even after the lien is released). If we file a lien against your property, you are responsible for paying the lien filing and release fees and charges.

Collection Action
Assessment and Notice of Intent



March 27, 2015



Letter ID: L1065247504

THOMAS W. BROWN
569 CORTLAND DR
LAKE ZURICH IL 60047-2335

Taxpayer ID: XXX-XX-5419
1002D Penalty ID: 2560179



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.

IL Withholding Income Tax						Account ID: 45-3822317-000
Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2013	24,550.29	2,905.03	682.45	-	(7,500.00)	20,637.77
31-Mar-2014	12,131.43	1,555.77	328.68	-	(2,000.00)	12,015.88
30-Jun-2014	10,998.30	1,419.80	215.97	-	-	12,634.07
30-Sep-2014	13,439.31	1,443.93	162.22	-	-	15,045.46
31-Dec-2014	48,839.93	732.14	72.22	-	(12,233.15)	37,411.14

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: L1065247504
THOMAS W. BROWN

Total amount due: \$97,744.32
Write the amount you are paying below.

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

\$ _____
Write your Account ID on your check.