

ILLINOIS INDEPENDENT  
TAX TRIBUNAL

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RUDD EQUIPMENT COMPANY, INC. )

Petitioner, )

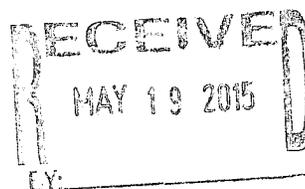
v. )

ILLINOIS DEPARTMENT OF REVENUE, )

Respondent, )

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**PETITION**

The Petitioner, Rudd Equipment Company, Inc., hereby petitions the Illinois Independent Tax Tribunal to review and cancel the two (2) Notices of Tax Liability (“Notices”) issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

**INTRODUCTION**

1. The Department on March 20, 2015 issued the Notices the first assessing \$61,592.00 in use tax and \$24,343.60 in interest for taxable periods January 1, 2008 through June 30, 2009, inclusive, and the second assessing \$228,426.00 in use tax and \$29,165.84 in interest for taxable periods July 1, 2009 through October 31, 2010, inclusive. A copy of said Notices are attached to this Petition as Exhibit A.

2. Petitioner is a Kentucky corporation with its principal place of business in Louisville, Kentucky, with an address of 4344 Poplar Level Road, Louisville, KY 40213 and a telephone number of (502) 456-4050; its Taxpayer Account number is 0237-5613.

3. The heavy equipment rented by Petitioner is of the same general type sold by it and was available for sale during the interim use period so that the interim use exemption applies to exempt such equipment from Illinois use tax, and depreciating this equipment does not remove application of the interim use exemption as the Department has asserted. Failure to apply the interim use exemption to Petitioner, an out-of-state business, when the exemption is allowed to in-state business competitors, *inter alia*, discriminates against interstate commerce and thus violates the Commerce Clause.

### **BACKGROUND AND RELEVANT FACTS**

4. Petitioner timely filed sales tax returns for period January 1, 2008 through October 31, 2010 inclusive (“Tax Periods”).

5. Petitioner is in the principal business of selling heavy off-road construction-type equipment (*e.g.*, articulated trucks, cranes, excavators, compactors, and loaders) (collectively “Equipment”) purchased from manufacturers such as Volvo and Hitachi. However, upon a customer’s request, Petitioner will rent Equipment to a customer.

6. Petitioner has locations in Kentucky, Indiana, Missouri, Pennsylvania, West Virginia, and Ohio, however it does not have a location in Illinois.

7. Petitioner does not maintain a rental fleet in Illinois.

8. Petitioner’s Illinois-based competitors each maintain their own separate, dedicated rental fleet.

9. Petitioner sold Equipment delivered to its customers in southern Illinois and collected and remitted Illinois sales tax thereon during the Tax Periods.

10. Petitioner rented 43 pieces of Equipment in southern Illinois, in response to customer specific requests during the Tax Periods. See Department Audit Schedule 4 (copy attached as Exhibit B).

11. Petitioner did not pay Illinois sales or use tax incident to the Equipment rented during the Tax Periods (Exhibit B).

12. The Department conducted a field audit of Petitioner, and issued a Notice of Proposed Liability for Sales, Use and Excise Taxes and Fees dated October 2, 2012; thereafter, Petitioner timely requested an Informal Conference Board Review, which the Informal Conference Board (the “Board”) granted on December 21, 2012.

13. The Board held a conference on June 27, 2013 and issued an Action Decision on November 20, 2013 in *Re Rudd Equipment Company*, Docket # 12-0406 (the “Decision”).

14. The Department issued a Notice of Audit Results dated December 23, 2013 and then after discussions with Petitioner conducted additional audit field work.

15. The Department issued the Notices, dated March 20, 2015.

16. The Department has asserted that Illinois use tax applies to 19 pieces of Equipment rented by Petitioner during the Tax Periods because there was “depreciation taken” so that the interim use exemption does not apply (Exhibit B). See Department Schedule 1 – Summary Analysis (copy attached as Exhibit C) and Global Taxable Exceptions Detailed Report (copy attached as Exhibit D).

17. Petitioner retained title to the Equipment (copy of example Rental Agreement attached as Exhibit E).

18. All of the Equipment rented in Illinois was available for sale by Petitioner (see Exhibit E).

19. Petitioner sold previously rented Equipment during (see Exhibit B) and subsequent to the Tax Periods (some of which are indicated as sold on Exhibit B).

20. Petitioner's sales income exceeded its rental income in Illinois during the Tax Periods (see Exhibit B).

21. Petitioner did not expense the equipment at issue under section 179 of the Internal Revenue Code of 1986, as amended ("Code") (see Exhibit B).

22. Petitioner depreciated the equipment at issue either under section 167 or 168 of the Code (see Exhibit C).

23. The average rental period for equipment in Illinois during the Tax Periods was approximately fourteen (14) months (see Exhibit B).

24. Under each rental agreement, either Petitioner or the customer could terminate the rental agreement upon five (5) days prior notice to the other (see Exhibit E).

25. All Equipment rented by Petitioner is ultimately sold (*see, e.g.*, Exhibit B).

26. After the Department audited Petitioner and informed it that rented Equipment was subject to Illinois sales tax, Petitioner curtailed its rentals of Equipment in Illinois.

27. The tax imposed under Illinois law has substantially hampered Petitioner's ability to compete in renting equipment to its customers in Illinois.

### APPLICABLE LAW

28. Illinois treats a lessor's purchase as a retail sale subject to sales or use tax, absent an exemption. *See* 35 Ill. Comp. Stat. Ann. 105/3; 86 Ill. Admin. § 130.220(a) (“[T]he sale of tangible personal property to a purchaser who will act as a lessor of such tangible personal property is a sale at retail and is subject to [sales tax].”).

29. “‘Use’ means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property is not first subjected to a use for which it was purchased, and does not include the use of such property by its owner for demonstration purposes....” 35 Ill. Comp. Stat. Ann. 105/2.

30. “‘Use’ does not mean the demonstration use or interim use of tangible personal property by a retailer before he sells that tangible personal property.” 35 Ill. Comp. Stat. Ann. 105/2.

31. Under the interim use exemption, “[e]xcept as otherwise provided ..., tangible personal property purchased by a retailer for resale, and used by the retailer or his or her agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is *of the same general type of property sold by that retailer and* is carried as inventory on the books of the retailer or *is otherwise available for sale* during the interim use period.” 86 Ill. Adm. Code § 150.306 (emphasis supplied). *See Illinois Rd. Equip. Co. v. Dep’t of Revenue*,

32 Ill. 2d 576, 207 N.E.2d 425 (1965) (“At no time was any of the machinery... held ...for any ultimate purpose other than sale at retail, and the practice of renting on a trial or promotional basis is in no way inconsistent with that purpose.”); *L & L Sales & Servs., Inc. v. Dep't of Revenue*, 68 Ill. App. 3d 329, 385 N.E.2d 925 (1979) (“[W]hen equipment is originally purchased with the intent of selling it at retail and is subsequently rented with the intent remaining to ultimately sell it at retail, the rental is an exempt interim use.”).

32. “Illinois taxes rentals and leases differently for sales tax purposes than the majority of other states....” Marilyn A. Wethekam et al., *2011 Guidebook to Illinois Taxes* 224, ¶1506.

33. To survive Commerce Clause scrutiny, the state taxing measure in question must be construed so that “...the tax [1] is applied to an activity with a substantial nexus with the taxing state, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

#### **ERROR I – INTERIM USE EXEMPTION APPLIES TO THIS RENTED EQUIPMENT**

34. The Department did not apply the interim use exemption to exempt from use tax the 19 pieces of Equipment rented by Petitioner during the Tax Periods.

35. “Except as otherwise provided ..., tangible personal property purchased by a retailer for resale, and used by the retailer or his or her agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is of the same general type of property sold by that retailer and is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period.” 86 Ill. Adm. Code § 150.306.

36. Petitioner purchased for resale the 19 pieces of Equipment which were of the same general type of property sold by Petitioner and which were available for sale during the interim use period so that such Equipment meets the requirements for application of the interim use exemption in 86 Ill. Adm. Code § 150.306(a)(1).

37. The Department asserted that Illinois use tax applies to the equipment because there was “depreciation taken” so that the interim use exemption did not apply.

38. Petitioner’s accounting practice of depreciating the Equipment does not foreclose the application of the interim use exemption.

39. In holding that heavy equipment rented by a heavy equipment seller was exempt as an interim use, the Court in *Illinois Road Equipment, supra*, did not consider depreciation to be a relevant factor. *Illinois Rd. Equip. Co.*, 32 Ill. 2d at 580.

40. Depreciating equipment which is for sale and ultimately sold, as the Equipment here, is consistent with Petitioner’s continued intent to ultimately sell the Equipment; the Court in *L & L Sales & Services.*, 68 Ill. App. 3d at 332, simply recognized that, *inter alia*, not depreciating equipment was “consistent with a continued intent to ultimately sell it at retail.”

41. The interim use exemption applies when the property rented, as the Equipment here, is the same general type of property sold by that retailer and is otherwise available for sale during the interim use period; depreciating the Equipment does not remove application of the interim use exemption to the Equipment under 35 Ill. Comp. Stat. Ann. 105/2 or 86 Ill. Adm. Code § 150.306.

42. To the extent the Department reads 86 Ill. Adm. Code § 150.306 to add any requirement not present in, that conflicts with, or is inconsistent with 35 Ill. Comp. Stat. Ann. 105/2 as to the interim use exemption, *e.g.*, that equipment cannot be depreciated, such requirement is invalid and ineffective. *See Kean v. Wal-Mart Stores, Inc.*, 235 Ill.2d 351, 372 (2009) (“Administrative regulations can neither expand nor limit the statute they enforce.”).

43. The Department’s failure to apply the interim use exemption to the 19 pieces of Equipment at issue here is contrary to the Illinois Compiled Statutes, the Department Regulations, and case law.

#### **ERROR II – COMMERCE CLAUSE VIOLATION**

44. Illinois’ sales and use tax laws, which treat a purchase for rent as a retail sale subject to sales and use tax [86 Ill. Admin. § 130.220(a)], particularly as to its application to an out-of-state business such as Petitioner, violates the Commerce Clause of the United States Constitution. *See U.S. Const. Art. I, § 8, cl. 3.*

45. To survive Commerce Clause scrutiny, the state taxing measure in question must be construed so that “...the tax [1] is applied to an activity with a substantial nexus with the taxing state, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

46. The Illinois sales tax on lessors violates multiple prongs of the *Complete Auto* test because it, *inter alia*, discriminates against interstate commerce.

47. Petitioner, as an out-of-state seller, cannot compete with its Illinois-based competitors because of the Illinois tax scheme on rentals which differs from its Sister States and discriminates against interstate commerce.

### **ERROR III – OTHER ERRORS**

48. The Department's position violates multiple provisions of the Illinois Constitution, the United States Constitution, the Illinois Compiled Statutes, Illinois case law and the common law.

49. The Department's position articulated above violates Illinois law, both statutory and the common law, and denies Petitioner multiple rights it is guaranteed under the Illinois and United States Constitutions.

50. The Notices violate the Fourteenth Amendment of the United States Constitution because the Department applies a facially neutral law in a discriminatory fashion, unlawfully singling out Petitioner.

51. The constitutional mandates of uniformity are violated whenever a particular entity or taxpayer or class is singled out for special taxation and/or is required to bear a heavier taxing burden than other similarly situated taxpayers are required to bear, and the Department has unlawfully singled out Petitioner.

52. No rational basis for the distinction advanced by the Department is presented, nor is there a compelling or even a legitimate State interest being served by the distinction advanced by the Department. The classification made by the Department thus being arbitrary, it violates the Illinois Constitution, which proscribes arbitrary conduct on the part of state government.

There are no distinctions of relevance between the classes subject to the Department's arbitrary distinctions; therefore, the arbitrary line drawing violates hornbook equal protection doctrine. The position of the Department demonstrates that the classification is arbitrary and capricious, such that it is hostile, oppressive and utterly devoid of a rational basis.

53. The Department's position, that the involved tax is owed by Petitioner, is arbitrary, capricious and not in accordance with the Illinois Constitution and the Equal Protection Clause of 14th Amendment to the United States Constitution and the statutes and regulations of Illinois.

54. The Department's position disregards the longstanding prior administrative practices of the Department.

55. The Department's arbitrary classification and distinction violates Illinois law, as it defies the administrative regulation promulgation provisions of the Illinois Compiled Statutes.

56. The Department's actions violate the Doctrine of Contemporaneous Construction.

57. The Illinois Constitution confers upon Petitioner the right that no one of Illinois's three branches of government shall exercise any power properly belonging to either of the others; specifically, the Department, a part of the executive branch, shall not exercise the legislative power vested in the Illinois Legislature by administratively adding to or detracting from the involved statutes.

#### **CONCLUSION AND RELIEF REQUESTED**

58. Petitioner respectfully requests the Illinois Independent Tax Tribunal issue an order: stating that the interim use tax exemption applies to the heavy equipment rented by

Petitioner; stating that Petitioner is not subject to the tax and interest assessed; canceling the Notices; and, awarding Petitioner such other relief as the Tribunal may deem appropriate.

WHEREAS, Petitioner requests that the Notices be cancelled for the reasons contained herein.

RUDD EQUIPMENT COMPANY, INC.

By:   
Brett J. Miller, Counsel for Petitioner  
ARDC # 618905

BINGHAM GREENEBAUM DOLL LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204  
(317) 968-5398  
bmiller@bgdlegal.com

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that three (3) originals of the foregoing Petition were filed via UPS Next Day, with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room N506 Chicago, Illinois 60601, along with the filing fee of \$500.00; and one copy served on Illinois Department of Revenue, Office of Legal Services, 100 W. Randolph St., 7-900, Chicago, Illinois 60601, this 18<sup>th</sup> day of May, 2015.

  
Counsel for Petitioner

# Exhibit A

# Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX X187 5154 7X44#  
RUDD EQUIPMENT CO  
ATTN: POA - BINGHAM GREENEBAUM DOLL LLP  
(BRETT J MILLER)  
10 W MARKET ST  
INDIANAPOLIS IN 46204-4900

March 20, 2015



Letter ID: CNXXX18751547X44

Account ID: 0237-5613

We have audited your account for the reporting periods January 01, 2008, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	61,592.00	0.00	61,592.00
Interest	24,343.60	0.00	24,343.60
<b>Assessment Total</b>	<b>\$85,935.60</b>	<b>\$0.00</b>	<b>\$85,935.60</b>

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 contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is May 19, 2015. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at [tax.illinois.gov](http://tax.illinois.gov)). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, 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 liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at [tax.illinois.gov](http://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 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.

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.

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

217 785-6579

## Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 **Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 **Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 **Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 **Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 **Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 **Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

**10 100 percent interest penalty** - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

**11 Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

**12 Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

### Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

### How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

**Notice of Tax Liability**  
for Form EDA-105-R, ROT Audit Report



#BWNKMGV  
#CNXX X114 6X82 5769#  
RUDD EQUIPMENT CO  
ATTN: POA - BINGHAM GREENEBAUM DOLL LLP  
(BRETT J MILLER)  
10 W MARKET ST  
INDIANAPOLIS-IN 46204-4900

March 20, 2015



Letter ID: CNXXX1146X825769

Account ID: 0237-5613

We have audited your account for the reporting periods July 01, 2009, through October 31, 2010. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	254,858.00	(26,232.00)	228,426.00
Interest	29,165.84	0.00	29,165.84
<b>Assessment Total</b>	<b>\$283,823.84</b>	<b>(\$26,232.00)</b>	<b>\$257,591.84</b>

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 contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is May 19, 2015. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, 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 liability 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 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.

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.

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ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

217 785-6579

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For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

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10 **100 percent interest penalty** - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
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### Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

### How is interest figured?

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## Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

## Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

# Exhibit B

RUDD EQUIPMENT CO  
SCH 4 ILLINOIS EQUIPMENT RENTALS  
1/1/2008-10/31/2010

0237-5613  
9/15/2011  
RJS

DATE FIRST RENTED IN ILLINOIS	CUSTOMER NAME	LOCATION	EQUIPMENT TYPE	SERIAL NUMBER	DEPRECIATION TAKEN	ILLINOIS RENT INCOME	TOTAL RENT INCOME	TOTAL SALES INCOME	EQUIPMENT PURCHASE DATE	EQUIPMENT SALE DATE	ANYWHERE DATE RENTED	J MINUS I MONTHS IN RENTAL INVENTORY	COST	MONTHS OF DEPREC ALLOWED
1/1/2008	PEABODY COAL COMPANY	CATLIN, IL	HITACHI EXCAVATOR	1J9Q-020124	NONE	30400	30400	810458		3/31/2008	3/26/2007	13	502621	10
1/1/2008	WASTE MGMT SERVICES INC	MARISSA, IL	KENT HYDRAULIC HAMMER	F22-5428	N/A	60000	60000	6702		4/17/2009	3/28/2007	25	32370	10
1/1/2008	WASTE MGMT SERVICES INC	MARISSA, IL	VOLVO EXCAVATOR	EC240BLC80266	N/A	15974	15974	115711		6/27/2008	4/17/2006	25	177330	21
3/20/2008	ARCLAR COMPANY, LLC	EQUALITY, IL	TAMROCK RANGER DRILL	107T11501-1	N/A	86400	118400	217775		12/30/2009	5/16/2007	32	356199	10
4/23/2008	WASTE MGMT SERVICES INC	MARISSA, IL	VOLVO EXCAVATOR	EC240CLC110555	SECTION 168	117144	117144.5	85528	3/26/2008	2/24/2010	4/25/2008	23	131398	0
5/7/2008	BLUFF CITY MINERALS	ALTON, IL	TAMROCK RANGER DRILL	107T11702-1	N/A	119000	332633	467885		4/16/2010	10/15/2007	31	356411	7
5/15/2008	MERVIS INDUSTRIES INC	DANVILLE, IL	VOLVO LOADER	L25BV1752857	NONE	1624.5	1624.5	70334	2/12/2008	6/26/2008	5/15/2008	2	55136	0
7/8/2008	LUHR BROS INC	COLUMBIA, IL	VOLVO ARTICULATED TRUCK	A30EV72098	NONE	66000	66000	385547	3/28/2008	1/16/2009	7/8/2008	7	299524	0
12/3/2008	HAYDEN EQUIPMENT	EAST ST LOUIS, IL	VOLVO EXCAVATOR	EC240BLR80863	N/A	14820	137563	94066		3/15/2010	9/23/2008	18	176830	3
12/5/2008	R L BRINK CORP	QUINCY, IL	VOLVO ARTICULATED TRUCK	A25DV72342	N/A	17420	17420	216036		1/16/2009	7/24/2007	18	221079	17
1/12/2009	BUDROVICH CONTRACTING CO INC	BALDWIN, IL	LINK BELT CRANE	J9J-1017	SECTION 168	100433	128433	n/a	1/5/2009	n/a	1/12/2009	22	429009	0
3/26/2009	WASTE MGMT SERVICES INC	MARISSA, IL	KENT HYDRAULIC HAMMER	F22-6011	N/A	40000	40000	17808		8/20/2010	3/26/2009	17	33265	0
4/7/2009	ATLAS EXCAVATING CO	ONARGA, IL	HITACHI EXCAVATOR	1CGQ-045109	N/A	21000	48940	n/a		n/a	9/11/2007	38	68195	19
9/3/2009	SUGAR CAMP ENERGY LLC	MACEDONIA, IL	VOLVO ARTICULATED TRUCK	A40EV11417	SECTION 168	11500	349556	379556	2/18/2008	1/31/2011	7/31/2009	18	424631	2
9/3/2009	SUGAR CAMP ENERGY LLC	MACEDONIA, IL	VOLVO ARTICULATED TRUCK	A40EV11391	SECTION 168	11500	315074	72104	6/18/2008	?	4/8/2009	19	422876	5
9/15/2009	WASTE MGMT SERVICES INC	EAST ST LOUIS, IL	VOLVO ARTICULATED TRUCK	A30EV72502	SECTION 168	11400	70900	443789	3/9/2009	12/14/2010	9/15/2009	15	332841	0
10/9/2009	ENERGY RECOVERY LLC	GALATIA, IL	VOLVO EXCAVATOR	EC290CLR110904	SECTION 168	19950	76434	177655	3/6/2009	3/30/2010	3/20/2009	13	205533	7
11/6/2009	RJ CORMAN DERAILMENT SERVICES INC	DUQUOIN, IL	VOLVO EXCAVATOR	EC290CLC110577	SECTION 168	18240	19852	161473	3/26/2008	12/31/2009	4/16/2009	9	162399	7
11/10/2009	MIDLAND AGRICULTURAL CENTER INC	CARMI, IL	USED VOLVO LOADER	1950393	NONE	4940	15207	34835	4/27/2009	2/28/2011	5/27/2009	21	44000	6
11/24/2009	VECELLIO & GROGAN INC	MACEDONIA, IL	HITACHI EXCAVATOR	1J9Q-020044	N/A	182400	494396	n/a	1/22/2009	n/a	9/20/2006	50	528132	39
12/14/2009	ENERGY RECOVERY LLC	GALATIA, IL	VOLVO EXCAVATOR	EC210CLC111210	SEC 167	31160	31160	159562	10/12/2009	10/15/2010	12/14/2009	12	118130	0
12/23/2009	BOLLMEIER INC	RED BUD, IL	LINK BELT CRANE	J7J9-1301	SECTION 168	168000	168000	n/a	3/18/2009	n/a	12/23/2009	11	756967	0
2/23/2010	WASTE MGMT SERVICES INC	MARISSA, IL	VOLVO EXCAVATOR	EC240CLC110766	SECTION 168	47923	47923	n/a	10/21/2008	n/a	2/25/2010	9	170355	0
3/1/2010	VIGO EQUIPMENT INC	MT. CARMEL, IL	HITACHI EXCAVATOR	ASR-820003	N/A	26059	26059	n/a	3/22/2009	n/a	3/30/2009	19	174818	12
3/17/2010	ENERGY RECOVERY LLC	GALATIA, IL	VOLVO LOADER	L180FV11866	SEC 167	54150	54150	355850	10/5/2008	10/14/2010	3/17/2010	7	236677	0
3/19/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	NEW CANTON, IL	VOLVO ARTICULATED TRUCK	A40EV12229	SECTION 168	92000	92000	n/a	11/14/2008	n/a	11/14/2008	23	477875	17
3/19/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	NEW CANTON, IL	VOLVO ARTICULATED TRUCK	A40EV11321	SECTION 168	23000	189500	353182	1/21/2008	5/27/2010	2/11/2008	28	408277	26
5/7/2010	CONSOLIDATION COAL COMPANY	SCHELLER, IL	USED VOLVO ARTICULATED TRUCK	A40DV70241	NONE	40289	130199	n/a	3/10/2010	n/a	5/7/2010	6	331536	0
5/7/2010	CONSOLIDATION COAL COMPANY	SCHELLER, IL	USED VOLVO ARTICULATED TRUCK	A40DV70254	NONE	40536	40536	n/a	3/10/2010	n/a	5/7/2010	6	341784	0
5/7/2010	CONSOLIDATION COAL COMPANY	SCHELLER, IL	USED VOLVO ARTICULATED TRUCK	A40DV60193	N/A	39857	173055	n/a	5/23/2008	n/a	9/15/2006	50	291907	44
5/15/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	KINDERHOOK, IL	VOLVO ARTICULATED TRUCK	A40EV12122	SECTION 168	159690	159690	n/a	5/13/2010	n/a	5/19/2010	6	526592	0
6/7/2010	CENTRAL FLEET INC	SPRINGFIELD, IL	VOLVO ARTICULATED TRUCK	A40EV13016	SECTION 168	49456	49456	n/a	5/27/2010	n/a	6/7/2010	5	528831	0
6/22/2010	PINEVILLE PAVING INC	MACEDONIA, IL	USED VOLVO GRADER	37138	NONE	16500	23165	75244	10/5/2009	10/25/2010	3/28/2010	7	50605	3
7/27/2010	ALCOA FUELS	MT. CARMEL, IL	USED EUCLID DUMP TRUCK	77535	NONE	40800	40800	n/a	12/23/2009	n/a	7/27/2010	4	602945	0
8/5/2010	WASTE MGMT SERVICES INC	MARISSA, IL	KENT HYDRAULIC HAMMER	F27-2736	NONE	9000	9000	36749	8/4/2010	11/30/2010	8/5/2010	3	41517	0
8/12/2010	B K MARINE CONSTRUCTION INC	GREENVILLE, IL	VOLVO EXCAVATOR	EC360CLC140031	SECTION 168	97139	97139	n/a	7/17/2008	n/a	5/25/2010	6	235838	3
8/16/2010	SHORT BROS CONSTRUCTION	MARION, IL	VOLVO ASPHALT COMPACTOR	192490	SECTION 168	15500	15500	n/a	4/29/2008	n/a	9/22/2008	26	109972	23
8/19/2010	BEYERS CONSTRUCTION CO	DANA, IL	VOLVO EXCAVATOR	EC553YBP37032	N/A	6240	6240	n/a			8/10/2009	15	55362	13
9/1/2010	MT. CARMEL STABILIZATION GROUP INC	JOHNSTON CITY, IL	VOLVO EXCAVATOR	EC290CLC110510	SECTION 168	7800	7800	189655	10/12/2009	5/25/2011	9/1/2010	14	163818	0
9/30/2010	ET SIMONDS CONSTRUCTION	CARBONDALE, IL	VOLVO EXCAVATOR	ECR235C1 C110255	SECTION 168	1500	1500	n/a	7/26/2010	n/a	9/30/2010	1	158897	0
10/13/2010	HAYWARD BAKER INC	MARION, IL	HITACHI EXCAVATOR	ASP-920465	SECTION 168	11400	46367	n/a	3/22/2010	n/a	6/26/2010	7	213146	6
10/19/2010	COOPER RAIL SERVICE INC	BELLEVILLE, IL	VOLVO SOIL COMPACTOR	191717	SECTION 168	4275	28341	n/a	2/28/2008	n/a	6/30/2009	16	69826	16
7/17/2009	MERVIS INDUSTRIES INC	DANVILLE, IL	VOLVO LOADER	L070EV60544	NONE	4900	4900	75240	10/30/2008	8/31/2009	7/17/2009	2	65881	0

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PRIOR TO AUDIT PERIOD. NON-TAXABLE PER ICB DECISION

DEPRECIATION GIVEN FROM DATE FIRST RENTED ANYWHERE TILL DATE RENTED IN ILLINOIS.

MONTHS IN RENTAL INVENTORY IS FROM DATE FIRST RENTED ANYWHERE TILL DATE SOLD. IF NOT SOLD BY END OF AUDIT PERIOD, END OF AUDIT PERIOD WAS USED.

RUDD EQUIPMENT CO  
 SCH 4 ILLINOIS EQUIPMENT RENTALS  
 1/1/2008-10/31/2010

DATE FIRST RENTED IN ILLINOIS	CUSTOMER NAME	5 YEAR STRAIGHT LINE	REDUCE COST BY MONTHS TIMES	LESS TAX PAID PRIOR TO USE IN ILLINOIS	TAXABLE REDUCTION FOR TAX PAID PRIOR TO IL USE	COST LESS	STT CODE 31-100 INTERIM USE NOT VALID	
1/1/2008	PEABODY COAL COMPANY	8377	83770	0	0	418851	0	PURCHASED PRIOR TO AUDIT PERIOD
1/1/2008	WASTE MGMT SERVICES INC	540	5395	0	0	26975	0	PURCHASED PRIOR TO AUDIT PERIOD
1/1/2008	WASTE MGMT SERVICES INC	2956	62066	0	0	115265	0	PURCHASED PRIOR TO AUDIT PERIOD
3/20/2008	ARCLAR COMPANY, LLC	5949	59487	0	0	297433	0	PURCHASED PRIOR TO AUDIT PERIOD
4/25/2008	WASTE MGMT SERVICES INC	2190	0	0	0	131398		RENT INCOME GREATER THAN SALES INCOME
5/7/2008	BLUFF CITY MINERALS	5940	41581	0	0	314830	0	PURCHASED PRIOR TO AUDIT PERIOD
5/15/2008	MERVIS INDUSTRIES INC	319	0	0	0	55136	0	EXEMPT USE
7/8/2008	LUHR BROS INC	4992	0	0	0	299524	0	CONVERTED TO TAXABLE SALE
12/3/2008	HAYDEN EQUIPMENT	2947	8842	5246	33936	84053	0	PURCHASED PRIOR TO AUDIT PERIOD
12/5/2008	R. L. BRINK CORP	3685	62639	0	0	158440	0	PURCHASED PRIOR TO AUDIT PERIOD
1/12/2009	BUDROVICH CONTRACTING CO INC	7150	0	0	0	429009	429009	NOT SOLD DURING AUDIT PERIOD
3/26/2009	WASTE MGMT SERVICES INC	554	0	0	0	33265	0	PURCHASED PRIOR TO AUDIT PERIOD
4/7/2009	ATLAS EXCAVATING CO	1137	21595	60	960	45640	0	PURCHASED PRIOR TO AUDIT PERIOD
9/3/2009	SUGAR CAMP ENERGY LLC	7077	14154	0	0	410477	0	EXEMPT USE
9/3/2009	SUGAR CAMP ENERGY LLC	7048	35240	0	0	387636	0	EXEMPT USE
9/15/2009	WASTE MGMT SERVICES INC	5547	0	0	0	332841	332841	
10/9/2009	ENERGY RECOVERY LLC	3426	23979	3242	51872	129682	129682	
11/6/2009	RJ CORMAN DERAILMENT SERVICES INC	2707	18947	1076	17216	126236	126236	
11/10/2009	MIDLAND AGRICULTURAL CENTER INC	733	4400	447	7152	32448	0	INTERIM USE
11/24/2009	VECELLJO & GROGAN INC	8802	343286	0	0	184846	0	PURCHASED PRIOR TO AUDIT PERIOD
12/14/2009	ENERGY RECOVERY LLC	1969	0	0	0	118130	118130	
12/23/2009	BOLLMEIER INC	12616	0	0	0	756967	756967	
2/25/2010	WASTE MGMT SERVICES INC	2840	0	0	0	170395	170395	
3/1/2010	VIGO EQUIPMENT INC	2914	34964	966	15456	124398	0	PURCHASED PRIOR TO AUDIT PERIOD
3/17/2010	ENERGY RECOVERY LLC	3945	0	0	0	236677	236677	
3/19/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	7965	135398	1484	23744	318733	318733	
3/19/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	6805	176920	10046	160736	70621		GREATER THAN 24 MONTHS
5/7/2010	CONSOLIDATION COAL COMPANY	5526	0	0	0	331536	0	EXEMPT USE
5/7/2010	CONSOLIDATION COAL COMPANY	5696	0	0	0	341784	0	EXEMPT USE
5/7/2010	CONSOLIDATION COAL COMPANY	4865	214065	0	0	77842	0	EXEMPT USE/PURCHASED PRIOR TO AUDIT PERIOD
5/19/2010	SNY ISLAND LEVEE DRAINAGE DISTRICT	8777	0	0	0	526592	526592	
6/7/2010	CENTRAL FLEET INC	8814	0	0	0	528831	528831	
6/22/2010	PINEVILLE PAVING INC	843	2530	467	7472	40606	0	INTERIM USE
7/27/2010	ALCOA FUELS	10049	0	0	0	602945	0	INTERIM USE
8/5/2010	WASTE MGMT SERVICES INC	692	0	0	0	41517	0	INTERIM USE
8/12/2010	B K MARINE CONSTRUCTION INC	3931	11792	1846	29536	194510	194510	
8/18/2010	SHORT BROS CONSTRUCTION	1833	42156	711	11376	55440		GREATER THAN 24 MONTHS
8/19/2010	BEYERS CONSTRUCTION CO	923	11995	0	0	43367	0	PURCHASED PRIOR TO AUDIT PERIOD
9/1/2010	MT. CARMEL STABILIZATION GROUP INC	2730	0	0	0	163818	163818	
9/30/2010	ET SIMONDS CONSTRUCTION	2645	0	0	0	158697	158697	
10/15/2010	HAYWARD BAKER INC	3552	21315	2099	33584	158247	158247	
10/19/2010	COOPER RAIL SERVICE INC	1164	18620	1506	24096	27110	27110	
7/17/2009	MERVIS INDUSTRIES INC	1098	0	0	0	65881	0	EXEMPT USE

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0 PRIOR TO AUDIT PERIOD. NON-TAXABLE F

DEPRECIATION GIVEN FROM DATE FIRST RENTED ANY

MONTHS IN RENTAL INVENTORY IS FROM DATE FIRST I

# Exhibit C



Illinois Department of Revenue  
Sales Tax Audit System  
Schedule 1 - Summary Analysis

Date: 12/31/2014  
Time: 11:54:23  
Page: 1

IBT: 0237-5613

Taxpayer: RUDD EQUIPMENT CO

Auditor: Robert J. Siegelman

<u>Item Description</u>	<u>Tax Type/Str Codes</u>	<u>Exception Amount</u>	<u>Rate</u>	<u>Tax Amount</u>	<u>Tax Paid</u>	<u>Net Tax Due</u>	<u>Total</u>
ROT/SOT Receipts Adjustment	ROT / 10-100	\$424,296.96	06.25%	\$26,518.56	\$0.00	\$26,518.56	\$26,518.56
ROT/SOT Receipts Adjustment	ROT / 10-101	-\$420,400.00	06.25%	-\$26,275.00	\$0.00	-\$26,275.00	-\$26,275.00
UT/SUT Receipts Adjustment	ROT / 11-201	\$1,461.76	06.25%	\$91.36	\$0.00	\$91.36	\$91.36
Consumable Supplies Use Tax Adjustment	ROT / 31-100	\$4,634,934.00	06.25%	\$289,683.39	\$0.00	\$289,683.39	\$289,683.39
Total Additional Tax							\$290,018.31

# Exhibit D



**Illinois Department of Revenue**  
**Sales Tax Audit System**  
*Global Taxable Exceptions Detailed Report / All Codes Sorted by Date*

Date: 12/31/2014  
Time: 11:48:01  
Page: 1

Taxpayer: RUDD EQUIPMENT CO

IBT #: 0237-5613

Audit Period: 01/01/2008 through 10/31/2010

Auditor: Robert J. Siegelman

<u>Date</u>	<u>Doc #</u>	<u>Name</u>	<u>Description</u>	<u>Reason Questioned</u>	<u>Amount Taxable</u>
<b>Tax Code: 10</b>	<b>Exam Type: 100</b>				
06/01/2008	SCH 5	TAX RECONCILIATION	UNREPORTED INCOME	NOT ON ST-1	\$424,296.96
Total for Exam Type: 100					\$424,296.96
<b>Tax Code: 10</b>	<b>Exam Type: 101</b>				
01/01/2010	jan st-1-x	AMENDED RETURN FILED	TAX NOT DUE	TAX RETURNED TO CUSTOMER	-\$420,400.00
Total for Exam Type: 101					-\$420,400.00
Total for Tax Code: 10 - ROT/SOT Receipts Adjustment					\$3,896.96
<b>Tax Code: 11</b>	<b>Exam Type: 201</b>				
01/11/2008	3C45281	MIDWEST LOADING CO	BATTERY MA	NO TAX ON INVOICE	\$144.46
12/30/2009	3C01179	OXFORD CRANE	LINK BELT ELEMENT	NO TAX ON INVOICE	\$156.49
Total for Exam Type: 201					\$300.95
Total for Tax Code: 11 - UT/SUT Receipts Adjustment					\$300.95
<b>Tax Code: 31</b>	<b>Exam Type: 100</b>				
04/25/2008	SCH 4	WASTE MGMT SERVICES	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$131,398.00
01/12/2009	SCH 4	BUDROVICH CONTRACTING	LINK BELT CRANE	LEASED INTO ILLINOIS	\$429,009.00
09/15/2009	SCH 4	WASTE MGMT SERVICES	VOLVO ARTIC TRUCK	LEASED INTO ILLINOIS	\$332,841.00
10/09/2009	SCH 4	ENERGY RECOVERY SVC	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$129,682.00
11/06/2009	SCH 4	RJ CORMAN DERRAIL SVC	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$126,236.00
12/14/2009	SCH 4	ENERGY RECOVERY SVC	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$118,130.00
12/23/2009	SCH 4	BOLLMEIER INC	LINK BELT CRANE	LEASED INTO ILLINOIS	\$756,967.00
02/25/2010	SCH 4	WASTE MGMT SERVICES	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$170,395.00
03/17/2010	SCH 4	ENERGY RECOVERY SVC	VOLVO LOADER	LEASED INTO ILLINOIS	\$236,677.00
03/19/2010	SCH 4	SNY ISLAND LEVEE DR DIST	VOLVO ART TRUCK	LEASED INTO ILLINOIS	\$318,733.00
03/19/2010	SCH 4	SNY ISLAND LEVEE DR DIST	VOLVO ART TRUCK	LEASED INTO ILLINOIS	\$70,621.00
05/19/2010	SCH 4	SNY ISLAND LEVEE DR DIST	VOLVO ART TRUCK	LEASED INTO ILLINOIS	\$526,592.00
06/07/2010	SCH 4	CENTRAL FLEET INC	VOLVO ART TRUCK	LEASED INTO ILLINOIS	\$528,831.00



**Illinois Department of Revenue**  
Sales Tax Audit System  
*Global Taxable Exceptions Detailed Report / All Codes Sorted by Date*

Date: 12/31/2014  
Time: 11:48:01  
Page: 2

Taxpayer: RUDD EQUIPMENT CO

IBT #: 0237-5613

Audit Period: 01/01/2008 through 10/31/2010

Auditor: Robert J. Siegelman

<u>Date</u>	<u>Doc #</u>	<u>Name</u>	<u>Description</u>	<u>Reason Questioned</u>	<u>Amount Taxable</u>
08/12/2010	SCH 4	BK MARINE CONSTR INC	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$194,510.00
08/18/2010	SCH 4	SHORT BROS CONSTR	VOLVO ASPHALT COMPACT	LEASED INTO ILLINOIS	\$56,440.00
09/01/2010	SCH 4	MT. CARMEL STABILIZATION	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$163,818.00
09/30/2010	SCH 4	ET SIMONDS CONSTR	VOLVO EXCAVATOR	LEASED INTO ILLINOIS	\$158,697.00
10/15/2010	SCH 4	HAYWARD BAKER	HITACHI EXCAVATOR	LEASED INTO ILLINOIS	\$158,247.00
10/19/2010	SCH 4	COOPER RAIL SERVICE	VOLVO SOIL COMPACTOR	LEASED INTO ILLINOIS	\$27,110.00
Total for Exam Type: 100					\$4,634,934.00
Total for Tax Code: 31 - Consumable Supplies Use Tax Adjustment					\$4,634,934.00
<b>Totals for Examination:</b>					<b>\$4,639,131.91</b>

# Exhibit E

# RUDD EQUIPMENT COMPANY - RENTAL AGREEMENT

White - Original  
Green - Customer Copy  
Yellow - Salesman's Copy

THIS RENTAL AGREEMENT is made by and between RUDD EQUIPMENT COMPANY (hereinafter "RUDD") and \_\_\_\_\_

The parties agree as follows:

1. GRANT. Subject to the terms set out below, RUDD rents to CUSTOMER, and CUSTOMER rents from RUDD, all machinery, equipment and other property described in paragraph 2, including all component parts and accessory items (the "Equipment").
2. SCHEDULE OF EQUIPMENT.

Manufacturer	Model	Description	Serial Number	Replacement Value
--------------	-------	-------------	---------------	-------------------

### J. SCHEDULE OF TERMS:

A. F. O. B.:

B. Ship for use in following Operations: ( ) Mining (X) Construction

( ) Other (Describe) \_\_\_\_\_ Job Site: \_\_\_\_\_

Name of Job or Project (at or near) \_\_\_\_\_

(Street)

(City, County, State, Zip)

F. Mail location to:

(Name)

(Street)

(City, State, Zip)

F. Minimum Rental Period: \_\_\_\_\_ Months \_\_\_\_\_ Weeks

Rental shall commence on \_\_\_\_\_ if this blank is not filled in, rental shall commence on the date CUSTOMER receives possession of the Equipment. Upon expiration of the Minimum Rental Period, the term hereof shall, at RUDD's discretion, continue for an indefinite period, and either RUDD or CUSTOMER may terminate this Rental Agreement upon five (5) days prior notice to the other. If CUSTOMER terminates this Rental Agreement prior to expiration of the Minimum Rental Period, it shall pay RUDD all the aggregated remaining rent due during the Minimum Rental Period. CUSTOMER shall be liable for all transportation charges of returning the Equipment to RUDD.

4. CALCULATION OF RENTAL PERIOD. The rental period shall begin on and include the date of shipment to CUSTOMER and shall end on and include the date of return to RUDD's Designated Receiving Point. If the Equipment is kept longer than the specified Minimum Rental Period, the rental shall be invoiced to and paid by CUSTOMER on a pro rata basis.

5. RATES AND OVERTIME RATES. The rates provided for in this Rental Agreement are straight time rates based on eight (8) hours per day, five (5) days per week, or twenty-two (22) eight (8) hour days per month for a total of one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. CUSTOMER shall receive no credit or offset against the monthly rent due hereunder if the Equipment is in actual use for less than one hundred seventy-six (176) hours in any one thirty (30) consecutive day period. Should the Equipment be used longer than the above specified hours in any specific period, the overtime rate shall be based on the figure in the blank above, or if it is not filled in, then on 1/176th of the monthly rate for each hour in excess of one hundred seventy-six (176) hours worked in any one thirty (30) consecutive day period (or if the specified rate is weekly, 1/40 of the weekly rate).

#### 6. TITLE.

A. TRUE LEASE. Title to the Equipment (and to all replacements thereof or substitutions therefor) is and shall remain in RUDD. RUDD and CUSTOMER further acknowledge and agree that this Rental Agreement is intended as a true and actual lease between the parties and does not constitute a so-called "caption" lease or as a "financing lease" under KRS 355.2A-103, intended as security. The filing by RUDD under the Uniform Commercial Code of one or more UCC forms (including the statement hereby created) shall not render this Rental Agreement a lease intended as security.

B. NO PURCHASE OPTION. This Rental Agreement contains no purchase option. If at any time during the Rental Period, CUSTOMER desires to purchase the Equipment, RUDD will enter into good faith negotiations, but neither party shall have any obligation to agree to a purchase.

#### 7. RISK OF LOSS; SHIPMENT AND RECEIPT OF EQUIPMENT.

Risk of loss shall pass to CUSTOMER upon the delivery of the Equipment to a carrier for delivery to CUSTOMER or upon delivery to CUSTOMER of RUDD's facility. Should the Equipment be damaged in transit, it shall be the obligation of CUSTOMER to have such repairs or replacements made to the Equipment as necessary to bring the Equipment to its condition when the risk of loss passed to CUSTOMER. The receipt and assumption of possession by CUSTOMER of the Equipment shall constitute acknowledgment that the Equipment has been accepted and found in proper working condition. Any use of the Equipment shall constitute a full, complete and irrevocable acceptance by CUSTOMER.

#### 8. CUSTOMER'S OBLIGATIONS.

A. TIRE CLAUSE. During the rental period all repairs to tires or replacement of tires shall be the sole responsibility of CUSTOMER. Notwithstanding the condition of any tire on the Equipment at the time this Rental Agreement was executed, CUSTOMER agrees, as additional rent, to pay, upon return of the Equipment, the replacement value of any tire which RUDD, in its sole opinion, determines cannot be used again; and, CUSTOMER also agrees to pay upon return of the Equipment the entire replacement charge for any tire which RUDD determines, in its sole opinion, to be in need of recapping.

#### B. INSTRUCTION MANUAL AND OPERATION OF THE EQUIPMENT.

CUSTOMER acknowledges being furnished with an instruction manual governing safe operation of the Equipment and warrants that any person who uses the Equipment will operate the Equipment in accordance with the instruction manual. CUSTOMER agrees to use the Equipment only for its intended purpose and CUSTOMER agrees to comply with and conform to all applicable, state and federal

Via: \_\_\_\_\_

Shipping Date: \_\_\_\_\_

Freight Charges: \_\_\_\_\_

C. RUDD's Designated Receiving Point: \_\_\_\_\_

D. Rental Rate: Weekly @ \$ \_\_\_\_\_ per week.

Monthly @ \$ \_\_\_\_\_ per month.

Monthly Rate Shown for \_\_\_\_\_ Hours/Month.

Hourly Charge for Excess Hours \$ \_\_\_\_\_

Single Shift \_\_\_\_\_ Double Shift \_\_\_\_\_

\$ \_\_\_\_\_ Deposit payable on execution, applicable

to First month's rental

to First month's rental

laws relating to the use and operation of the Equipment.

C. REPAIRS. CUSTOMER agrees, during the rental period, at its own cost and expense, to operate and maintain the Equipment with factory authorized parts and to make all necessary repairs to the Equipment. CUSTOMER agrees to return the Equipment to RUDD in the same condition as received by CUSTOMER, reasonable wear and tear excepted. RUDD reserves the right to inspect the Equipment upon return, and CUSTOMER agrees to pay all costs and expenses of making all necessary repairs to the Equipment upon its return to RUDD. At CUSTOMER's request, RUDD may repair the Equipment for CUSTOMER, using reasonable diligence to make such repairs, and CUSTOMER shall pay RUDD its regular charges for any material or labor furnished in making such repairs.

D. CASUALTY TO EQUIPMENT; INDEMNIFICATION. CUSTOMER hereby agrees to indemnify RUDD for all losses and damages to the Equipment which are the result of any casualty or which may be an act of God, said indemnification to continue until the Equipment has been returned to the possession of RUDD and accepted by it. For the purpose of fixing the value of the Equipment in order to determine the loss, damage, or injury thereto, the Replacement Value, as stated in Paragraph 2 hereof, shall be deemed a true and just value, forming a basis for such adjustment. In making such adjustment, no rentals therefor shall be paid or due shall apply toward the payment of such loss.

E. SEIZURE OF THE EQUIPMENT. CUSTOMER represents and warrants to RUDD that the Equipment is not being rented for the purpose of and will not, during the Rental Period, be used for any purpose or in any manner which would violate any provision of any law which would allow the Equipment to be seized by any governmental agency. If the Equipment is used within the Commonwealth of Kentucky, CUSTOMER represents and agrees the Equipment will be used in compliance with any and all applicable laws and regulations, including, but not limited to, the provisions of Chapter 258 of the Kentucky Revised Statutes. Failure to fulfill this obligation on the part of CUSTOMER shall be deemed a default under the Rental Agreement.

F. LOCATION OF EQUIPMENT; LEVY; INSPECTION. CUSTOMER shall, whenever requested by RUDD, give RUDD the exact location of the Equipment and shall further give RUDD immediate notice if any levy is attempted upon the Equipment, or if the Equipment from any cause becomes liable to seizure, and shall indemnify RUDD against all loss and damages caused by any such action. RUDD shall have the privilege at all times of entering, for the purpose of inspection, any job, building, or location where the Equipment is being used, and reserves the privilege of removing the Equipment on twenty-four (24) hours notice if it is being overloaded or taxed beyond its capacity or in any manner abused, neglected or mistreated.

G. NO ENCUMBRANCE. CUSTOMER agrees that it will not subject the Equipment to any lien, attachment, security interest or claim of any kind other than the rights reserved to RUDD pursuant to this Rental Agreement or under law.

H. PUBLIC LIABILITY; INDEMNIFICATION. CUSTOMER hereby agrees to indemnify RUDD against all loss, damage, expense, and penalty arising from any action on account of any death or injury to person or property of any character whatsoever occasioned by its operation, handling, or transportation of the Equipment during the rental period or while the Equipment is in the possession or under the custody and control of CUSTOMER, including without limitation, the death or injury, to any employee of CUSTOMER.

I. INSURANCE. CUSTOMER further agrees to protect RUDD with full all risk insurance (consists of loss - special form) naming RUDD as an additional insured and loss payee covering all losses and damages listed in the previous Paragraphs 8D and H hereof and agrees by itself to RUDD a copy of the Certificate of Insurance demonstrating it has complied with this subparagraph. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by

independent instrument furnished to RUDD, that it will give RUDD thirty (30) days written notice before the policy in question shall be amended or canceled. CUSTOMER hereby assigns to RUDD all proceeds from such insurance, conveys an equitable lien in said proceeds, directs any insurer to pay said proceeds to RUDD, and appoints RUDD its attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damages under said insurance policy. RUDD may at its option and at its own expense insure its own interest in the Equipment. If RUDD does obtain its own insurance, CUSTOMER shall have no interest whatsoever in such insurance. In addition, CUSTOMER shall maintain comprehensive public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence naming RUDD as an additional insured.

J. TAXES. CUSTOMER shall pay all local assessments, taxes, sales or use taxes or public charges, either local, municipal, state, or federal, which may be levied on the Equipment while in the possession of CUSTOMER. Nothing in this paragraph is to be construed as requiring that CUSTOMER is to pay the personal property tax levied against the Equipment rented when said Equipment is located within the home state of RUDD. Any and all taxes assessed against the Equipment, including personal property taxes, while the Equipment is outside of the home state of RUDD, are to be paid by CUSTOMER. The term "home state" means any state in which the RUDD has its home office or branch.

K. FAILURE TO PAY INSURANCE OR TAXES. If CUSTOMER fails to procure and maintain insurance under Paragraph H above or to pay taxes under Paragraph J above, RUDD shall have the right, but not the obligation, to effect such insurance or pay such taxes and the cost thereof shall be reimbursed to RUDD by CUSTOMER with the next installment of rent.

L. LABOR UNIONS AND FORCE MAJEURE. CUSTOMER shall pay any charges for work or inspection required by any labor union. RUDD may, at its option, refuse to do any repair work on Equipment in time of strike or in violation of any union or governmental rule affecting the Equipment or in the event RUDD is prevented from doing so by a cause beyond his control. RUDD reserves the right to remove the Equipment from a job site at any time when, in RUDD's opinion, the Equipment is in danger because of strikes or any other condition.

9. RUDD'S OBLIGATIONS.

A. NO WARRANTY GIVEN. RUDD IS NOT THE MANUFACTURER OF THE EQUIPMENT HEREIN RENTED, NOR THE AGENT OF THE MANUFACTURER OF SAID EQUIPMENT, AND RUDD GIVES NO EXPRESS WARRANTY AGAINST PATENT OR LATENT DEFECTS IN MATERIAL, WORKMANSHIP, OR CAPACITY, OR THAT SAID EQUIPMENT WILL MEET THE REQUIREMENTS OF ANY LAW, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR SPECIFIC MACHINERY OR APPARATUS OR SPECIAL METHODS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY EXCLUDED. THE EQUIPMENT SHALL BE DEEMED USED EQUIPMENT AND IS RENTED ON AN "AS IS - WHERE IS" BASIS. RUDD SHALL NOT BE LIABLE IN ANY EVENT TO CUSTOMER FOR ANY LOSS, DELAY OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, THE EQUIPMENT, NOR SHALL RUDD BE LIABLE FOR ACCIDENTAL BREAKAGE THEREOF, NOR SHALL CUSTOMER BE ENTITLED TO RECOVER CONSEQUENTIAL OR INCIDENTAL DAMAGES.

B. EXCLUSIVE REMEDY AGAINST RUDD. IN THE EVENT CUSTOMER ACCEPTS THE EQUIPMENT, AS HEREIN PROVIDED, AND THEREAFTER THE EQUIPMENT PROVES DEFECTIVE IN DESIGN, MATERIALS, WORKMANSHIP, CAPACITY OR FOR ANY OTHER REASON, OR IS UNFIT FOR USE BECAUSE OF ANY ACCIDENT OR OTHERWISE, CUSTOMER'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE EQUIPMENT TO RUDD AND TERMINATE THIS RENTAL AGREEMENT; PROVIDED, HOWEVER, CUSTOMER SHALL BE LIABLE FOR THE TRANSPORTATION CHARGES ON RETURNING THE EQUIPMENT.

C. CONDITION AND INSPECTION OF EQUIPMENT. RUDD shall use reasonable care to see that the Equipment is in proper working condition before shipment to CUSTOMER. CUSTOMER acknowledges that it has inspected the Equipment prior to executing this Rental Agreement.

10. DEFAULT. Should any of the provisions of this Rental Agreement, including the payment of rent, be violated by CUSTOMER, the remaining rental for the Minimum Rental Period shall become forthwith due and payable, and RUDD or its agents may, without notice, enter the premises occupied by CUSTOMER without being a trespasser thereon and take possession of and remove the Equipment. All freight, demurrage, storage, labor, or other charges required to return the Equipment to RUDD's Designated Receiving Point shall be borne by the CUSTOMER. In the event RUDD incurs reasonable attorney's fees or other costs due to CUSTOMER's default, CUSTOMER agrees to pay same to RUDD, in addition to all other costs, charges and damage.

11. TERMINATION. After the expiration of the Minimum Rental Period this Rental Agreement may be terminated.

A. by RUDD, by making demand for the return of the Equipment which CUSTOMER, at its expense, shall forthwith return to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

B. by CUSTOMER, in accordance with Paragraph 3F hereof and by returning the Equipment to RUDD's Designated Receiving Point set forth in Paragraph 3C hereof.

12. BANKRUPTCY. Neither this Rental Agreement nor any interest herein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Code, Title 11 of U.S.C., as amended, is commenced by or against CUSTOMER, or if CUSTOMER is adjudged insolvent, or if CUSTOMER makes any assignment for the benefit of its creditors, or if a receiver is appointed in any proceeding or action to which CUSTOMER is a party, this Rental Agreement shall, at the option of RUDD, without notice, immediately terminate and shall not be treated as an asset of CUSTOMER.

13. MODIFICATION OF RENTAL AGREEMENT. No modification of this Rental Agreement shall be binding upon the parties or either of them unless such modification is in writing and duly accepted in writing.

14. RELATIONSHIP OF PARTIES. Nothing in this Rental Agreement shall render RUDD in any manner a partner, agent, joint venturer, or associate of CUSTOMER in the operation and use of the Equipment or subject RUDD to any obligation, loss, charge or expense in connection with or arising from the operation and use of the Equipment.

15. PLACE OF MAKING. RUDD's location set forth in Paragraph 3C shall be the place of making of this Rental Agreement, and any and all disputes arising hereunder shall be settled at RUDD's location, whether such settlement be arrived at, or be attempted, by negotiation, litigation, or otherwise.

16. APPLICABLE LAW; SEVERABILITY. The law of the state of RUDD's location set forth in Paragraph 3C hereof shall apply to this Rental Agreement and the construction hereof. To the extent any provision or clause in this Rental Agreement is prohibited by any law or is deemed unenforceable, such prohibition or unenforceability shall not invalidate any of the remaining provisions or clauses hereof.

17. MISCELLANEOUS. No waiver of a breach of any provision of this Rental Agreement shall constitute a waiver of any other breach of the same or any other provision. Time is of the essence of this Rental Agreement.

18. NO ASSIGNMENT OR SUBLETTING BY CUSTOMER. CUSTOMER shall not assign, sell, sublet, encumber or otherwise transfer this Rental Agreement or the Equipment or any right thereto without the prior written consent of RUDD.

19. ASSIGNMENT BY RUDD. RUDD may assign its rights hereunder to any person, partnership or corporation, either with or without recourse, and upon receipt of notice of any such assignment, CUSTOMER shall be obligated to RUDD's assignee to the same extent that it is obligated to RUDD, and the assignee, either in its own name or in RUDD's name, shall have the full and complete right to assert all of the rights granted RUDD hereunder. All representations, warranties and agreements of CUSTOMER set forth herein shall be deemed made to the assignee with the same force and effect as if said assignee were RUDD. Further, upon assignment of this Rental Agreement by RUDD, RUDD will not be assignee's agent for any purpose, and CUSTOMER's obligations and liabilities hereunder to the assignee will be absolute and unconditional and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to CUSTOMER against RUDD.

20. SUBJECT TO RUDD'S ACCEPTANCE. This Rental Agreement is subject to acceptance by RUDD and shall not be binding upon RUDD until signed by RUDD's authorized representative. Acceptance shall be executed by RUDD on the attached Acknowledgment Copy which shall be returned to CUSTOMER by United States Mail.

21. UCC-1. CUSTOMER appoints RUDD as its attorney in fact to execute and file any UCC-1 financing statements deemed appropriate by RUDD to protect its ownership or other interests hereunder.

22. ENTIRE UNDERSTANDING. RUDD'S SALESMEN AND/OR OTHER EMPLOYEES MAY HAVE MADE ORAL OR WRITTEN STATEMENTS ABOUT THE EQUIPMENT. SUCH STATEMENTS DO NOT CONSTITUTE WARRANTIES, SHALL NOT BE RELIED UPON BY CUSTOMER AND ARE NOT A PART OF THIS RENTAL AGREEMENT. THE ENTIRE UNDERSTANDING OF THE PARTIES IS EMBODIED IN THIS RENTAL AGREEMENT. THIS RENTAL AGREEMENT, SIGNED AND DATED BY BOTH PARTIES, CONSTITUTES A FINAL WRITTEN EXPRESSION OF TERMS OF THIS AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. EVIDENCE OF COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY LAWSUIT IN AN ATTEMPT TO EXPLAIN THE MEANING OF ANY TERM IN THE RENTAL AGREEMENT.

ALL THE ABOVE TERMS AND CONDITIONS HAVE BEEN READ AND ARE THOROUGHLY UNDERSTOOD. THIS RENTAL AGREEMENT DOES NOT CONTAIN A PURCHASE OPTION UNLESS SET FORTH IN A SEPARATE WRITTEN AMENDMENT. CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS RENTAL AGREEMENT.

RUDD EQUIPMENT COMPANY

CUSTOMER:

By: \_\_\_\_\_  
 Title: MARK BURRIS, SENIOR V.P. SALES & MKTG.  
 Date: \_\_\_\_\_

Circle One:  Corporation  Partnership  Individual  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Witness: \_\_\_\_\_  
 (Salesman signature as witness)

Performance and payment of CUSTOMER's obligations up to a maximum of \$ \_\_\_\_\_, or the total amount which is payable by CUSTOMER under this Rental Agreement (whichever is greater) is personally guaranteed by:

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_