

ST 12-14

Tax Type: Sales Tax

Tax Issue: Responsible Corporate Officer – Failure To File Or Pay Tax

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
ANYWHERE, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JACK BLACK,
Taxpayer

No. XXXXX
Account ID XXXXX
NPL Penalty ID XXXXX
Period XXXXX

Ted Sherrod
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Paula Hunter on behalf of the Illinois Department of Revenue; John Doe, Esq. on behalf of Jack Black.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Penalty Liability (“NPL”) to Jack Black (“taxpayer”) pursuant to section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7. The NPL alleges that the taxpayer was an officer or employee of Anywhere Food & Liquor Inc. (“Anywhere Food”) who was responsible for willfully failing to pay the corporation’s retailers’ occupation and related taxes. The respondent timely protested the NPL and an evidentiary hearing was held. After reviewing the transcript of the hearing and documents presented at this proceeding, I recommend that the NPL be made final.

Findings of Fact:

1. The Department's *prima facie* case was established by the admission into evidence of the NPL. The NPL, dated February 8, 2011, reflects a total liability due and owing in the amount of \$XXXXXX. Department Ex. 1.
2. The NPL arises from the underlying corporate liability of Anywhere Food for the tax period at issue *Id.* Anywhere Food, a package liquor store formerly located in Anywhere, Illinois, closed in March 2008. *Id.*
3. The taxpayer was the sole owner and President of Anywhere Food during the tax period at issue. *Id.*
4. The Department audited Anywhere Food for the period July 1, 2006 through March 31, 2008, determined that Anywhere Food had underreported gross receipts for the entire audit period and assessed tax, a late pay penalty and a negligence penalty for the period at issue in this case. *Id.*¹ This corporate audit liability was finalized, and a Final Notice of Tax Due for Form ST-1, Sales and Use Tax Return was issued on February 17, 2010. *Id.*

Conclusions of Law:

The Department seeks to impose personal liability on Jack Black (“taxpayer”) for failure to remit Retailers’ Occupation Tax (“ROT”). This personal liability penalty is imposed by section 3-7 of the Uniform Penalty and Interest Act, which provides as follows:

¹ No fraud penalty was assessed the underlying corporation for the tax period at issue in this case. Tr. p. 10.

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 to make the payment to the Department or willfully attempts in any 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. The Department shall determine a penalty due under this Section according to its best judgment and information, and that determination shall be prima facie correct and shall be prima facie evidence of a penalty due under this Section.

35 ILCS 735/3-7

It is clear from the foregoing that, under the above-referenced statute, personal liability will be imposed only upon an officer or employee who: 1) is responsible for filing corporate tax returns and/or making tax payments; and 2) “willfully” fails to file returns or make payments.

At the hearing in this case, the Department established its *prima facie* case by introducing its NPL into evidence. Branson v. Department of Revenue, 168 Ill. 2d 247, 262 (1995). The admission of the NPL into evidence established the Department’s *prima facie* case with regard to both the fact that the taxpayer was “responsible” and the fact that he “willfully” failed to file and/or pay. *Id.* Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to rebut the *prima facie* correctness of the assessments. Anderson v. Department of Finance, 370 Ill. 225 (1938); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978).

The taxpayer's attorney appeared at the hearing but did not offer any oral testimony or documentary evidence on behalf of the taxpayer. Tr. p. 10. Accordingly, the

taxpayer failed to produce any competent evidence to overcome the Department's *prima facie* case and the Department's *prima facie* determination of liability must therefore be finalized and affirmed.

WHEREFORE, for the reasons stated above, it is my recommendation that the NPL at issue be finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: November 9, 2012