

**ILLINOIS INDEPENDENT
TAX TRIBUNAL**

EDWIN EDELBERG,)	
Petitioner)	
)	
V)	No. 14 TT 71
ILLINOIS DEPARTMENT)	Chief Judge James M. Conway
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. The Petitioner, Edwin Edelberg, presently resides at 7089 Palazzo Reale, Boynton Beach, Florida 33437. His phone number is 561/853-8694. His taxpayer identification number is xxx-xx-9193.

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

2. This matter involves Respondent’s determination that Petitioner was a responsible person pursuant to the NPLs identified below for the periods, taxes and amounts identified below.

<i>NPL Number</i>	<i>Period(s)</i>	<i>Tax</i>	<i>Amount</i>
22201110	March 31, 2009	Sales & Use	\$5,924.77

11326007	June 30, 2008, through November 30, 2008	Sales & Use	\$32,138.58
200924402	February 29, 2008, through April 30, 2008	Hotel Operators	\$10,457.38
200902103	May 31, 2008, through November 30, 2008	Hotel Operators	\$76,958.52
200932002	March 31, 2009	Hotel Operators	\$2,182.65
11292067	March 31, 2009	Illinois Income Tax withholding	\$904.70

Petitioner never received these NPLs but he has received notices of levy concerning them, copies of which are attached as Exhibit A.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2 of the petition that the petitioner never received the referenced NPLs. The Department admits the remaining allegations in paragraph 2 of the petition.

3. The determinations of liability set forth in each of the NPLs are erroneous for each of the following reasons:

(a) The NPLs were not issued to Petitioner at his last known address and, therefore, are defective and legal nullities;

ANSWER: The Department denies the allegations in paragraph 3(a) of the petition.

(b) The NPLs were issued after the relevant statute of limitations had expired and therefore are untimely, illegal, and legal nullities;

ANSWER: The Department denies the allegations in paragraph 3(b) of the petition.

(c) Petitioner was not a responsible person with respect to the Illinois taxes claimed due in the NPLs and, therefore, the assessments made against him with respect to such taxes are improper and illegal.

ANSWER: The allegations in paragraph 3(c) of the petition consist primarily of factual and/or legal conclusions and are denied.

(d) The Petitioner was unaware that any Illinois taxes were unpaid by the entity to which the proposed assessments relate and, therefore, there is no basis for personal liability being assessed against him for any of these taxes;

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3(d) of the petition that the petitioner was unaware that any Illinois taxes were unpaid by the entity to which the proposed assessments relate. The remaining allegations in paragraph 3(d) of the petition consist primarily of factual and/or legal conclusions and are denied.

(e) Petitioner did not willfully cause any of the Illinois taxes set forth in the NPLs to be unpaid and, therefore, there is no basis for any assessment for personal liability being assessed against him;

ANSWER: The allegations in paragraph 3(e) of the petition consist primarily of factual and/or legal conclusions and are denied.

(f) Certain of the assessments reflected in the NPLs are not trust fund assessments but, instead, reflect obligations imposed upon the business and, therefore, no personal liability can be assessed Petitioner;

ANSWER: The allegations in paragraph 3(f) of the petition consist primarily of factual and/or legal conclusions and are denied.

(g) No “trust fund” taxes were ever assessed against the business with respect to which the NPLs relate and, therefore, there is no basis for any assessment or personal liability against Petitioner;

ANSWER: The allegations in paragraph 3(g) of the petition consist primarily of factual and/or legal conclusions and are denied.

(h) The taxes claimed due in the NPLs are excessive and, therefore, must be abated; and

ANSWER: The allegations in paragraph 3(h) of the petition consist primarily of factual and/or legal conclusions and are denied.

(i) Payments made toward these tax obligations were misapplied by the Respondent and, therefore, no net tax is due.

ANSWER: The allegations in paragraph 4(i) of the petition are overly vague and consist primarily of factual and/or legal conclusions and are denied.

4. The facts upon which this case is based are as follows:

(a) Petitioner was born on March 13, 1930.

ANSWER: The Department admits the allegations in paragraph 4(a) of the petition.

(b) At all times since on or before December 31, 2007, Petitioner has been retired and maintained his principal residence in Florida.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4(b) of the petition.

(c) During calendar 2008 and 2009, Petitioner was an investor and member of Eagle Creek Resort, LLC (hereinafter “Eagle Creek” or “the Company”), which operated a resort in Shelbyville, Illinois.

ANSWER: The Department admits that the Petitioner was a member of Eagle Creek Resort, LLC which operated a resort in Shelbyville, Illinois. The Department states that the remaining allegations in paragraph 4 (c) of the petition are vague and are denied.

(d) At all relevant times, Petitioner was a passive investor in Eagle Creek, did not sign checks for the Company, did not sign tax returns for the Company, did not hire or fire employees of the Company and did not receive any financial information concerning the Company’s operations (other than the annual information required to file his personal income tax returns).

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4(d) of the petition.

(e) Eagle Creek suffered financial reversals and was put in bankruptcy in or about March, 2009.

ANSWER: The Department admits the allegations in paragraph 4(e) of the petition.

(f) As a result of Eagle Creek’s bankruptcy, Petitioner was also required to file personal bankruptcy in or about August 2009.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4(f) of the petition.

(g) Respondent was notified of pendency of Eagle Creek’s and Petitioner’s bankruptcy proceedings including notice that Petitioner maintained his principal residence in Florida.

ANSWER: The allegations in paragraph 4(g) of the petition are so overbroad, vague and unspecific as to not be reasonably capable of being answered and are therefore denied. The allegations that the Respondent was notified of Eagle Creek's and Petitioner's bankruptcy proceedings including notice that Petitioner maintained his principal residence in Florida contains no specifics as to whether the notification was formal or informal, who made the notification, whether it was in writing, if so, where it was sent, the date of the purported notification, etc.

(h) Nonetheless, Respondent took no action to assert liabilities against Eagle Creek and/or Petitioner in connection with the bankruptcy proceedings.

ANSWER: The allegations in paragraph 4(h) of the petition are so overbroad, vague and unspecific as to not be reasonably capable of being answered and are therefore denied. The allegations that the Respondent took no action to assert liabilities against Eagle Creek and/or Petitioner in connection with the bankruptcy proceedings after being notified of Eagle Creek's and Petitioner's bankruptcy proceedings contains no specifics as to whether the purported notification was formal or informal, who made the notification, whether it was in writing, if so, where it was sent, the date of the purported notification, etc.

(i) To the extent that Eagle Creek actually collected sales, hotel operators and/or income tax from its customers and employees, such amounts were properly reported and turned over to Respondent.

ANSWER: The allegations in paragraph 4(i) of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

(j) Petitioner had no knowledge and had no reason to know that any taxes due to Respondent were not being timely reported and paid

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4(j) of the petition.

(k) Respondent was not a “responsible person” with respect to the collection and payment of Illinois tax.

ANSWER: The allegations in paragraph 4(k) of the petition consist not of material allegations of fact, but primarily of factual and/or legal conclusions and are thus denied.

5. By letter dated March 25, 2014, a copy of which is attached as Exhibit B, the Respondent granted the Petitioner the right to file a late petition in this case.

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

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 Notices of Penalty Liability at issue are correct as issued;
 - c. ordering judgment in favor of the Department and against the Petitioner;
- and

granting such further relief as this Tribunal deems appropriate under the circumstances

Respectfully Submitted,

LISA MADIGAN
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State of Illinois

By: 

George Foster
Special Assistant Attorney General

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CERTIFICATE OF SERVICE

I, George Foster, an attorney, do hereby certify that on May 28, 2014 a copy of the Department's ANSWER was served on Francis J. Emmons, Ungaretti & Harris LLP by causing a copy to be sent by electronic mail to FJEmmons@uhl.com.

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

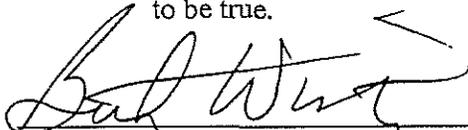
ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

EDWIN EDELBERG)	
)	
v.)	14-TT-71
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

AFFIDAVIT OF BETH WINTER
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 paragraphs 2, 3(d), 4(b), 4(d), 4(f), and 4(j).

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.



Beth Winter
RTS III
Illinois Department of Revenue

DATED: 5/22/14