

ST 12-18

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
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.
JOHN & JANE DOE,
As Responsible Officers of
ABC BUSINESS,
TAXPAYERS

No. XXXX

NPL's and Notices of Intent
(1002D Penalty)
(See attached list)

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. and Mrs. Doe, appearing *pro se*; Mr. George Foster, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This matter comes on for hearing pursuant to John Doe's protest of Notice of Penalty Liability No. 1520319 and Notice of Intent (1002D Penalty) No. XXXX and Jane Doe's protest of Notice of Penalty Liability No. XXXX and Notice of Intent (1002D Penalty) No. XXXX, all issued on March 31, 2011, as responsible officers of ABC Business (hereinafter "ABC Business"). The NPL's represent a penalty liability for retailers' occupation tax and county motor fuel tax due to the Department for various months in 2006, 2009 and 2010 and the Notices of Intent represent a penalty for withholding tax due for the third and fourth quarters of 2009. An evidentiary hearing was held in this matter on September 5, 2012, with Mr. and Mrs. Doe testifying. Following submission of all evidence and a review of the record, it is recommended

that the NPL's and Notices of Intent be finalized as issued. In support thereof, the following "Findings of Fact" and "Conclusions of Law" are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of NPL Nos. XXXX and XXXX, in the amount of \$XXXX and Notices of Intent Nos. XXXX and XXXX in the amount of \$XXXX, all dated March 31, 2011, issued to John Doe and Jane Doe, respectively. Tr. pp. 4-5, 9; Dept. Ex. Nos. 1 and 2.
2. The State of Illinois "Domestic Corporation Annual Report" for ABC Business lists John Doe as "President," and Jane Doe as "Secretary" and "Treasurer." Tr. p. 11; Dept. Ex. No. 4.
3. Checks signed by John Doe were submitted to the Department. Sales and Use Tax Returns and County Motor Fuel Tax Returns signed by John Doe were submitted to the Department. Tr. pp. 10-12; Dept. Ex. Nos. 3 and 5.

Conclusions of Law:

The sole issue to be decided in this case is whether Mr. and Mrs. Doe should be held personally liable for the unpaid retailers' and withholding tax of ABC Business. 35 ILCS 120 *et seq.* The statutory basis upon which any personal liability is premised is Section 3-7 of the Uniform Penalty and Interest Act, which provides as follows:

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 other

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 under the statute that personal liability will be imposed only upon a person who: (1) is responsible for filing corporate tax returns and/or making the tax payments; and (2) “willfully” fails to file returns or make payments.

The Department presents a *prima facie* case for responsibility and willfulness with the introduction of the NPL and the Notices of Intent into evidence. Branson v. Dept. of Revenue, 168 Ill. 2d 247, 260 (1995). When the Department established its *prima facie* case, the burden shifted to Mr. and Mrs. Doe to overcome the presumption of responsibility and willfulness through sufficient evidence. In order to overcome the Department’s *prima facie* case, evidence must be presented which is consistent, probable and identified with the corporation’s books and records. Central Furniture Mart, Inc. v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987).

No evidence was offered by either Mr. or Mrs. Doe at the hearing. In fact, Mr. and Mrs. Doe did not contest either responsibility or willfulness but only argued that they could not afford to pay the liability. According to Mrs. Doe, she and her husband lost everything in the business. “Every single penny we own, we lost on the business.” Tr. p. 7. Mr. and Mrs. Doe’s inability to pay may be a collection issue, but it is not a rebuttal of the Department’s *prima facie* case. I conclude that Mr. and Mrs. Doe have failed to rebut the Department’s *prima facie* case that they are responsible parties and acted willfully during the periods covered by the liability.

WHEREFORE, for the reasons stated above, it is my recommendation that NPL Nos. XXXX and XXXX, in the amount of \$XXXX and Notices of Intent Nos. XXXX and XXXX in the amount of \$XXXX, issued to John and Jane Doe, respectively, dated March 31, 2011, be finalized as issued.

Kenneth J. Galvin
Administrative Law Judge

December 13, 2012