

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

SALVATORE LIOTTA, Petitioner)	
)	
V)	No. 14 TT 39
ILLINOIS DEPARTMENT OF REVENUE, Respondent)	Chief Judge James M. Conway
)	
)	

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 Taxpayer’s Petition states as follows:

1. Petitioner is an individual who lives at 6 Oakbrook Club Drive, Oakbrook, Illinois, 60523, and can be reached at 630-833-1006.

ANSWER: The Department admits the allegations in paragraph 1 of the petition.

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.

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

3. Petitioner's Taxpayer ID is XXX-XX-7701.

ANSWER: The Department admits the allegations in paragraph 3 of the petition.

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.

ANSWER: The allegations in paragraph 4 of the petition consist of legal conclusions and are thus denied.

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

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

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.

ANSWER: The allegations in paragraph 6 of the petition consist of legal conclusions and are thus denied.

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.

ANSWER: The Department admits that the 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, on the date stated, but states the notice speaks for itself and denies any and all other allegations in paragraph 7 of the petition.

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.

ANSWER: The allegations in paragraph 8 of the petition consist of legal conclusions and are thus denied.

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.

ANSWER: The allegations in paragraph 9 of the petition consist of legal conclusions and are thus denied.

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

ANSWER: The Department admits the allegations in paragraph 10 of the petition.

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

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.

12. As of the date of the issuance of the Notice, LLB Inc. owed \$244,914.56 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.

ANSWER: The Department admits the allegations in paragraph 12 of the petition, except that the Department denies that at the date of the issuance of the Notice, that LLB Inc. owed \$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.

ANSWER: The Department admits the allegations in paragraph 13 of the petition.

COUNT I

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 13 as though fully set forth herein.

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.

ANSWER: The allegations in paragraph 15 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

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.

ANSWER: The allegations in paragraph 16 of the petition consist not of material allegations of fact, but of factual and/or legal conclusions and are therefore denied.

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.

ANSWER: The allegations in paragraph 17 of the petition consist not of material allegations of fact, but of factual and/or legal conclusions and are therefore 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.

COUNT II

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

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 17 as though fully set forth herein.

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.

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

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.

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

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.

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

COUNT III

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

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

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

ANSWER: The allegations in paragraph 23 of the petition consist not of material allegations of fact, but of legal conclusions, and are on that basis denied.

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.

ANSWER: The allegations in paragraph 24 of the petition consist not of material allegations of fact, but of factual and/or legal conclusions and are therefore denied.

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

ANSWER: The allegations in paragraph 25 of the petition consist not of material allegations of fact, but of factual and/or legal conclusions and are therefore denied.

26. The Department's determination that Petitioner personally owes the unpaid penalties and interest of LLB Inc. is not supported by law.

ANSWER: The allegations in paragraph 26 of the petition consist not of material allegations of fact, but of factual and/or legal conclusions and are therefore 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,

LISA MADIGAN
Attorney General
State of Illinois

By:  _____

George Foster
Special Assistant Attorney General

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ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

SALVATORE LIOTTA)	
)	
v.)	14-TT-39
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

AFFIDAVIT OF DEBRA PAONI
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

1. I am currently employed by the Illinois Department of Revenue in the Collection Bureau's 100% Penalty Unit.
2. My current title is RTS III.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraph 11.

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.

Debra A. Paoni

Debra Paoni
RTS III
Illinois Department of Revenue

DATED: 4/8/14

VERIFICATION

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.



CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on April 11, 2014 a copy of the Department's ANSWER was served on James E. Dickett, Romanoff & Dickett Ltd., by causing a copy to be sent by electronic mail to jdickett@aol.com.

A handwritten signature in blue ink, appearing to read "George Foster", is written over a horizontal line.