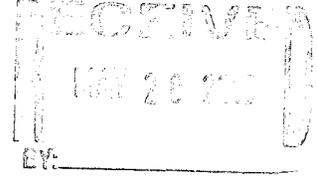


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

COLORADO FUTURE ENTERPRISES LLC)
)
) Petitioner,)
))
) v.) No.
))
) THE ILLINOIS DEPARTMENT OF REVENUE,)
))
) Defendant.)



ITTT103

PETITION

Petitioner, Colorado Future Enterprises LLC (“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. For the tax year ending December 31, 2010 (“Year in Issue”), Petitioner was a West Virginia corporation whose principal business address was 1014 Osterman Avenue, Deerfield, Illinois 60015.
2. Petitioner is represented by Jordan M. Goodman and Samantha K. Breslow of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3225 or jgoodman@hmblaw.com; 312-606-3206 or sbreslow@hmblaw.com, respectively.
3. Petitioner’s FEIN is 20-3311732.
4. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

NOTICES

5. On March 30, 2015, the Department issued a Notice of Deficiency to the Petitioner in the amount of \$26,412.03. The Notice of Deficiency (“Notice”) is attached hereto as Exhibit A.

6. Unless otherwise stated, the allegations in this Petition relate to the Year in Issue.

JURISDICTION

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100 and the Illinois Income Tax Act (“Income Tax Act”), 35 ILCS 5/101 et. seq.

8. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notice.

BACKGROUND

9. Petitioner is an insurance company registered to do business in West Virginia.

10. Petitioner did not file an Illinois Corporation Income and Replacement Tax Return for the Year in Issue.

11. The Department initiated an audit of Petitioner’s Business Income Tax on August 18, 2014.

12. As a result of the audit, the Department issued Petitioner a Notice of Deficiency on March 30, 2015. Exhibit A.

13. In the Notice, the Department explained that it apportioned all federal ordinary income to Illinois, resulting in an Illinois tax liability of \$26,412.03.

COUNT I

Petitioner’s Income is not Apportionable to Illinois

14. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 13, inclusive, hereinabove.

15. The Illinois Income Tax Act defines business income as all income that may be treated as apportionable business income under the Constitution of the United States. 35 ILCS 5/1501(a)(1).

16. Nonbusiness income is all income other than business income. 35 ILCS 5/1501(a)(13).

17. Business income of an insurance company shall be apportioned to Illinois by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this State, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. 35 ILCS 5/304(b)(1).

18. The term “direct premiums written” means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Illinois Director of Insurance. 35 ILCS 5/304(b)(1).

19. The Petitioner was not obligated to file an annual statement with the Illinois Director of Insurance, because it did not have insurable risk in Illinois during the Year in Issue.

20. The Petitioner did not file an annual statement with the Illinois Director of Insurance.

21. If an insurance company does not file an annual statement with the Director of Insurance, “that company shall include in the numerator of the apportionment factor the direct premiums written for insurance on property or risk in this State, determined in accordance with the determination of gross taxable premium written under Section 409(1) of the Illinois Insurance Code [215 ILCS 5/409(1)]. Ill. Reg. 100.3400.

22. Gross taxable premium written is defined as the gross amount received on direct business on contracts covering risks in this State. 25 ILCS 5/409(1).

23. Petitioner does not have any contracts covering risks in Illinois.

24. Petitioner's income is not apportionable to Illinois.

25. The Department issuance of the Notice to Petitioner was in error and should be withdrawn.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that Petitioner's insurance income is not apportionable to Illinois.
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due on the Notices;
- (c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to cancel the Notice of Deficiency; and
- (d) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause

26. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 25, inclusive, hereinabove.

27. In its Notices, the Department assessed penalties in an amount totaling \$4,296, comprising both late payment and late filing penalties.

28. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS §734-8.

29. 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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

30. A taxpayer will be 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).

31. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that it did not owe Illinois income tax because it did not issue direct premiums written for insurance on property or risk in this State.

32. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

- (a) finds and declares that all penalties should be fully abated based on reasonable cause;
- (b) enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of penalties on the Notices; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

COLORADO FUTURE ENTERPRISES LLC
Petitioner

By: 
One of Petitioner's Attorneys

Jordan M. Goodman (jgoodman@hmblaw.com)
Samantha K. Breslow (sbreslow@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered by messenger before the hour of 5:00 p.m. on the 20th day of May, 2015.

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



Notice of Deficiency
for Form IL-1065, Partnership Replacement Tax Return



March 30, 2015



Letter ID: CNXXXX9728984485

#BWNKMGV
#CNXX XX97 2898 4485#
COLORADO FUTURE ENTERPRISES LLC
1014 OSTERMAN AVE
DEERFIELD IL 60015-4290

Taxpayer ID: 20-3311732
Reporting period: December 2010
Total Deficiency: \$26,412.03
Balance due: \$26,412.03



We have audited your account 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 number 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 information listed below.

Sincerely,

Constance Beard
Director

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

217 524-3999

Statement

Date: March 30, 2015
Name: COLORADO FUTURE ENTERPRISES LLC
Taxpayer ID: 20-3311732
Letter ID: CNXXXX9728984485

Reasons for deficiency

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d). We determined your correct Illinois Income Tax because you did not file the appropriate Illinois Business Income Tax Return, as required by Illinois law. [35 ILCS 5/502(a), 904(b)]

Penalties

We are imposing a **late-filing or non-filing penalty** because you did not file a processable return by the due date (including any extended due date). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return, including any extended due date. This penalty cannot exceed \$250. [35 ILCS 735/3-3(a-10)]

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 but prior to the date the department has initiated an audit or investigation of the taxpayer;
- 20 percent of any amount that is paid later than 30 days and after the date the department has initiated an audit or investigation of the taxpayer; provided the penalty is reduced to 15 percent if the entire amount due is paid not later than 30 days after the department has provided the taxpayer with a form for waiver of restrictions on assessment. [35 ILCS 735/3-3(b-20)(2)]

Interest

Interest has been computed through March 30, 2015.

Auditor's Report



March 30, 2015



Letter ID: CNXXX15X976936X0

#BWNKMGV
 #CNXX X15X 9769 36X0#
 COLORADO FUTURE ENTERPRISES LLC
 1014 OSTERMAN AVE
 DEERFIELD IL 60015-4290

Taxpayer ID: 20-3311732
 Account ID: 07364-02688
 Return type: IL-1065
 Reporting period: December 2010



		Current Figures		Net Change		As Corrected
Step 1: Ordinary income or loss						
1	Ordinary income or loss or equivalent from federal Schedule K	0	523,326	1	523,326	
2	Net income or loss from all rental real estate activities	0	0	2	0	
3	Net income or loss from all other rental activities	0	0	3	0	
4	Portfolio income or loss	0	826,160	4	826,160	
5	Net IRC Section 1231 gain or loss	0	0	5	0	
6	Items of income (loss) not included on U.S. Form 1065 or 1065-B	0	0	6	0	
7	Add Lines 1 through 6. This is your ordinary income or loss.	0	1,349,486	7	1,349,486	
Step 2: Unmodified base income or loss						
8	Charitable contributions	0	0	8	0	
9	Expense deduction under IRC Section 179	0	0	9	0	
10	Interest on investment indebtedness	0	0	10	0	
11	Items of expense not deducted on U.S. Form 1065 or 1065-B	0	0	11	0	
12	Add Lines 8 through 11.	0	0	12	0	
13	Unmodified base income (loss). Subtract Line 12 from Line 7.	0	1,349,486	13	1,349,486	
14	Unmodified base income (loss) from Line 13	0	1,349,486	14	1,349,486	
Step 3: Income or loss						
15	State, municipal, and other interest income	0	0	15	0	
16	Illinois replacement tax deducted in arriving at Line 14	0	0	16	0	
17	Illinois special depreciation addition	0	0	17	0	
18	Related-party expenses addition	0	0	18	0	
19	Distributive share of additions	0	0	19	0	
20	Guaranteed payments to partners from U.S. Form 1065	0	0	20	0	
21	Amount of loss distributed to a partner	0	0	21	0	
22	Other additions	0	0	22	0	
23	Add Lines 14 through 22. This is your income or loss.	0	1,349,486	23	1,349,486	
Step 4: Illinois base income or net loss						
24	Treasury Interest income and other exempt federal obligations	0	0	24	0	
25	August 1, 1969, valuation limitation amount	0	0	25	0	
26	Personal Service inc or rsn allowance for compensation of partners	0	0	26	0	
27	Share of income distributed to a partner	0	0	27	0	
28	Enterprise Zone dividend subtraction	0	0	28	0	
29	High Impact Business Dividend subtraction	0	0	29	0	
30	Illinois special depreciation subtraction	0	0	30	0	
31	Related-party expenses subtraction	0	0	31	0	
32	Distributive share of subtractions	0	0	32	0	
33	Other subtractions	0	0	33	0	
34	Total subtractions. Add Lines 24 through 33.	0	0	34	0	
35	Base income or net loss. Subtract Line 34 from Line 23.	0	1,349,486	35	1,349,486	

March 30, 2015



Letter ID: CNXXX15X976936X0

COLORADO FUTURE ENTERPRISES LLC
1014 OSTERMAN AVE
DEERFIELD IL 60015-4290

Taxpayer ID: 20-3311732
Account ID: 07364-02688
Return type: IL-1065
Reporting period: December 2010

	Current Figures	Net Change	As Corrected
Step 5: Income allocable to Illinois			
36 Nonbusiness income or loss	0	0	0
37 Non-unitary partnership business income (loss) included in Line 36	0	0	0
38 Add Lines 36 and 37.	0	0	0
39 Business income or loss. Subtract Line 38 from Line 35.	0	1,349,486	1,349,486
40 Total sales everywhere	0	0	0
41 Total sales inside Illinois	0	0	0
42 Apportionment factor. Divide Line 41 by Line 40.	0.000000	1.000000	1.000000
43 Business income or loss apportionable to Illinois	0	0	0
44 Nonbusiness income or loss allocable to Illinois	0	0	0
45 Non-unitary partnership business income or loss apportionable to IL	0	0	0
46 Base income or net loss allocable to Illinois. Add Lines 43 thru 45.	0	0	0
Step 6: Net income			
47 Base income or net loss from Line 35 or Line 46	0	1,349,486	1,349,486
48 Illinois net loss deduction	0	0	0
49 Income after NLD. Subtract Line 48 from Line 47.	0	1,349,486	1,349,486
50 Base Income from Line 35	0	1,349,486	1,349,486
51 Divide Line 47 by Line 50.	0.000000	1.000000	1.000000
52 Exception allowance. Multiply Line 51 by \$1,000.	0	1,000	1,000
53 Net income. Subtract Line 52 from Line 49.	0	1,348,486	1,348,486
Step 7: Net replacement tax			
54 Replacement tax. Multiply Line 53 by 1.5%.	0	20,227	20,227
55 Recapture of investment credits	0	0	0
56 Replacement tax before credits. Add Lines 54 and 55.	0	20,227	20,227
57 Investment credits	0	0	0
58 Net replacement tax. Subtract Line 57 from Line 56.	0	20,227	20,227
Step 8: Tax, penalty, and interest			
59 Penalties			
a Late-filing or nonfiling penalty	0	250	250
b Underpayment of estimated tax penalty	0	0	0
c Late-payment penalty	0	2,023	2,023
d Audit late-payment penalty	0	2,023	2,023
e Collection fee, fraud or negligence penalty	0	0	0
f Amnesty penalty*	0	0	0
60 Total penalties. Add Lines 59a through 59f.	0	4,296	4,296
61 Interest			
a Interest on tax	0	1,890	1,890
b Amnesty interest*	0	0	0
62 Total interest. Add Lines 61a through 61b.	0	1,890	1,890
63 Total tax, penalty, and interest. Add Lines 58, 60, and 62.	0	26,413	26,413