

**ST 06-18**

**Tax Type: Sales Tax**

**Issue: Responsible Corporate Officer – Failure to File or Pay Tax**

**STATE OF ILLINOS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS 60601**

---

---

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE, as responsible officer  
of ABC Café,**

**Taxpayer**

**No. 00-ST-0000  
NPL No. 0000-000-00-0  
IBT: 0000-0000  
SSN: 000-00-0000**

**Kenneth J. Galvin  
Administrative Law Judge**

---

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. *John Doe*, appearing *pro se*; Mr. Marc Muchin, Special Assistant Attorney General, appearing 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. 0000-000-00-0 (hereinafter "NPL") as responsible officer of *ABC Cafe* (hereinafter "*ABC*"). The NPL represents a penalty liability for retailers' occupation tax of *ABC* due to the Illinois Department of Revenue for June through September, 2003. An evidentiary hearing was held in this matter on October 4, 2006, with Mr. *Doe* testifying. Following submission of all evidence and a review of the record, it is recommended that the NPL 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 No. 0000-000-00-0 dated July 8, 2005, which shows a penalty for unpaid retailers' occupation tax liability of ABC Cafe of \$6,046.51 for the months of June through September, 2003. Tr. p. 6; Dept. Ex. No. 1.
2. ABC's NUC-1, "Illinois Business Administration," filed November 26, 2003 lists *John Doe* and *Jim Doe* as "Partners." Question 6 of the form, "Date business started in Illinois under your current ownership" lists a date of "6/4/03." "John Doe" accepted personal responsibility for the filing of returns and the payment of taxes in question 14 of the form. The form is signed by "*John Doe*." Tr. pp. 7-8; Dept. Ex. No. 2.
3. The ST-1, "Sales and Use Tax Returns" for the four months at issue in this case show "*John Doe* and *Jim Doe*, PTRS" under "Owner's Name." The returns are signed by "*Mr. Smith*." Tr. pp. 9-10; Taxpayer's Ex. No. 5.

**Conclusions of Law:**

The sole issue to be decided in this case is whether Mr. *Doe* should be held personally liable for the unpaid retailers' occupation tax of ABC. 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.

In determining whether an individual is a responsible person, the courts have indicated that the focus should be on whether that person has significant control over the business affairs of a corporation and whether he or she participates in decisions regarding the payment of creditors and disbursement of funds. Monday v. United States, 421 F. 2d 1210 (7<sup>th</sup> Cir. 1970), *cert. denied*, 400 U.S. 821 (1970). Liability attaches to those with the power and responsibility within the corporate structure for seeing that the taxes are remitted to the government. *Id.*

The second element which must be met in order to impose personal liability is the willful failure to pay the taxes due. 35 ILCS 735/3-7 fails to define what constitutes a willful failure to pay or file taxes. Branson v. Department of Revenue, 168 Ill. 2d 247, 254 (1977). In attempting to clarify what constitutes a willful failure to file or pay taxes, the courts have adopted a broad interpretation of the words “willfully fails.” Department of Revenue ex rel. People v. Corrosion Systems, Inc., 185 Ill.App.3d 580 (4<sup>th</sup> Dist. 1989). Under this broad interpretation, responsible officers are liable if they delegate bookkeeping duties to third parties and fail to inspect corporate records or otherwise fail to keep informed of the status of the tax returns and payments. Branson supra at 267.

The admission into evidence of the NPL establishes the Department's *prima facie* case with regard to both the fact that Mr. *Doe* was a "responsible" officer of *ABC* and the fact that he "willfully" failed to file and or pay. Branson, *supra* at 262. Once the Department has established a *prima facie* case, the burden shifts to the taxpayer to overcome the case. Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1<sup>st</sup> Dist. 1978). 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 (1<sup>st</sup> Dist. 1987).

Mr. *Doe* testified that he was never the owner of *ABC* and he never discussed a partnership with Mr. *Jim Doe*. Mr. *Doe* remembered signing the NUC-1 but "when I signed them, they were for my taxes for what I was being paid that I would have to file once I get my W-2 or whatever, you know, at the end of the year." "This was falsified to me, you know, in the way it was presented to me wrongly." Tr. pp. 10-12. Mr. *Doe* also testified that Mr. *Jim Doe* was a friend of his at the time, "and still kind of is." Tr. p. 12. Mr. *Doe* did not subpoena Mr. *Jim Doe* to testify at the hearing. Mr. *Doe* also stated that the "original contract that was wrote up and signed for this company, for this business, is at [Mr. *Jim Doe*'s] house right now. It's in a briefcase at his house in XXXXX in a white cabinet in the kitchen, at the bottom of the white cabinet in the kitchen." Tr. p. 14. No documentary evidence was offered by Mr. *Doe* at the evidentiary hearing.

Mr. *Doe*'s testimony is insufficient to show that he was not a responsible officer of *ABC* or that he did not willfully fail to file and pay *ABC*'s taxes. Mr. *Doe*'s signature appears on the "NUC-1" and he accepted personal responsibility for taxes on that form. If he was misled in signing the form, his recourse is against the person who misled him. Without any documentary evidence to support his contentions in this case, Mr. *Doe* has failed to rebut the Department's *prima*

*facie* case that he was a responsible party under the statute and that he willfully failed to file and pay *ABC*'s taxes.

WHEREFORE, for the reasons stated above, it is my recommendation that Notice of Penalty Liability No. 0000-000-00-0 be finalized as issued.

Kenneth J. Galvin  
Administrative Law Judge

November 20, 2006