

ST 16-03

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
HAPPYTOWN, ILLINOIS**

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

v.

**JOHN DOE,
Taxpayer**

**No. XXXX
Account ID XXXX
NPL Penalty ID XXXX
Period 11/04-12/08**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General George Foster on behalf of the Illinois Department of Revenue; John F. Etzkorn, Esq. of Arnold & Kadjan on behalf of John Doe.

Synopsis:

This matter is before this administrative tribunal pursuant to a timely protest filed by John Doe (“taxpayer”) contesting the issuance of a Notice of Penalty Liability, NPL Penalty ID number XXXX by the Illinois Department of Revenue (“Department”) assessing a penalty to the taxpayer as the responsible officer of ABC Business Inc. for that company’s unpaid Retailers’ Occupation Tax liability. At issue in this case is whether the taxpayer is a “responsible” corporate officer who “willfully” failed to file returns and pay taxes owed by the aforementioned corporate entity for the period November 2004 through December 2008. A hearing was held to consider this matter on September 25, 2015 during which the taxpayer testified and both the taxpayer and the Department presented documentary evidence. The record in this case also includes briefs submitted by both parties. Following the submission of all evidence and a review

of the record, it is recommended that the NPL at issue be finalized as issued. In support of this recommendation, 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 Notice of Penalty Liability NPL Penalty ID number XXXX (“NPL”) issued to John Doe (“taxpayer”) on June 26, 2013 for the period November 2004 through December 2008. Department Exhibit (“Ex.”) 1.
2. John Doe (“taxpayer”) was the owner, President and sole officer of ABC Business Inc. (“ABC BUSINESS”), an Illinois corporation incorporated in 2003, during its entire existence. Transcript of Hearing September 25, 2015 (“Tr.”) pp. 7, 14; Taxpayer’s Ex. 1. During the tax period in controversy, ABC BUSINESS was engaged in the business of supplying tangible personal property (nail supplies which included lotion, brush, flour and top coat) to nail salons from a store located in Happytown, Illinois. Tr. p. 15; Taxpayer’s Ex. 2, 3.
3. ABC BUSINESS entered into a lease agreement to lease the premises beginning in January 2004, for a term of five years, on January 1, 2004. Taxpayer’s Ex. 2. Pursuant to this lease agreement, the taxpayer agreed to be the guarantor of lease payments due from ABC BUSINESS during the term of the lease. *Id.*
4. Prior to commencing business operations in 2004, ABC BUSINESS obtained a Certificate of Registration as a reseller, after the taxpayer and Jack Black, a friend, went to the Department’s offices in Happytown to apply for a business license. Tr. pp. 15-22; Taxpayer’s Ex. 3 (copy of ABC BUSINESS’s Certificate of Registration - Reseller).
5. The Certificate of Registration-Reseller issued the taxpayer provides, in pertinent part, as

- 7; Taxpayer's Ex. 4 (Global Taxable Exceptions Detailed Report).
9. Upon completion of its audit of ABC BUSINESS, the Department's auditor prepared a form entitled "Global Taxable Exceptions Detailed Report." *Id.* The Department determined that none of the gross receipts ABC BUSINESS realized were from exempt sales for resale, and that tax was due on all of ABC BUSINESS's gross receipts. *Id.* As set forth in the Department's report, the Department's auditor determined that tax was due in the amount of \$XXXX, plus late filing and late payment penalties. *Id.*
 10. The taxpayer protested the Department's determination that ABC BUSINESS owed tax on its gross receipts from sales of nail supplies during the tax period at issue in the instant case. Department Ex. 1 (decision in Department of Revenue v. ABC Business Inc., 11-ST-0210, Department of Revenue Office of Administrative Hearings, December 27, 2012). On December 27, 2012, the administrative law judge assigned to hear that case issued a Recommendation for Decision affirming the Department's audit determination which was accepted and approved by the Department's Director of Revenue on December 28, 2012. *Id.* The entire final assessment of ABC BUSINESS affirmed by the Department's administrative law judge arose from the administrative law judge's rejection of ABC BUSINESS's claim that all of its sales were exempt from Retailers' Occupation Tax as sales for resale pursuant to ABC BUSINESS's alleged authorization to act exclusively as a wholesaler based upon its Certificate of Registration – Reseller issued by the Department. *Id.*
 11. The taxpayer was ABC BUSINESS's President, sole officer and sole shareholder during the company's entire existence including the tax period in controversy. Tr. pp. 7, 14; Taxpayer's Ex. 1. As the company's sole officer, the taxpayer was exclusively responsible for ABC BUSINESS's financial affairs. Tr. p. 7.

12. The notice of penalty liability issued the taxpayer arose from the unpaid liability of ABC BUSINESS determined during the Department’s audit of this company indicated above. Department Ex. 1.
13. ABC BUSINESS closed its business in September, 2008 and made no additional sales after that month. Tr. pp. 6, 14, 31. The Secretary of State of Illinois involuntarily dissolved this corporation on May 8, 2009. Taxpayer’s Ex. 1.
14. The Department’s audit of ABC BUSINESS took place in 2010, more than a year after ABC BUSINESS ceased doing business. Tr. p. 7; Taxpayer’s Ex. 4 (Global Taxable Exceptions Detailed Report). The notice of penalty liability at issue was issued on June 26, 2013, more than four years after ABC BUSINESS closed. Department Ex. 1.
15. During the hearing, the taxpayer testified that he was not aware that ABC BUSINESS was required to file sales tax returns or to collect and remit sales taxes to the Department on its sales of nail supplies to nail salons. Tr. pp. 34, 35.

Conclusions of Law:

The Illinois Department of Revenue (“Department”) seeks to impose personal liability on John Doe (“taxpayer”) pursuant to section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7 (“UPIA”). The taxpayer was issued a Notice of Penalty Liability (“NPL”) pursuant to that provision on June 26, 2013. Section 3-7 of the UPIA 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 respoABC Businessbility 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 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.

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 admission into evidence of the NPL establishes the Department’s *prima facie* case with regard to both the fact that the taxpayer was a “responsible officer” and the fact that he “willfully” failed to file and/or pay. Branson v. Department of Revenue, 168 Ill. 2d 247, 262 (1995). Once the Department has established a *prima facie* case, the burden shifts to the taxpayer to overcome the Department’s presumptively correct determination. Masini v. Department of Revenue, 60 Ill. App. 3d 11, 14 (1st Dist. 1978).

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 the 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 (7th 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 taxpayer, by his own admission (tr. p. 7), does not raise any legitimate argument contesting the charge that he was a responsible officer. Instead, his defense to this action is that he did not act willfully as the responsible officer in failing to file the necessary returns or pay the taxes due from the corporation. However, for purposes of the record, I specifically conclude that the taxpayer was a “responsible” corporate officer based upon the following facts:

1. The taxpayer was at all times during its existence ABC BUSINESS’s sole owner, President and only officer and was exclusively responsible for ABC BUSINESS’s financial affairs. Tr. pp. 7, 14, 36; Taxpayer’s Ex. 1, 2.

2. The taxpayer started and incorporated ABC BUSINESS. Tr. pp. 40, 41; Taxpayer's Ex. 1.
3. The taxpayer personally prepared an application for, and applied to the Department for a registration certificate for the corporation. Tr. pp. 16, 17, 19, 20.
4. The taxpayer was authorized to issue and sign the corporation's checks and wrote checks to pay the corporation's bills. Tr. pp. 7, 53.
5. The taxpayer had the authority to sign, and signed a Lease Agreement to lease the corporation's store. Taxpayer's Ex. 2. The taxpayer also personally guaranteed payments due under the terms of the corporation's lease. *Id.*

The exclusive control and authority exercised by the taxpayer over the affairs of ABC BUSINESS throughout its existence evidenced above are more than enough to determine that he was indeed a "responsible" corporate officer as contemplated by the UPIA.

Having established his responsible position at ABC BUSINESS, the only remaining question to be determined here is whether the taxpayer acted willfully in failing to collect taxes, file returns or pay taxes due from the corporation during the time period involved.² In addressing this question, the taxpayer seeks to avoid liability by claiming that he had a

² Because ABC BUSINESS failed to collect use tax from its customers, the instant case only involves the taxpayer's liability, as a responsible officer, for the unpaid Retailers' Occupation Tax liability of ABC BUSINESS arising pursuant to section 120/2 of the Retailers' Occupation Tax Act, 35 ILCS 120/2. This tax is due whether or not a retailer heeds its statutory obligation under the Use Tax Act to collect tax from its customers. National Bank of Hyde Park in Happytown v. Isaacs, 27 Ill. 2d 205 (1963). In Brown v. Zehnder, 295 Ill. App. 3d 1031 (1st Dist. 1988), the court wholly rejected the argument that section 3-7 of the UPIA does not apply to a corporation's unpaid Retailers' Occupation Tax liabilities, and held that "a taxpayer can be personally liable for the nonpayment of ... taxes, whether [the taxes] are considered taxes paid pursuant to the [Use Tax Act] or [Retailers' Occupation Tax Act]." *Id.* at 1035. Accordingly, ABC BUSINESS's failure to collect tax from its customers is not a basis for concluding that liability cannot be imposed upon the taxpayer in the instant case.

reasonable belief that taxes were not due. Taxpayer's Brief pp. 4-7. That belief was evidently premised upon advice given him that ABC BUSINESS would incur no Illinois sales tax because its sales of tangible personal property were being made to purchasers for resale by them. *Id.* However, I cannot conclude from the evidence presented that any such belief was reasonable or that it would otherwise protect the taxpayer from the imposition of the "responsible officer" penalty here.

Much of the taxpayer's defense in this case is premised upon his claim that he reasonably relied upon the Certificate of Registration-Reseller issued to ABC BUSINESS when it applied for a business license. *Id.* However, as pointed out by Administrative Law Judge John White in Department of Revenue v. ABC Business Inc., *supra* (included in the record as part of the Department's Exhibit 1), a case involving the underlying corporate liability giving rise to the NPL at issue here, "[T]he plain text of the certificate notified ABC BUSINESS that it was '...authorized to do business as a reseller in Illinois and ... authorized to purchase items and/or services tax-free[.] The items and/or services must be purchased for resale and all sales must be made in a nontaxable manner.' Despite the express note – 'all sales must be made in a nontaxable manner' (*id.*) – ABC BUSINESS wants me to treat the certificate, itself, as documentary evidence that all of its sales were made in a nontaxable manner. ... I cannot agree [because] both the plain text of the certificate, and applicable Illinois law, place the burden on ABC BUSINESS to document that some or all of its sales were made in a nontaxable manner. 35 **ILCS** 120/2c; 35 **ILCS** 115/3-40; 86 Ill. Admin. Code § 140.1001."

Succinctly stated, it was incumbent upon the taxpayer to verify that his company's sales were being made for resale, in order to rely upon the Certificate of Registration- Reseller as a basis for failing to collect and remit sales tax. In the absence of evidence the taxpayer never

attempted any such verification, the taxpayer's reliance upon ABC BUSINESS's Certificate of Registration-Reseller cannot be deemed a reasonable basis for concluding that ABC BUSINESS was exclusively engaged in making sales for resale.³

The taxpayer avers that no personal liability can attach under the facts of this case due to his claimed ignorance that taxes were required to be collected. Taxpayer's Brief pp. 1-7. Citing the case of Department of Revenue v. Corrosion Systems, 185 Ill. App. 3d 580 (4th Dist. 1989) wherein the court remanded the Department's determination of responsible officer liability because it did not determine whether the taxpayer knew or should have known tax was due, the taxpayer proffers that a principal component of willfulness is a showing that the individual cited knew that tax was due. Taxpayer's Brief pp. 1-5. It therefore necessarily follows that in the absence of such a showing, no personal liability can legally be imposed.

While it is true that "willfulness" within the ambit of section 7 of the UPIA has been defined as a "voluntary, conscious and intentional" act (see Department of Revenue v. Dombrowski, 202 Ill. App. 3d 1050, 1054 (1st Dist. 1990)), what is ignored in the taxpayer's argument is that the courts have generally not allowed corporate officials and employees to hide behind a wall of self-created and blissful ignorance in examining the issue of willfulness in relation to their responsibilities. Specifically, several courts have gone beyond the "voluntary, conscious and intentional" threshold and have imposed personal liability where, alternatively, there has been a showing of a reckless disregard for obvious or known risks. Carl E. Branson v.

³ The taxpayer also argues that he reasonably relied upon the disclaimer in the Certificate of Registration-Reseller the Department issued to the taxpayer stating "Retailers' Occupation Tax Not applicable". Taxpayer's Brief pp. 2-5; Taxpayer's Ex. 3. Vendors selling to the taxpayer were required to obtain a copy of the taxpayer's Certificate of Registration-Reseller in order to make tax free sales to the taxpayer by section 2c of the Retailers' Occupation Tax Act, 35 ILCS 120/2c. Read in light of this requirement, it is clear that this document is intended to notify persons selling to ABC BUSINESS that such sales are not subject to the Retailers' Occupation Tax Act. The taxpayer plainly misconstrues this document to mean that sales by ABC BUSINESS are automatically not subject to Retailers' Occupation Tax, which this document clearly disavows by stating that "all sales must be made in a non-taxable manner."

Department of Revenue, 168 Ill. 2d 247 (1995). This has sometimes been described as the “gross negligence” standard where an officer “clearly ought to have known that there was a grave risk that ...taxes were not being paid and ...he was in a position to find out for certain easily.” Wright v. United States, 809 F. 2d 425 at 427 (7th Cir. 1987); Ruth v. United States, 823 F. 2d 1091 at 1094-95 (7th Cir. 1987); Brown v. United States, 552 F. Supp. 662 at 664 (ND Ill. 1982).⁴

Taking that standard and applying it to the circumstances before me, I am reluctant to accept that any rational person could conclude the actions of the taxpayer in creating and incorporating ABC BUSINESS and subsequently running it, were not “grossly negligent” with respect to ascertaining the proper tax responsibilities of this corporation. Initially, we must look at the fact that the taxpayer, while lacking in English proficiency (tr. p. 16), was not a naive stranger to the world of taxation. This is evident from the taxpayer’s testimony during the hearing wherein he stated as follows:

Q. Did you fill out any application or any paperwork at the Illinois Department of Revenue?

A. Yes.

Q. An application?

A. That’s right.

Q. What did you apply for?

A. I apply for the business license.

Q. Did you apply for wholesale or retail?

A. I apply for the license. I’m asking for two license, one is retail and one is wholesale ... [.]

Q. Why did you apply for a retail license?

A. I apply for in case if we have the wholesale or retail at the same time.

Q. What type of retail sales did you expect to have?

A. It’s in case it was someone coming to buy in retail ... [.]

Q. You mean people off the street ... [.]

⁴ In applying the UPIA section 7 penalty at issue in this case, the Illinois courts have authorized reliance upon Federal case law precedents involving section 6672 of the Internal Revenue Code which contains language similar to the aforementioned statute. Branson v. Department of Revenue, 168 Ill. 2d 247 (1985); Department of Revenue v. Joseph Bublick & Sons, Inc., 68 Ill. 2d 568 (1977).

A. When I apply I want to [do] that.
Tr. pp. 16, 17

This testimony is evidence that the taxpayer clearly understood the difference between taxable and non-taxable sales and his responsibility to collect taxes when sales at retail were being made. Moreover, the record indicates that the taxpayer was not unfamiliar with running a retail business, having been involved in the ownership and operation of two businesses before he incorporated ABC BUSINESS. Tr. pp. 38-41.

More importantly, to ascertain whether the taxpayer was grossly negligent one must examine what steps the taxpayer took to positively ascertain what tax liabilities might pertain to his business. The taxpayer contends that he consulted a tax professional who also prepared ABC BUSINESS's tax returns (tr. p. 22) and, based upon this consultation, was led to believe that no taxes were due. Tr. pp. 22-27. This testimony is self serving and, during the hearing, was not corroborated by any other testimony or by any documentary evidence. Moreover, as the Department rightfully noted in its objection to parts of this testimony, to the extent this testimony sought to prove what the accountant actually told the taxpayer, it is hearsay and inadmissible. *Id.* As a consequence of the foregoing, I have accorded this testimony no weight.

Even if the taxpayer's claim to have consulted with an accountant were entitled to be given some minimal weight, the advice the taxpayer claims to have received casts doubt that all pertinent facts at the taxpayer's disposal were disclosed, particularly the fact that the nail salons were using the products the taxpayer delivered to them in the conduct of a service enterprise rather than reselling them at retail. This fact would be critical information in considering whether the taxpayer was required to collect and remit tax because sales of tangible personal property for use in performing a service are not sales for resale. See 86 Ill. Admin. Code §130.1415(b) ("Examples of purchasers for resale who would need a resale number from the

Department are persons who resell only to purchasers who in turn resell the property apart for engaging in a service occupation.”). The record indicates that the taxpayer very well may have been aware that the nail salons purchasing nail supplies from the taxpayer’s business were purchasing these supplies for use in a service occupation from the inception of ABC BUSINESS’s business operations. Tr. p. 6 (“The evidence will show that they went to the Department of Revenue for registration and received a Certificate of Registration indicating that they were ... a business-to-business wholesaler[.] With their understanding, they owed no taxes because their only sales are to businesses, and the sales of nail supplies, which are used during the rendering of a service.” Emphasis supplied).

The taxpayer also avers that he was told by an unidentified representative of the Department that ABC BUSINESS’s sales would not be subject to Retailers’ Occupation Tax. Tr. pp. 15-22. This testimony is uncorroborated, self serving and, to the extent offered to prove what the taxpayer was in fact told hearsay. Moreover, given the importance of the information concerning which the taxpayer alleges to have sought clarification from the Department, i.e. whether or not ABC BUSINESS was a retailer, it would seem reasonable that, rather than relying on the alleged oral representation of a “counter person” (tr. p. 6), clearly a source of unknown reliability, the taxpayer would have sought corroboration (i.e. citation to a General Information Letter or Department regulation), or requested written confirmation from the Department itself in the form of a ruling.

However, of paramount significance in ascertaining whether the taxpayer made a reasonable effort to correctly determine his tax compliance responsibilities is the following testimony:

Q. Did any of your customers ask you about sales tax?

A. No.

Q. Did any of your customers ever tell you that suppliers had charged them tax?

A. No.

Q. Did you ever ask any of your customers whether any of their other suppliers charged them sales tax?

A. No.

Tr. pp. 43, 44.

Based upon the aforementioned testimony, I find that the taxpayer, by his own admission, never made any sincere effort to verify that his customers were actually reselling any of the tangible personal property being sold to them by ABC BUSINESS, the company the taxpayer owned. Written verification that sales claimed to be exempt from Retailers' Occupation Tax are sales for resale is statutorily required by section 2c of the Retailers' Occupation Tax Act, 35 ILCS 120/2c, which provides as follows:

... a sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sale for resale, or that a particular sale is a sale for resale.

35 ILCS 120/2c

The record in this case contains no evidence that ABC BUSINESS ever collected, kept or produced for audit any resale certificates from its purchasers. Indeed, Administrative Law Judge White, in Department of Revenue v. ABC Business Inc., *supra* (included in the record of these proceedings as part of the Department's Exhibit 1) expressly found that ABC BUSINESS did not "request and keep signed statements from such customers that the goods they purchased from ABC BUSINESS were purchased for resale." *Id.* (Department of Revenue v. ABC Business

Inc., *supra*, Findings of Fact number 8). I have accorded probative weight to this finding in the instant case pursuant to Illinois Administrative Procedures Act, 5 **ILCS** 100/10-40(a), which provides, in part, as follows: “The rules of evidence and privilege applied in civil cases in the circuit courts of this State shall be followed[.] Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.” In the absence of such documentation or other proof that ABC BUSINESS’s sales were for resale, its sales were presumed by law to be retail sales subject to the Retailers’ Occupation Tax Act pursuant to section 2c of the Retailers’ Occupation Tax Act, noted above.

By virtue of his failure to collect, keep or produce for audit any resale certificates, the taxpayer deliberately failed to comply with section 7 of the Retailers’ Occupation Tax Act, 35 **ILCS** 120/7 which provides as follows:

Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom of the specific trade and other pertinent papers and documents.

35 **ILCS** 120/7

As a consequence of the taxpayer’s failure to meet his obligations under section 7 of the Retailers’ Occupation Tax Act, it was impossible for the taxpayer to ever check the accuracy of his presumption that his company was not required to collect and remit sales tax, even though the taxpayer was charged with the responsibility for doing so by virtue of his control over all of the company’s financial affairs including its tax compliance. At best, this failure shows a reckless disregard for the obvious risk that his decision not to collect and pay Retailers’ Occupation Tax might not be correct.

In the seminal case of Branson, *supra*, the Illinois Supreme Court held that:

...lack of willfulness is not proved simply by denying conscious awareness of a tax deficiency that could have been easily investigated by an inspection of corporate records. *Id.* at 267

Using that same analogy, I suggest that the absence of willfulness cannot be maintained through a plea of ignorance when no reasonable effort was expended to conclusively determine what the tax ramifications of any business undertaking might be.

Here, the evidence unequivocally demonstrates that no conscientious effort was undertaken by the taxpayer to actually determine the responsibilities of ABC BUSINESS, the company he owned and exclusively operated, for the filing of returns and/or the payment of taxes to the State of Illinois based upon its business practices. Simply relying on the casual opinion of a Department “counter person” and failing to verify that such advice corresponded to the actual uses being made of the products purchased from the taxpayer’s company are not reliable business acts. To merely rely on such limited information in determining a corporation’s compliance practices is just being foolhardy. The minimal level of inquiry undertaken by the taxpayer cannot reach the level of intelligent or responsible investigation on the part of someone who is conscientiously seeking to determine his tax compliance responsibilities.

In all, the attempts by the taxpayer to ascertain the real tax obligations of his company through serious investigation and inquiry are conspicuously non-existent in the evidence that has been accorded probative weight in this matter. His actions (or non-actions, as the case may be) constituted a reckless disregard of obvious or known risks regarding the potential consequences of operating ABC BUSINESS. As the President and sole operator of the company, he was in the best position to find out for certain through competent inquiry what taxes, if any, would apply. He did not and, as a result, was grossly negligent in failing to do so. As such, any beliefs he may

have held were founded on gossamer and decidedly unreasonable in scope. Therefore, they cannot form the basis for any defense premised on a supposed lack of knowledge. Claiming ignorance under the circumstances indicated in the record does not provide the taxpayer with any escape route from holding him personally responsible for the taxes remaining unpaid.

By virtue of the record presented and the evidence admitted, I conclude that the taxpayer acted willfully in attempting to evade or defeat the payment of taxes due. This conclusion is founded upon both the gross negligence displayed in failing to ascertain his company's actual legal responsibilities through the acquisition and retention of legally required documentation from his purchasers and the taxpayer's cursory efforts to determine what taxes were actually due. As a consequence of the foregoing, at all times during the corporate existence of ABC BUSINESS the taxpayer should have known that a grave risk existed that taxes were not being collected and paid on ABC BUSINESS's sales of tangible personal property. Ignoring this grave risk, the record discloses that the taxpayer took no meaningful or otherwise legitimate steps to ensure compliance with the law. Having found and concluded that taxpayer acted willfully in failing to collect taxes, file requisite returns and pay taxes due to the Department, he is therefore personally liable under the provisions of the UPIA for the unpaid taxes owed by ABC BUSINESS.

WHEREFORE, it is recommended that Notice of Penalty Liability number XXXX be upheld in its entirety and a final assessment be issued against the taxpayer in accord therewith.

Ted Sherrod
Administrative Law Judge

Date: March 15, 2016

