

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

JAYESH PATEL,)	
Petitioner)	
)	
V)	No. 14 TT 51
ILLINOIS DEPARTMENT)	Judge Brian F. Barov
OF REVENUE,)	
Respondent)	
)	

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 48 Buttonwood Drive, East Brunswick, New Jersey, 08816, and can be reached at 732-213-6718.

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-5151.

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 February 3, 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 \$57,812.60, which covers the tax periods ending June 30, 2012, July 31, 2012, August 31, 2012, and September 30, 2012, and which is comprised of \$50,459.12 in tax due, \$6,926.09 in penalties, and \$427.39 in interest. Of the \$50,459.12 in tax due in the Notice, exactly \$50,000 is from

the tax periods ending September 30, 2012. The Notice is attached hereto as Exhibit A.

ANSWER: The Department admits the 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 Butterfield Petroleum LLC.

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

11. Petitioner is 60 years old and was not involved in the filing, preparation, and payment of Illinois sales tax for Butterfield Petroleum LLC during the tax periods at issue.

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. The tax amount on the Notice for the tax period ending September 30, 2012 is

exactly \$50,000 because the tax amount was estimated by the Department.

ANSWER: The Department admits the allegations in paragraph 12 of the petition.

13. Butterfield Petroleum LLC did not operate the business in September 2012 because a bank-appointed foreclosure receiver took over the operation of the business.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of 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 Butterfield Petroleum LLC who lives outside of Illinois and 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 Butterfield Petroleum LLC's unpaid sales tax, penalties, and interest.

ANSWER: The allegations in paragraph 16 of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus 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 Butterfield Petroleum LLC.

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 Butterfield Petroleum LLC 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 Butterfield Petroleum LLC.

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 Notice includes an estimated liability for the tax periods ending September 30, 2012, which is erroneous because Butterfield Petroleum LLC did not operate the business during that month.

ANSWER: The Department denies the allegations in paragraph 23 of the petition and further states that the Department properly estimated the underlying corporation's tax liability for September 2012 using its best judgment and information, and issued a Notice of Tax Liability based upon the underlying corporation's failure to file a required return. The Department further states that pursuant to the Retailers Occupation Tax Act, the Notice of Tax Liability

became a final assessment with all defenses thereto being deemed waived upon the failure of the corporation to protest the Notice. Any such defenses are similarly not available in an action challenging a derivative notice of penalty liability. Department of Revenue v. Dombrowski , 202 Ill.App.3d 1050, 560 N.E. 2d 881 (First Dist. 1990).

24. Contrary to the Department's determination, Petitioner is not a responsible officer who willfully failed to pay the estimated sales tax, penalties, and interest of Butterfield Petroleum LLC for the tax periods ending September 30, 2012.

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.

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
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ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

JAYESH PATEL

v.

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

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14-TT-51

AFFIDAVIT OF TRACI SKEETERS
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 and 13.

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.



Traci Skeeters
RTS III
Illinois Department of Revenue

DATED: 4-30-14

CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on May 1, 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.