

IT 06-13

Tax Type: Income 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 DOE*, as responsible officer
of *DOE Professional Association, Ltd.*,**

Taxpayer

No. 00-IT-0000
FEIN: 00-0000000
SSN: 000-00-0000
NOD: 0000-000-00-0

RECOMMENDATION FOR DECISION

Appearances: Mr. Jim *DOE*, on behalf of the respondent *John Doe*; Mr. Rickey Walton, Special Assistant Attorney General on behalf of the Illinois Department of Revenue

Synopsis:

This matter comes on for a hearing pursuant to the protest filed by *John Doe* to the Notice of Deficiency issued against him by the Department of Revenue on or about June 21, 2005. At issue is the question of whether personal liability may attach as a “responsible officer” pursuant to the provisions of Section 3-7 of the Uniform Penalty and Interest Act, for corporate tax debt incurred and unpaid. (35 ILCS 735/3-7). Following the conclusion of the proceedings and consideration of all facts and law, it is

recommended that the Notice of Deficiency be affirmed in its entirety. In support thereof, the following findings and conclusions are made.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by admission into evidence of Notice of Deficiency #0000-000-00-0, issued against *John Doe* on June 21, 2005. The Notice shows a Withholding Tax deficiency established against *DOE* Professional Association, Ltd., for the first through third quarters of 1996 and the third quarter of 1997. (Tr. P. 5; Dept. Ex. No. 1)
2. The Department also introduced supplemental exhibits, inclusive of IL-941 tax forms for the business as well as an IL-W3 for the tax years 1995 and 1997. All were admitted into evidence without objection. (Tr. Pp. 5-6; Dept. Ex. No. 2)
3. The Department additionally introduced a group exhibit of the annual reports for the corporate taxpayer for fiscal years 1990 through and inclusive of 1995. (Tr. P. 7; Dept. Grp. Ex. No. 3)
4. Respondent, *John Doe*, by and through his counsel, made no statement, posed no argument, offered no objections and submitted no evidence of any kind or nature in answer to the Department's charges and the case presented.

Conclusions of Law:

The single issue to be decided in this case is whether *John Doe* should be held personally liable under the provisions of Section 3-7 of the Uniform Penalty and Interest Act for the unpaid withholding tax debt of *DOE* Professional Association, Ltd. That section 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)

Accordingly, pursuant to this Act, liability for corporate debt will attach to an officer or employee who is responsible for filing its returns and/or making the payments due and who willfully fails to do either.

The admission into evidence of the Notice of Deficiency establishes the Department's *prima facie* case with regard to both the fact that Mr. *DOE* was a "responsible officer" and that he "willfully failed" to file the applicable returns and/or to payment the amounts due thereon. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 262 (1995). Once the *prima facie* case has been established, the burden of proof shifts to the respondent to meet and overcome it. *Masini v. Department of Revenue*, 60 Ill. App. 3d 11 (1st Dist. 1978).

Due to the fact that absolutely no argument was made in defense of *John Doe* nor was any evidence presented in rebuttal to the Department's case, there is no choice but to determine that the requirements of the UPIA and Section 3-7 have been met. Therefore, I must conclude as a matter of law that Mr. *DOE* was a responsible officer or employee of the *DOE* Professional Association, Ltd., and that he willfully failed to file returns and/or pay taxes due on those returns for the periods in question.

Based on the establishment of the prima facie case and the lack of any rebuttal evidence whatsoever, it is recommended that the Notice of Deficiency issued in this cause, 0000-000-00-0, be upheld in its entirety.

Respectfully submitted:

Richard L. Ryan
Administrative Law Judge

Date: 8/2/2006