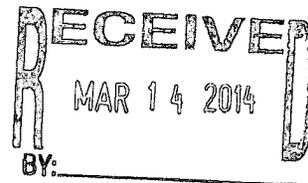


**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

SALVATORE LIOTTA,)
)
) Petitioner,)
)
) v.)
)
) BRAIN HAMER, in his official capacity as)
) DIRECTOR OF THE ILLINOIS DEPARTEMENT)
) OF REVENUE, and the ILLINOIS)
) DEPARTMENT OF REVENUE,)
)
) Defendants.)

No.



MT 79

PETITION

Petitioner, Salvatore Liotta (“Petitioner”), by and through his attorneys, Romanoff & Dickett, Ltd, complains of the Defendants, the Illinois Department of Revenue (“Department”) and Brian Hamer, Director of the Department (“Director Hamer”), and alleges as follows:

PARTIES

1. Petitioner is an individual who lives at 6 Oakbrook Club Drive, Oakbrook, Illinois, 60523, and can be reached at 630-833-1006.
2. Petitioner is represented by Romanoff & Dickett, Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.
3. Petitioner’s Taxpayer ID is XXX-XX-7701.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

5. Director Hamer is the current Director of the Department.

6. Director Hamer is lawfully appointed by the Governor of the State of Illinois to execute the powers and discharge the duties vested by law in the Director. 20 ILCS 5/5-20.

NOTICE

7. On January 14, 2014, Petitioner received a Collection Action Assessment and Notice of Intent for a personal liability penalty (a.k.a. NPL) ("Notice") in the amount of \$244,914.56, which covers the tax periods ending June 30, 2009 and December 31, 2011, and which is comprised of zero dollars in tax due, \$127,848.00 in penalties, and \$117,067.56 in interest. The Notice is attached hereto as Exhibit A.

JURISDICTION

8. 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.

9. 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

10. Petitioner is a corporate officer of a corporation named LLB Inc.

11. Petitioner is 64 years old and not involved in the filing, preparation, and payment of Illinois sales tax for LLB Inc.

12. As of the date of the issuance of the Notice, LLB Inc. owed \$244,914.56 to the Department for the tax periods ending June 30, 2009 and December 31, 2011, and that amount is comprised of zero dollars in tax due, \$127,848.00 in penalties, and \$117,067.56 in interest.

13. The amount that is currently owed by LLB Inc. is the result of two sales tax audits whereby all of the taxes were paid for both audits and the interest was paid for the second audit.

COUNT I

Petitioner is not a responsible officer who failed to pay the sales tax penalties and interest of LLB Inc.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. 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.

16. Petitioner is a corporate officer of LLB Inc. who does not have 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.

17. Contrary to the Department's determination, Petitioner is not a responsible officer who failed to pay the sales tax penalties and interest of LLB Inc.

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 LLB Inc. 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;
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

COUNT II

Petitioner did not willfully fail to pay the sales tax penalties and interest of LLB Inc.

18. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 17, inclusive, hereinabove.

19. 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.

20. Petitioner is a corporate officer of LLB Inc. who did not willfully fail to pay the sales tax penalties and interest and therefore is not personally liable for such amounts.

21. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the sales tax penalties and interest of LLB Inc.

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 LLB Inc. 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;
- (c) enters judgment in favor of Petitioner and against the Defendants and cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

The Department cannot assess a personal liability assessment for penalties and interest amounts related to unpaid corporate sales taxes

22. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 21, inclusive, hereinabove.

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

24. 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.

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

26. The Department’s determination that Petitioner personally owes the unpaid penalties and interest of LLB Inc. 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 LLB Inc. 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 cancels the Notice; and
- (d) grants such further relief as the Tribunal deems appropriate.

Thank you for considering this Petition.

Respectfully submitted,

Salvatore Liotta,
Petitioner

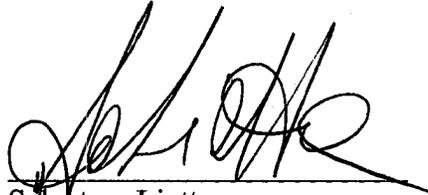
By:  3-13-14
One of Petitioner's Attorneys

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

VERIFICATION

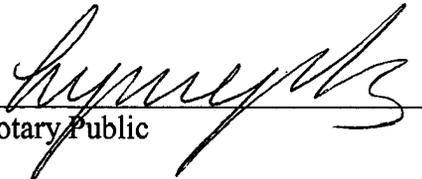
Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statement set forth in the foregoing Petition are true, accurate and correct.

By:


Salvatore Liotta

Subscribed and Sworn to before me
this 17th day of March, 2014.




Notary Public

Collection Action
Assessment and Notice of Intent

Exhibit A



January 14, 2014



Letter ID: L1019604320

SALVATORE LIOTTA
6 OAKBROOK CLUB DRIVE
OAKBROOK IL 60523

Taxpayer ID: XXX-XX-7701
NPL Penalty ID: 2160204

LLB INC
695 W SAINT CHARLES RD
ELMHURST, IL 60126-3024

**We have determined you are personally liable
for a penalty of \$244,914.56.**

The penalty is equal to the amount of unpaid liability of LLB INC, due to your status as a responsible officer, partner, or individual of LLB 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 \$244,914.56. 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 **March 15, 2014**. 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

IDOR-5P-NPL (R-11/13)

Collection Action
Assessment and Notice of Intent



January 14, 2014



Letter ID: L1019604320

SALVATORE LIOTTA
6 OAKBROOK CLUB DRIVE
OAKBROOK IL 60523

Taxpayer ID: XXX-XX-7701
NPL Penalty ID: 2160204



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: 1883-2547

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	298,868.00	119,647.00	117,066.56	-	(298,868.00)	236,713.56
31-Dec-2011	54,007.00	8,201.00	3,291.00	-	(57,298.00)	8,201.00

IDOR-5P-NPL (R-11/13)

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: L1019604320
SALVATORE LIOTTA

Total amount due: \$244,914.56

Write the amount you are paying below.

\$ _____

Write your Taxpayer ID on your check.

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



Illinois Department of Revenue

IL-2848 Power of Attorney

Read this information first

Attach a copy of this form to each specific tax return or item of correspondence for which you are requesting power of attorney. **Do not send this form separately.**

Step 1: Complete the following taxpayer information

1	<u>Salvatore Liotta</u>	3	<u>6 Oakbrook Club Lane</u>
	Taxpayer's name		Taxpayer's street address
2	<u>XXX-XX-7701</u>	<u>Oakbrook</u>	<u>IL</u> <u>60523</u>
	Taxpayer's identification number(s)	City	State ZIP

Step 2: Complete the following information

4 The taxpayer named above appoints the following to represent him before the Illinois Department of Revenue.

GUST DICKETT/JAMES DICKETT

Name	Name	Name
<u>ROMANOFF & DICKETT, LTD.</u>		
Name of firm	Name of firm	Name of firm
<u>600 HILLGROVE AVE., SUITE 1</u>		
Street address	Street address	Street address
<u>WESTERNSPRING IL 60558</u>		
City State ZIP	City State ZIP	City State ZIP
<u>(708) 784-3200</u>	<u>()</u>	<u>()</u>
Daytime phone number	Daytime phone number	Daytime phone number
<u>JDICKETT@AOL.COM</u>		
E-mail address	E-mail address	E-mail address
<u>ALL</u>	<u>ALL</u>	
Specific tax type	Year or period	Specific tax type Year or period

5 The attorneys-in-fact named above shall have, subject to revocation, full power and authority to perform any act that the principals can and may perform, including the authority to receive confidential information.

The attorneys-in-fact named above do not have the power to - Check only the items below you do not wish to grant.

- endorse or collect checks in payment of refunds.
- receive checks in payment of any refund of Illinois taxes, penalties, or interest.
- execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.
- execute consents extending the statutory period for assessments or collection of taxes.
- delegate authority or substitute another representative.
- file a protest to a proposed assessment.
- execute offers in compromise or settlement of tax liability.
- represent the taxpayer before the department in all proceedings including hearings (requiring representation by an attorney) pertaining to matters specified above.
- obtain a private letter ruling on behalf of the taxpayer.
- perform other acts (explain) _____

6 This power of attorney revokes all prior powers of attorney on file with the department with respect to the same matters and years or periods covered by this form, except for the following:

Name	Name	Name
Street address	Street address	Street address
City State ZIP	City State ZIP	City State ZIP
Daytime phone number	Daytime phone number	Daytime phone number
Date granted	Date granted	Date granted



7 Copies of notices and other written communications addressed to the taxpayer in proceedings involving the matters listed on the front of this form should be sent to the following:

JAMES DICKETT

Name JAMES DICKETT	Name	Name
Street address 600 HILLGROVE AVE., SUITE 1	Street address	Street address
City State ZIP WESTERNSPRING IL 60558	City State ZIP	City State ZIP
Daytime phone number (708) 784-3200	Daytime phone number	Daytime phone number

Step 3: Taxpayer's signature

If signing as a corporate officer, partner, fiduciary, or individual on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

(X) *[Signature]* Title, if applicable _____ Date 3-11-14

Spouse's signature _____ Title, if applicable _____ Date _____

If corporation or partnership, signature of officer or partner _____ Title, if applicable _____ Date _____

Step 4: Complete the following if the power of attorney is granted to an attorney, a certified public accountant, or an enrolled agent

I declare that I am not currently under suspension or disbarment and that I am

- a member in good standing of the bar of the highest court of the jurisdiction indicated below; or
- duly qualified to practice as a certified public accountant in the jurisdiction indicated below; or
- enrolled as an agent pursuant to the requirements of United States Treasury Department Circular Number 230.

ATTORNEY	IL	<u><i>[Signature]</i></u>	<u>3-11-14</u>
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
ATTORNEY	IL	<u><i>[Signature]</i></u>	<u>3-11-14</u>
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date
Designation (attorney, C.P.A., enrolled agent)	Jurisdiction (state(s), etc.)	Signature	Date

Step 5: Complete the following if the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent

If the power of attorney is granted to a person other than an attorney, a certified public accountant, or an enrolled agent, this document must be witnessed or notarized below. Please check and complete one of the following.

Any person signing as or for the taxpayer

_____ is known to and this document is signed in the presence of the two disinterested witnesses whose signatures appear here.

Signature of witness _____ Date _____

Signature of witness _____ Date _____

_____ appeared this day before a notary public and acknowledged this power of attorney as his or her voluntary act and deed.

Signature of notary _____ Date _____

Notary seal



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