

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**

VALID USA INC.	)	
	)	
Petitioner,	)	
v.	)	No.
	)	
THE ILLINOIS DEPARTMENT OF REVENUE	)	
	)	
Defendant.	)	

**NOTICE OF FILING**

To: Illinois Department of Revenue  
Office of Legal Services  
100 W Randolph St., Ste. 7-900  
Chicago, IL 60601

PLEASE TAKE NOTICE that on the 11th day of January, 2021, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL 60601, **Valid USA Inc.’s Petition**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

**VALID USA INC., Petitioner**

By:   
\_\_\_\_\_  
One of Petitioner’s Attorneys

David A. Hughes (dhughes@hmblaw.com)  
Dakota S. Newton (dnewton@hmblaw.com)  
Horwood Marcus & Berk Chartered  
500 W. Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3212

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Petitioner,	)	
v.	)	No.
	)	
THE ILLINOIS DEPARTMENT OF REVENUE	)	
	)	
Defendant.	)	

**PETITION**

Valid USA Inc. (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

**PARTIES**

1. Petitioner is a Delaware corporation with its address at 1011 Warrenville Road, Ste. 450, Lisle, Illinois 60532-0935.
2. Petitioner’s federal employer identification number is 33-1224235 and its Illinois taxpayer account number is 4099-8460.
3. Petitioner is represented by David A. Hughes and Dakota S. Newton of Horwood Marcus & Berk Chartered located at 500 West Madison Street, Suite 3700, Chicago, Illinois 60661. Mr. Hughes can be reached at 312-606-3212 or dhughes@hmblaw.com. Mr. Newton can be reached at 312-606-3203 or dnewton@hmblaw.com.
4. The Department is an agency of the Executive Department of State Government and is tasked with the enforcement and administration of Illinois tax law. 10 ILCS 5/5-15.

**NOTICE**

5. On November 13, 2020 the Department issued a Notice of Tax Liability (“Notice”) to Petitioner in the amount of \$840,922.55 for Illinois sales and use tax for the reporting periods January 1, 2016 through June 30, 2017 (“Periods at Issue”). A true and accurate copy of this Notice is attached hereto as **Exhibit A**.

**JURISDICTION**

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*
7. The amount of sales and use tax, interest and penalties at issue for the Periods at Issue exceeds \$15,000.
8. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because the amount at issue exceeds \$15,000 and Petitioner timely filed this petition within 60 days of the Notice.

**FACTUAL AND PROCEDURAL BACKGROUND**

9. Petitioner produces credit, debit, gift, and identification cards, which it sells to customers in the public and private sectors.
10. Petitioner’s customers include, but are not limited to, banks, financial institutions, retailers and government agencies.
11. The process of producing these cards is a complex, multistep process, which involves numerous items of machinery and equipment that transform thin sheets of plastic - polyvinyl chloride (“PVC”) - into credit, debit, gift and identification cards.

12. As a vertically-integrated company, Petitioner's production process begins with large, raw, uncut sheets of PVC that are approximately 13MIL thick. These sheets are used to make the front and backs of the cards.
13. Depending on the particular type of card, the front and back sheets are then fed into different machines, which apply a graphic layer to the card.
14. This layer generally includes the customer's logo on the front piece as well as generic graphics and fine print details on the back piece.
15. These graphic layers are applied using one of three methods: lithographic, silk screen, or digital. Each of these methods requires a purpose-built piece of machinery.
16. After layering the graphics, Petitioner collates the front and back sheets between two 2MIL thick sheets of clear overlay using an Oasys collating machine. One side of the overlay has the magnetic tape adhered to it. The four-layer sheets are tacked together at the end of the collating machine.
17. After collating, the four-layer sheets are inserted between solid stainless steel plates and laminated at high temperatures and pressure to ensure the layers are fused together without air pockets.
18. These laminated sheets of PVC are cut into card-size pieces using an Oasys punch machine.
19. Petitioner then uses a "hot stamp" machine to adhere any security hologram decals and signature panels which may be required.
20. If a microchip is required, Petitioner uses routing and embedding machines to carve out a cavity in each card, insert glue, and adhere a microchip into the cavity.
21. Finished cards are quality inspected, counted, and packed in tamper-proof containers.

22. Petitioner “personalizes” the finished cards with a DataCard, Muhlbauer, Bell and Howell or Atlantic Zeiser machine to encode proprietary information onto the card, chip and magnetic strip.
23. Each stage of the production process requires a different, often purpose-built, piece of machinery to accomplish the required task.
24. Each of these machines is directly involved in the production process and each performs a vital role in producing Petitioner’s cards.
25. During the Periods at Issue, Petitioner purchased several items of machinery and equipment for use in its production process (“Equipment at Issue”).
26. Petitioner presented an exemption certificate at the time of purchase and did not remit Illinois use tax on the Equipment at Issue because Petitioner determined that the Equipment at Issue is exempt under Illinois’ manufacturing machinery and equipment exemption.
27. Upon audit, the Department that the Equipment at Issue is subject to use tax.

## COUNT I

### **The Department’s Imposition of Use Tax is Erroneous Because the Equipment at Issue is Exempt Machinery and Equipment**

28. Petitioner realleges and reincorporate the allegations in paragraphs 1 through 27 inclusive hereinabove.
29. Illinois exempts from Retailers’ Occupation Tax (“ROT”) and Use Tax “machinery and equipment” used “primarily” in the “process of manufacturing or assembling” tangible personal property for wholesale or retail sale or lease. 35 ILCS §§ 105/3-5(18) and 120/2-5(14).

30. During the periods up to July 1, 2003, from September 1, 2004 through August 30, 2014, and after July 1, 2017, “graphic arts” machinery and equipment are also exempt from Illinois sales and use taxes. 35 ILCS §§ 105/3-5(6) and 120/2-5(4).
31. Under the Illinois Use Tax Act, a “manufacturing process” means the production of an article of tangible personal property by a procedure commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. 35 ILCS § 105/3-50.
32. An “assembling process” means the production of an article of tangible personal property by the combination of existing materials in a manner commonly regarded as assembling that results in a material of a different form, use, or name. *Id.*
33. “Machinery” means major mechanical machines or major components of those machines that contribute to a manufacturing or assembling process. *Id.*
34. “Equipment” means any independent device or tool that is separate from any machinery but is essential to an integrated manufacturing or assembling process. *Id.*
35. Machinery and equipment are used “primarily” in manufacturing or assembling if more than 50% of their use is in a manufacturing or assembly capacity. 86 Ill. Admin. Code 130.330(a)(3).
36. The Equipment at Issue is either major mechanical machines or independent devices or tools that are used to produce tangible personal property for sale.
37. As part of Petitioner’s production process, sheets of PVC are changed into credit, debit, gift, and identification cards.
38. This change constitutes the process of manufacturing and assembling under the Illinois Use Tax Act.

39. Petitioner uses the Equipment at Issue solely in its production process.
40. The Equipment at Issue is exempt from Illinois use tax.
41. The Department's Notice has no basis in fact or law and must be withdrawn

**WHEREFORE**, Petitioner prays that the Tribunal enter an Order that:

- a) finds and declares that the Equipment at Issue is exempt from Illinois use tax;
- b) enters judgment in favor of Petitioner and against the Department and orders the Department to withdraw the Notice in its entirety;
- c) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of tax invalidated by this Tribunal; and
- d) grants such further relief as the Tribunal deems appropriate under the circumstances

## **COUNT II**

### **All Penalties Should be Abated**

42. Petitioner realleges and reincorporate the allegations in paragraphs 1 through 41 inclusive hereinabove.
43. Pursuant to the Notice, the Department assessed late payment and late filing penalties against Petitioner in the amount of \$114,028. *See **Exhibit A***.
44. Illinois law provides that late payment, late filing and negligence penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

45. The most important factor to be considered in a penalty abatement determination is the extent to which a taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 700.400(b).
46. A taxpayer is considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).
47. Petitioner, relying on Illinois law, carefully considered the nature and use of the Equipment at Issue and exercised ordinary business care and prudence in determining that the Equipment at Issue is exempt from Illinois use tax.
48. All penalties should therefore be waived for reasonable cause.

**WHEREFORE,** Petitioner prays that the Tribunal enter an Order that:

- a) finds and declares that Petitioner exercised ordinary business care and prudence in determining its use tax liability for the Periods at Issue;
- b) enters judgment in favor of Petitioner and against the Department and orders the Department to abate all penalties;
- c) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of penalty invalidated by this Tribunal; and
- d) grants such further relief as the Tribunal deems appropriate under the circumstances.



Respectfully submitted,

**Valid USA Inc., Petitioner**



By: \_\_\_\_\_  
One of Petitioner's Attorneys

David A. Hughes (dhughes@hmbllaw.com)  
Dakota S. Newton (dnewton@hmbllaw.com)  
Horwood Marcus & Berk Chartered  
500 West Madison Street, Suite 3700  
Chicago, IL 60661  
(312) 606-3212

# **EXHIBIT A**

# Notice of Tax Liability



November 13, 2020



#BWNKMGV  
#CNXX X144 6811 6320#  
VALID USA INC  
1011 WARRENVILLE RD STE 450  
LISLE IL 60532-0935

**Letter ID:** CNXXX14468116320  
**Account ID:** 4099-8460  
**Reporting period:** June 30, 2017

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 01, 2015, through June 30, 2017, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

**If you agree**, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

**If you do not agree**, you may protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

If you do not protest this notice or pay the assessment total 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 to satisfy your liability.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	603,128.00	0.00	603,128.00
Late Payment Penalty Increase	113,893.00	0.00	113,893.00
Late Filing Penalty Increase	135.00	0.00	135.00
Interest	123,766.55	0.00	123,766.55
<b>Assessment Total</b>	<b>\$840,922.55</b>	<b>\$0.00</b>	<b>\$840,922.55</b>

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

**AUDIT BUREAU  
TECHNICAL REVIEW SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012**

**217 785-6579**

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Valid USA Inc.'s Petition** to be served by electronic mail and by enclosing the same in an envelope, properly addressed, first-class postage prepaid and deposited in the US Mail at 500 West Madison Street, Chicago, Illinois, 60661, before the hour of 5:00 p.m. on the 11th day of January, 2021.

James R. Reynolds  
Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601  
[James.R.Reynolds@Illinos.gov](mailto:James.R.Reynolds@Illinos.gov)



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