

ILLINOIS INDEPENDENT
TAX TRIBUNAL

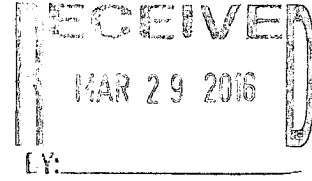
GRAPHIC PACKAGING HOLDING COMPANY
AND SUBS,

Petitioner.

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.



Case No. _____

Petitioner, Graphic Packaging Holding Company and Subs, by and through its attorneys, Sutherland Asbill & Brennan LLP, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notice of Deficiency (“Notice”) issued by the Illinois Department of Revenue, for the reasons stated below:

PARTIES

1. Petitioner, Graphic Packaging Holding Company and Subs (collectively, “Graphic”), is a publicly traded corporation duly organized and existing under the laws of Delaware.
2. Petitioner maintains its principal place of business at 1500 Riveredge Parkway, Suite 100, Atlanta, GA 30328.
3. Petitioner’s telephone number is (770) 240-7200.
4. Petitioner’s tax identification number is 26-0405422.
5. Petitioner is represented by Sutherland Asbill & Brennan LLP attorney Sheldon Kay, who is located at 999 Peachtree Street, NE, Suite 2300, Atlanta, GA 30309-3996 and can be reached at (404) 853-8965 or sheldon.kay@sutherland.com.

6. Respondent, Illinois Department of Revenue (“Department”), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

JURISDICTION

7. On January 25, 2016, the Department issued the Notice to Graphic assessing a total balance due of \$2,137,430.00 in tax, \$213,743.00 in penalty, and \$55,337.74 in interest for the tax year ended December 31, 2014. A copy of the Notice is attached as **Exhibit A**.
8. This Tribunal has original jurisdiction over all Department determinations reflected in Notices of Deficiency where the amount at issue exceeds \$15,000.00, exclusive of penalties and interest. 35 Ill. Comp. Stat. 1010/1-45.

BACKGROUND

9. Graphic is headquartered in Atlanta, Georgia.
10. Graphic designs and manufactures packaging for commercial products including beverages and packaged food.
11. Graphic owns multiple paper mills and paper converting operations across the United States, including paper mills located in Macon, Georgia and West Monroe, Louisiana.
12. Graphic files a unitary combined Illinois Corporation Income and Replacement Tax Return, Form IL-1120.
13. In January, 2009 Graphic began producing and using a mixture of “Black Liquor”¹ and diesel fuel in its recovery boilers at the Macon and West Monroe paper mills.

¹ Black Liquor is a liquid by-product of Graphic’s manufacture of pulp in the paperboard production business.

14. That same year, Graphic filed Federal Form 637, *Application for Registration (For Certain Excise Tax Activities)*, to be registered by the Internal Revenue Service (“IRS”) as a producer of alternative fuel mixtures.
15. Graphic received its registration from the IRS, effective May 18, 2009.
16. Graphic then began claiming payments on Federal Form 8849, *Claim for Refund of Excise Taxes*, on Schedule 3 of the form (Certain Fuel Mixtures and Alternative Fuel Credit).
17. Graphic claimed the federal benefits as alternative fuel mixture excise tax payments under I.R.C. § 6427(d).
18. In 2009, Graphic claimed a total of \$147,212,461 in alternative fuel credits and received payments equaling that amount pursuant to I.R.C. § 6427(e).
19. Graphic included the alternative fuel credit payments on its timely filed original 2009 Federal Form 1120, *U.S. Corporation Income Tax Return*, as gross income under I.R.C. § 61.
20. Because federal taxable income is the starting point for calculating Illinois net income, Graphic also included the alternative fuel credit payments within its gross income on its timely filed original 2009 Form IL-1120.
21. Subsequent to the filing of its 2009 Federal and Illinois corporate income tax returns, the IRS issued guidance conclusively stating that alternative fuel credit payments under I.R.C. § 6427(e) are not items of gross income under I.R.C. § 61. *See* I.R.S. Chief Couns. Mem. 201342010 (Aug. 29, 2013). A copy of the Memorandum is attached as **Exhibit B**.

22. Based on the I.R.S. Chief Counsel Memorandum, Graphic filed a Form 1120X, *Amended U.S. Corporation Income Tax Return*, to exclude from income the \$147,212,461 in alternative fuel credit payments it included in federal taxable income on its originally filed 2009 federal return.
23. This reduction to Graphic's 2009 federal taxable income necessitated a corresponding reduction in its 2009 Illinois base income.
24. Accordingly, in 2013 Graphic timely filed a 2009 IL-1120-X, *Amended Corporation Income and Replacement Tax Return*. Graphic's exclusion of its alternative fuel credit payments from federal taxable income reduced Graphic's Illinois base income, which resulted in an Illinois net loss of \$95,686 for 2009.
25. The 2009 Illinois amended return increased Graphic's pre-existing Illinois net operating loss ("NOL") carryover balance to \$75,166,397, to be utilized in future years.
26. Graphic did not utilize its NOL carryover balance in the 2011 tax year and capped at \$100,000 its NOL carryover deduction for tax years 2012 and 2013.
27. In its timely filed amended 2014 Form IL-1120, Graphic reported \$22,438,179 in Illinois combined net income but utilized its Illinois NOL carryover balance, which resulted in no tax being due.
28. The NOL utilized on Graphic's 2014 Illinois return was generated in tax years prior to 2009.

PROCEDURAL HISTORY

29. The Department reviewed Graphic's income tax return for tax years ended December 31, 2014 ("Audit Period").

30. Graphic responded to all information requests in a timely and sufficient manner.
31. As a result of the review, on January 25, 2016, the Department issued the Notice to Graphic assessing a total balance due of \$2,137,430.00 in tax, \$213,743.00 in penalty, and \$55,337.74 in interest for the tax year ending December 31, 2014.
32. In the Notice, the Department assessed additional tax by disallowing all NOLs claimed by Graphic on its 2014 Form IL-1120.
33. The Notice contained no other adjustments to Graphic's income.
34. The Notice states that the Department disallowed the NOL because "We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly."
35. The Notice failed to provide any explanation as to why the Department adjusted NOLs that did not relate to the 2009 alternative fuel credit payments.

FIRST COUNT

The Department Improperly Denied Graphic's 2014 NOL Deduction

36. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 35 as if set forth fully herein.
37. The Illinois Income Tax applies to corporate taxpayers' "net income." 35 ILCS 5/201(a).
38. Illinois defines "net income" as the taxpayer's "base income" which is allocable to Illinois, less the standard exemption allowed by 35 ILCS 5/204 and the net loss deduction allowed by 35 ILCS 5/207.

39. A taxpayer's "base income" means its federal ordinary income after certain modifications, including application of any federal NOL. 35 ILCS 203(b)(E).
40. Therefore, the starting point for calculating taxable Illinois net income is a taxpayer's federal taxable income after applying available NOLs, and other special deductions.
41. Because the 2009 alternative fuel credit payments were not included within gross income for federal income tax purposes, they are not included within gross income for Illinois corporate income tax purposes and thus not taxable.
42. If a taxpayer's Illinois net income results in a loss, for tax years on or after December 31, 2003 Illinois allows the loss as an NOL carryover to each of the twelve taxable years following the year of such loss. 35 ILCS § 207(a)(3).
43. Illinois disallowed the use of carryover NOLs for taxable years ending December 31, 2010 and prior to December 31, 2012 and capped at \$100,000 the NOL carryover deduction for tax years ending December 31, 2012 and prior to December 31, 2014. *See* 35 ILCS 5/207(d).
44. NOL carryover deductions disallowed in years 2010 – 2013 are not counted for purposes of the twelve year carryover period provided for in 35 ILCS 5/207(a). 35 ILCS 5/207(d).
45. On its originally filed 2009 federal return, Graphic included in its gross income \$147,212,461 of alternative fuel credit payments it received from the federal government under I.R.C. § 6427(e).
46. In 2013, the IRS conclusively stated that alternative fuel credit payments received pursuant to I.R.C. § 6427(e) does not constitute gross income under I.R.C. § 61. *See* I.R.S. Chief Couns. Mem. 201342010 (Aug. 29, 2013), **Exhibit B**.

47. Accordingly, Graphic filed an amended 2009 federal return to reduce its gross income by the amount of the 2009 alternative credit fuel payments it received but should not have included in gross income pursuant to the IRS Chief Counsel Memorandum.
48. Graphic properly amended its 2009 Illinois return to reflect its reduction in federal taxable income, which in turn reduced its Illinois net income from \$144,879,030 to an Illinois net loss of \$95,686.
49. Therefore, rather than utilizing its pre-existing NOL carryover balance in 2009, Graphic added to its NOL balance the \$95,686 Illinois net loss, pursuant to 35 ILCS 5/207(a).
50. Graphic did not utilize its NOL carryforward balance in the 2010 tax year and capped at \$100,000 its NOL carryforward in tax years 2012 and 2013, pursuant to 35 ILCS 5/207(d).
51. The Illinois statutory NOL carryover restrictions applied only to tax years ending prior to December 31, 2014.
52. Therefore, Graphic properly utilized its NOL carryover balance under the statutory twelve-year limitation for the tax year ending December 31, 2014.
53. Graphic's NOL deductions disallowed under Illinois' temporary NOL carryover restriction do not count for purposes of the twelve year limitation under 35 ILCS 5/207(a).
54. Therefore, the Department incorrectly disallowed Graphic's utilization of its NOL carryover balance on its 2014 Illinois return.

WHEREFORE, the Petitioner demands judgment as follows:

- (a) That Graphic properly utilized its available Illinois NOL carryover;;
- (b) That the Department does not have the authority to disallow any portion of the

2014 attributable to losses incurred within Illinois' carryover limitation;

(c) That the Department's Notice of Deficiency and assessment of income tax for the Audit Period in the amount of \$2,137,430.00 and all interest and penalties thereon be vacated, reversed, and set aside in its entirety; and

(d) Such other and further relief as the Tribunal may deem just and appropriate.

SECOND COUNT

The Department's Arbitrary Denial of the 2014 NOL Denies Graphic's right to Due Process Guaranteed by the United States and Illinois Constitutions.

55. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if set forth fully herein.

56. The United States and Illinois Constitutions guarantees that no person shall be deprived of property without due process of law. U.S. Const. amend. V; Ill. Const. Art. 1, § 2.

57. Due Process protections limit the police and taxing power of a government when "that power is arbitrarily and unreasonably used." *Crocker v. Finley*, 99 Ill.2d 444, 456, 459 N.E.2d 1346, 1352 (Ill. 1984); *Illinois Gamefowl Breeders Assoc. v. Block*, 75 Ill.2d 443, 453, 389 N.E.2d 529 (Ill. 1979).

58. The Department's Notice only states in its "Reason for deficiency" that it "did not receive the information we requested regarding [Graphic's] Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction."

59. Presumably, the Department seeks verification of the IRS' acceptance of Graphic's 2009 federal amended return, which provides the basis for Graphic's 2009 Illinois amended return and the adjusted NOL carryover balance.

60. However, the adjustment to Graphic's gross federal income due to the exclusion from gross income of the amounts received from the alternative fuel credits did not create a refund from the IRS for 2009 since Graphic already had a NOL. The adjustment merely increased the federal NOL. Therefore, Graphic was not required under federal law to amend its 2009 federal return and the IRS will not issue any acceptance or confirmation of the filed 2009 federal amended return.
61. The Department's requests, therefore, are arbitrary and unreasonable because they seek documentation that does not and cannot exist and is impossible for Graphic to produce.
62. Further, the Notice provides no explanation or legal justification for the denial of the utilization of NOLs for tax periods prior to 2009 leaving Graphic to guess as to the basis of the Department's assessment.
63. Because the Department arbitrarily and unreasonably denied Graphic's 2014 NOL without explanation or legal justification, Graphic has been stripped of its Due Process rights.

WHEREFORE, the Petitioner demands judgment as follows:

- (a) That the Department's unreasonable and arbitrary denial of Graphic's 2014 NOL, without any explanation or legal justification, violates Graphic's right to Due Process guaranteed by the United States and Illinois Constitutions;
- (b) That the Department's Notice of Deficiency and assessment of income tax for the Audit Period in the amount of \$2,137,430.00 and all interest and penalties thereon be vacated, reversed, and set aside in its entirety; and
- (c) Such other and further relief as the Tribunal may deem just and appropriate.

THIRD COUNT

Penalties Must Be Abated for Reasonable Cause.

64. Graphic hereby restates and realleges the allegations contained in paragraphs 1 through 63 as if set forth fully herein.
65. The Department assessed penalties for the Audit Period in the amount of \$213,743.00.
66. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8.
67. Under Illinois regulations, “the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” Ill. Admin. Code tit. 86, § 700.400(b).
68. A taxpayer is considered to have made a good faith effort to determine, file, and pay his tax liability if “he exercised ordinary business care and prudence in doing so.” Ill. Admin. Code tit. 86, § 700.400(c).
69. A taxpayer’s filing history is also considered when determining whether there is reasonable cause. Ill. Admin. Code tit. 86, § 700.400(d).
70. Graphic followed the statutory requirements set forth in federal and Illinois tax law to determine its 2014 Illinois corporate income tax liability.
71. Pursuant to federal law and Illinois statutory requirements, Graphic properly carried forward and applied its NOLs to 2014.
72. The Department attempts an arbitrary denial of Graphic’s 2014 NOL without explanation or legal justification.
73. Graphic made a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion.

74. Graphic exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper tax liability in a timely fashion.
75. Graphic has a long history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.
76. The penalties imposed by the Department must be abated for reasonable cause.

WHEREFORE, the Petitioner demands judgment as follows:

- (a) That all penalties assessed by the Department be abated in full; and
- (b) Such other and further relief as the Tribunal may deem just and appropriate.

SUTHERLAND ASBILL & BRENNAN LLP
Attorneys for Petitioner

By:



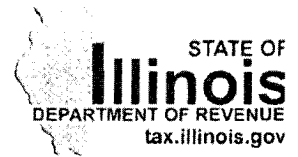
Sheldon Kay
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309-3996
(404) 853-8965
sheldon.kay@sutherland.com
ARDC # 3128707

DATED: March 25, 2016

EXHIBIT A

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



January 25, 2016



Letter ID: CNXXXX9591379367

Taxpayer ID: 26-0405422
Reporting period: December 2014
Total deficiency: \$2,406,510.74
Balance due: \$2,406,510.74

_____ #BWNKMGV
#CNXX XX95 9137 9367#
GRAPHIC PACKAGING HOLDING COMPANY AND
SUBS
_____ GRAPHIC PACKAGING HOLDING COMPANY AND
SUBS
1500 RIVEREDGE PKWY STE 100
ATLANTA GA 30328-4658



We have determined that you owe amounts for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, you must pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest, is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, **within 60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest **within 60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, contact us at the telephone number shown below.

Sincerely,


Constance Beard
Director of Revenue

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19014
SPRINGFIELD IL 62794-9014
217 557-9676



Letter ID: CNXXXX9591379367

Taxpayer ID: 26-0405422

Reporting Period: December 2014

STATEMENT

Reason for deficiency

We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly.

Penalties

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. This penalty is based on the amount required to be shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days after the due date.

[35 ILCS 735-/3-3(b-20)(2)]

We are imposing a late-payment penalty for underpayment of estimated tax because you did not make your required estimated tax payments or pay the required amount of estimated tax payment by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date.

[35 ILCS 735/3-3(b-20)(1)]

Interest

Interest in the amount of 55,337.74 has been computed through January 25, 2016.



Letter ID: CNXXXX9591379367
 Taxpayer ID: 26-0405422
 Reporting Period: December 2014

STATEMENT

Computation of Deficiency

Tax year ending: December 2014

	Corrected Amount
Base income(loss) allocable to IL	\$22,499,260.00
IL net loss deduction(NLD)	\$0.00
Net Income	\$22,499,260.00
Tax Due	\$2,137,430.00
Plus late-filing or nonfiling penalty	\$0.00
Plus late-payment penalty	\$213,743.00
Plus interest on tax through 01/25/2016	\$55,337.74
Total deficiency	*\$2,406,510.74

*If you intend to pay under protest, you must pay this total deficiency amount.

Computation of balance due

Reporting Period: 12/31/2014

Deficiency (this notice)	*\$2,406,510.74
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$0.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$2,406,510.74

*The 'amount to be paid' is for this Notice of Deficiency and is in addition to any previous liabilities.

EXHIBIT B

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

Number: 201342010

Release Date: 10/18/2013

CC:ITA:B04
POSTF-117811-13

Third Party Communication: None
Date of Communication: Not Applicable

UICL: 61.00-00, 6426.00-00, 6427.00-00, 6427.13-00

date: August 29, 2013

to: Carol Bingham McClure
Associate Area Counsel (Houston)
(Large Business & International)

from: Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

subject: Tax treatment under § 61 of the Internal Revenue Code of excise tax credits under § 6426(c) and payments under § 6427(e) for the sale of biodiesel mixture fuels

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Are the § 6426(c) excise tax credits and the § 6427(e) payments items of gross income under § 61 of the Internal Revenue Code (Code)?

CONCLUSION

The § 6426(c) excise tax credits and the § 6427(e) payments are not items of gross income under § 61.

FACTS

Blenders that produce and sell qualifying biodiesel mixtures to third parties have claimed § 6426(c) biodiesel mixture credits against their excise tax liability, and payments under § 6427(e). Blenders submit these claims to the IRS on Schedule C of Form 720, *Quarterly Federal Excise Tax Return*.

Some blenders included the § 6426(c) biodiesel mixture credits and the § 6427(e) payments in income through a negative adjustment to their biodiesel mixture cost of goods sold. On amended income tax returns, some blenders claimed a refund of income tax asserting that the § 6426(c) excise tax credits and the § 6427(e) payments are not includible in gross income. You ask whether this assertion is correct.

LAW AND ANALYSIS

Section 6426(a)(1) allows a credit against the excise tax imposed by § 4081 on taxable fuel for each gallon of biodiesel used by the blender to produce any biodiesel mixture for sale or use in the blender's trade or business. To the extent that the biodiesel mixture credit exceeds a person's § 4081 liability for any particular quarter, a payment under § 6427(e) or a refundable income tax credit under § 34 is allowable to the blender. See § 2(d)(1) of Notice 2005-4, 2005-1 C.B. 289.

As an alternative to the credit under § 6426(a)(1), a blender may choose to claim the non-refundable income tax credit allowable under § 40A. A blender who chooses the § 40A income tax credit is required by § 87 to include the amount of the credit in gross income. You ask whether blenders that do not opt for the § 40A credit, but instead claim the § 6426(c) excise tax credit and the § 6427(e) payment, must include those amounts in gross income for income tax purposes.

The biodiesel mixture credit under § 6426(c) is essentially a refundable federal tax credit. That is, through the payment mechanism of § 6427(e) and the refundable income tax credit of § 34, a blender can receive the full amount of the credit even if the credit exceeds the amount of the blender's excise and income tax liabilities for the year. Federal tax credits are an element in the Code's formula for computing a taxpayer's tax due (or refunded). The Code computes a taxpayer's income tax liability by starting with gross income, allowing certain deductions to arrive at taxable income, applying a tax rate to determine tax liability, and applying certain refundable and non-refundable credits and payments against the tax liability. A taxpayer whose refundable credits and payments exceed its tax liability is considered to have made an overpayment of tax. See § 6401(b). Where Congress has decided that a particular credit should itself be treated as an additional item of gross income, it has done so expressly.¹ In our view, in the absence of a specific statutory provision or judicial doctrine requiring inclusion, federal tax credits are not gross income for purposes of determining a taxpayer's federal income tax liability.

Our conclusion is consistent with the intent of Congress when it enacted the biodiesel mixture credit. The American Jobs Creation Act of 2004 (Act), P. L. 108-357, added several new provisions regarding biodiesel fuels to the Code, including §§ 6426(c), 6427, 40A, and 87. The Act's legislative history provides that the § 40A credit must be

¹ Thus, § 87 includes in gross income the credits for alcohol and biodiesel fuels determined under §§ 40 and 40A; § 54(g) includes in gross income the credits for holders of clean renewable energy bonds; and § 1397E(j) includes in gross income the credits for holders of qualified zone academy bonds.

included in gross income but is silent regarding the § 6426(c) credit and the § 6427 payment. See H.R. Conf. Rep. No. 108-755 at 306-310 (2004). We think the fact that §§ 6426(c), 6427, and 40A were enacted together, yet Congress chose only to specifically provide that the credit under § 40A is includible in gross income, indicates that Congress intended to exclude from gross income the § 6426(c) credit and the § 6427 payment.

Rev. Rul. 67-2, 1967-1 C.B. 13, addressing when farmers include in gross income the income tax credit for gasoline used on a farm under current § 34(a)(1) is distinguishable from the biodiesel mixture credit at issue here. The credit at issue in the revenue ruling was measured by multiplying the number of gallons of gasoline used for farming purposes by the rate of Federal gasoline tax which applied on the date the farmer purchased the gasoline. Congress considered the credit discussed in Rev. Rul. 67-2 to be, in effect, a “refund of the gasoline tax paid with respect to gasoline used on the farm for farming purposes.” S. Rep. No. 89-324, 1965 U.S.C.C.A.N. 1745-1746. Because farmers would have deducted the gasoline tax expense, they should include in gross income the amount refunded through the income tax credit to the extent of the tax benefit derived from the deduction. See also Pub. 510 (Rev. July 2012), *Excise Taxes*, at pages 22-23 which illustrates the application of the rule in Rev. Rul. 67-2. By contrast, Congress did not structure the biodiesel mixture credit as a refund of a previously deducted expense. Instead, “Congress believed that providing a new income tax credit for biodiesel fuel will promote energy self-sufficiency.” Staff of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress 227 (Comm. Print 2005). Thus, Rev. Rul. 67-2 is inapposite.

By electing the § 6426(c) excise tax credit and/or the § 6427(e) excise tax payment instead of the § 40A income tax credit, a blender is not required by § 87 or by § 61 to include in its gross income the amount of the § 6426(c) excise tax credits and/or the § 6427(e) payments that it claims.

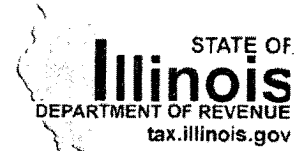
This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call () if you have any further questions.

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



January 25, 2016



Letter ID: CNXXXX9591379367

Taxpayer ID: 26-0405422
Reporting period: December 2014
Total deficiency: \$2,406,510.74
Balance due: \$2,406,510.74

#BWNKMGV
#CNXX XX95 9137 9367#
GRAPHIC PACKAGING HOLDING COMPANY AND
SUBS
GRAPHIC PACKAGING HOLDING COMPANY AND
SUBS
1500 RIVEREDGE PKWY STE 100
ATLANTA GA 30328-4658



We have determined that you owe amounts for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, you must pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest, is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000.** file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, **within 60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest **within 60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a-1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, contact us at the telephone number shown below

Sincerely,

Constance Beard
Director of Revenue

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19014
SPRINGFIELD IL 62794-9014
217 557-9676



Letter ID: CNXXXX9591379367
Taxpayer ID: 26-0405422
Reporting Period: December 2014

STATEMENT

Reason for deficiency

We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly.

Penalties

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. This penalty is based on the amount required to be shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days after the due date.

[35 ILCS 735-/3-3(b-20)(2)]

We are imposing a late-payment penalty for underpayment of estimated tax because you did not make your required estimated tax payments or pay the required amount of estimated tax payment by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date

[35 ILCS 735/3-3(b-20)(1)]

Interest

Interest in the amount of 55,337.74 has been computed through January 25, 2016.



Letter ID: CNXXXX9591379367
 Taxpayer ID: 26-0405422
 Reporting Period: December 2014

STATEMENT

Computation of Deficiency

Tax year ending: December 2014

	Corrected Amount
Base income(loss) allocable to IL	\$22,499,260.00
IL net loss deduction(NLD)	\$0.00
Net Income	\$22,499,260.00
Tax Due	\$2,137,430.00
Plus late-filing or nonfiling penalty	\$0.00
Plus late-payment penalty	\$213,743.00
Plus interest on tax through 01/25/2016	\$55,337.74
Total deficiency	*\$2,406,510.74

*If you intend to pay under protest, you must pay this total deficiency amount.

Computation of balance due Reporting Period: 12/31/2014

Deficiency (this notice)	*\$2,406,510.74
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$0.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$2,406,510.74

*The 'amount to be paid' is for this Notice of Deficiency and is in addition to any previous liabilities.