

ILLINOIS INDEPENDENT

TAX TRIBUNAL

THOMAS W. BROWN)	
<i>Petitioner</i>)	Doc. 15-TT-90
)	
Vs.)	Judge Brian F. Barov
)	
ILLINOIS DEPARTMENT OF REVENUE)	
<i>Respondent</i>)	

ANSWER

NOW COMES THE Department of Revenue of the State of Illinois (“Department”) through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its answer to Taxpayer’s Petition respectfully pleads as follows:

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:

Periods	Tax	Penalty	Interest
Oct 1, 2013 – Dec 31, 2013	\$24,550.29	2,905.29	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.

ANSWER: Department admits the factual allegations contained in Paragraph 1.

2.Petitioner is an individual who resides in Lake Zurich, Illinois.

ANSWER: The information contained in Paragraph 2 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(1)(A) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 2.

3.The corporation 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.

ANSWER: Department admits the factual allegations contained in Paragraph 3.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4, and demands strict proof thereof.

BACKGROUND AND RELEVANT FACTS

5. Petitioner was formally employed by Taxpayer as its Controller.

ANSWER: Department admits the factual allegations contained in Paragraph 5.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6, and demands strict proof thereof.

7. As the Controller, Petitioner did not make any financial decisions for Taxpayer. He was directed in all aspects of any financial decision by Taxpayer's President, Jerome Dykstra.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, and demands strict proof thereof.

9. Petitioner has never been an owner, shareholder, officer, or director of Taxpayer.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10, and demands strict proof thereof.

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

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13, and demands strict proof thereof.

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

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15, and demands strict proof thereof.

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 those credits have been applied not to the oldest liability, but to more recent taxes due.

ANSWER: Department admits that some payments were made toward the quarters at issue, but does not admit to the amount that has been paid. The document speaks for itself.

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 made 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*.

ANSWER: Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

Department denies any factual allegations contained in Paragraph 17 and demands strict proof thereof.

ERROR I

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

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18, and demands strict proof thereof.

19. Accordingly, of 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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20, and demands strict proof thereof.

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

ANSWER: Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 21 and demands strict proof thereof.

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.

ANSWER: Department admits the factual allegations contained in paragraph

22.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 23, and demands strict proof thereof.

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

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24, and demands strict proof thereof.

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.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25, and demands strict proof thereof.

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

ANSWER: Paragraph 26 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

Department denies any factual allegations contained in Paragraph 26 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. Deny Petitioner's prayer for relief;
- b. Find that Petitioner was liable as a responsible officer of Holmes Testing, Inc. for the corporation's withholding taxes for the last quarter of 2013 and the first, second, third and fourth quarters of 2014;
- c. Find that the Notice referred to in Paragraph 1 correctly reflects Taxpayer's liability for the last quarter of 2013 and the first, second, third and fourth quarters of 2014;
- d. Order judgment in favor of the Department and against the Petitioner; and
- e. Grant any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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