

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

CREDIT CARD RECEIVABLE FUND, INC.)	
Petitioner)	
)	
v.)	15-TT-141
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
Respondent)	

NOTICE OF FILING

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The undersigned representative for the Illinois Department of Revenue (the “Department”) certifies that, on August 25, 2015, she filed the Department’s Answer with the Illinois Independent Tax Tribunal.



Susan Budzileni
Special Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned representative for the Illinois Department of Revenue certifies that, on August 25, 2015, she served the Department’s Answer on the individuals identified above, at the email addresses shown above.



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ANSWER TO PETITION

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

INTRODUCTION

1. CCRF, a corporation commercially domiciled in Ohio, inexplicably received Assessments from the Department relating to the recognition of long-term gain in the 2010 and 2011 tax years, from the partial sale of membership interest in a lower-tier, non-unitary, minority-held Ohio entity, Unirush LLC (“Unirush”), that did not have any presence in Illinois and whose sophisticated joint venture partner was located in New York. Despite repeated requests, the State has failed to provide a written explanation of the specific factual and legal basis for its position.

ANSWER: The Department admits that CCRF is commercially domiciled in Ohio. The Department admits that it issued the four (4) Notices of Deficiency CCRF (or Assessments as labeled by Petitioner) attached to its Petition as Exhibits A, B, C and D. The Department states that Petitioner had a presence in Illinois and, therefore, denies that Petitioner did not have a presence in Illinois. The Department denies that the State failed to provide a written explanation of the specific factual and legal basis for its position. Upon information and belief the Department admits that CCRF is a corporate entity

registered with the Ohio Secretary of State. However, per the Ohio Secretary of State registration, Petitioner's registered name is "Credit Card Receivables Fund, Incorporated." The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity as to the remaining statements contained in Paragraph 1.

2. CCRF held an ownership interest in Unirush Acquisitions LLC ("Acquisitions"), an Ohio limited liability company. Acquisitions, in turn, held a partial ownership interest in Unirush, another Ohio limited liability company. Prior to the disposition at issue, Acquisitions owned 50% of the membership interests in Unirush. Over the course of 2010 and 2011 (the "Audit Period"), Acquisitions sold and transferred approximately 40% of its membership interest in Unirush to an unrelated third-party group.

ANSWER: The Department admits the statements contained in Paragraph 2.

3. The Assessments seek to impose business income tax liability on CCRF for capital gains resulting from Acquisitions' sale of a portion of its membership interest in Unirush. This is wholly improper for several reasons:

- a) CCRF is not the proper target of the Assessments – CCRF only indirectly holds any ownership interest in Unirush (the entity which actually owns the interest is Acquisitions), and would not be able to directly transfer any membership interest of Unirush;

- b) Even if CCRF were the proper taxable entity, the Assessments are improper because CCRF is an Ohio corporation, with a commercial domicile in Ohio, and capital gains from the sale of membership interest can only be allocated to Illinois if CCRF had a commercial domicile in Illinois at the time of the sale, which it did not; and

- c) The Assessments are improper because CCRF and Unirush do not have a unitary business relationship, but are instead wholly separate entities, in completely different lines of business.

ANSWER: The Department admits that the Assessments are based, at least in part, on the inclusion of capital gains in CCRF's apportionable business income resulting from the partial sale of Acquisitions' interest in Unirush. The propriety of the business tax assessments is a legal conclusion not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3(a). The Department states that CCRF is the proper target of the Assessments. The Department lacks sufficient knowledge or information to form a belief as to truth or falsity as to the remaining statements contained in Paragraph 3(a).

3(b). The Department admits that CCRF's commercial domicile is Ohio. The Department admits that CCRF is registered as an Ohio corporation. The Department denies the remaining statements in Paragraph 3(b).

3(c). The Department denies the allegations of 3(c).

4. Thus, the Assessments should be dismissed.

ANSWER: The Department denies the statement contained in Paragraph 4.

BACKGROUND AND RELEVANT FACTS

1. Petitioner is an Ohio corporation, whose address is 10625 Techwoods Circle, Cincinnati, Ohio 45242. Petitioner's taxpayer ID number is 31-1363256. Petitioner's telephone number is 513-489-8877.

ANSWER: The Department admits the statements contained in Paragraph 1.

The Various Corporate Entities

2. CCRF is a holding company that is commercially domiciled in Ohio. CCRF's primary line of business is in owning interests in limited liability companies that purchase, service, collect and/or sell distressed consumer account receivables.

ANSWER: The Department admits that CCRF is a holding company that is commercially domiciled in Ohio. The Department admits that the statements CCRF provided in this allegation are a partial description of the type(s) of lines of businesses in which CCRF has an interest.

3. Unrelated to and independent of that line of business, CCRF also owned a partial interest in Unirush (indirectly through Acquisitions) during the Audit Period.

ANSWER: The Department admits that CCRF owned a partial interest in Unirush. The Department denies the remaining allegations of Paragraph 3.

4. Unirush is an Ohio limited liability company that is commercially domiciled in Ohio. Unirush was formed in 2002 by Rush Communications, LLC, a New York domiciled entity ("Rush Communications") as a 50% member, and CCRF as a 50% member.

ANSWER: The Department admits that CCRF is a holding company that is commercially domiciled in Ohio. The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining statements contained in Paragraph 4.

5. Rush Communications is a leading multi-faceted holding company with investments in prominent and respected brands in three industry segments: entertainment and media; fashion and lifestyle; and financial empowerment. Rush Communications is and was during the Audit Period, a sophisticated joint venture that was completely unrelated to and independent of CCRF. Rush Communication's commercial domicile is in the state of New York.

ANSWER: The Department lacks sufficient knowledge of information to form a belief as to the truth or falsity of the statements contained in Paragraph 5.

6. Unirush is in the business of marketing a prepaid debit card known as “The Rushcard,” a product backed by the owner of Rush Communications.

ANSWER: The Department lacks sufficient knowledge of information to form a belief as to the truth or falsity of the statements contained in Paragraph 6.

Assignment of Interests and Formation of Acquisitions

7. On January 1, 2008, CCRF transferred 25% of its 50% interest in Unirush (12.5% of the total company) to ZB Limited Partnership (“ZB”). ZB’s general partner is ZB/CCR Corp, and its President was Jay Zises (Not CCRF or David Rosenberg).

ANSWER: The Department lacks sufficient knowledge and information to form a belief as to the truth or falsity of the statements contained in Paragraph 7.

8. Upon closing that transaction, 50% of Unirush was owned by Rush Communications, 37.5% by CCRF, and 12.5% by ZB. Thus, CCRF went from 50/50 ownership to minority ownership of Unirush in 2008.

ANSWER: The Department lacks sufficient knowledge of information to form a belief as to the truth or falsity of the statements contained in Paragraph 8.

9. On January 1, 2009, CCRF and ZB collectively assigned all of their interests in Unirush to a new entity – Acquisitions. Upon closing that transaction, Unirush was owned 50/50 by Rush Communications and Acquisitions. A diagram of Unirush’s ownership structure at this point in time is set forth below.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 9. (Diagram in Petition is not inserted here).

10. Thus, at the time of this transaction, CCRF owned 75% of Acquisitions, and Acquisitions owned 50% of Unirush (thus, 75% of 50%). CCRF therefore indirectly owned, in the aggregate, 37.5% of Unirush LLC.

ANSWER: The Department admits the statement of Paragraph 10.

Partial Sale of Unirush Membership Interest and Restructuring

11. In 2010, Rush Communications, and Acquisitions each sold approximately 40% of their holdings to a new, unrelated, third-party group. Concurrently, a new (upper-tier) entity called Empowerment Ventures, LLC (“Empowerment”), was formed to hold all of the Unirush interests. Thus, Unirush became a wholly-owned, single-member LLC of Empowerment, and the former Unirush owners became owners of Empowerment.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 11.

12. Upon closing that transaction, Empowerment was owned 30% by Rush Communications, 30% by Acquisitions, and 40% by a third-party group. A diagram of Unirush’s ownership structure at this point in time is set forth below.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 12. (Diagram in Petition is not inserted here).

13. Thus, CCRF’s indirect ownership of Unirush dropped to approximately 22.5% (75% of 30%).

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 13.

CCRF's Responses to the Department's Unitary Questionnaire

14. On May 12, 2014, CCRF submitted its responses to the Department's Unitary Questionnaire.

ANSWER: The Department admits the statement contained in Paragraph 14.

15. In the Questionnaire, it explained that:

- a. The Unirush business is entirely different from and unrelated to CCRF's primary line of business. *See* Questionnaire #2.
- b. CCRF and Unirush had different directors. *See* Questionnaire #3.
- c. CCRF and Unirush had different CEOs. *See* Questionnaire #6.
- d. CCRF and Unirush had different COOs. *See* Questionnaire #11.
- e. CCRF and Unirush had different CFOs. *See* Questionnaire #15.
- f. CCRF and Unirush had different officers. *See* Questionnaire #23.
- g. Unifund entities (which included CCRF) had intercompany loans, but there were *no* intercompany loans with Unirush. *See* Questionnaire #29.
- h. No functional services were provided by CCRF to Unirush. *See* Questionnaire #37.
- i. CCRF and Unirush had different mailing addresses. *See* Questionnaire #38.
- j. CCRF provided centralized cash management for Unifund entities, but did not provide these services to Unirush. *See* Questionnaire #39.

ANSWER: The Department admits that CCRF submitted responses to the Department's questionnaire, but states that CCRF's responses did not establish factual correctness through its books and records. Accordingly, with respect to 15(a)

through 15(j), the Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements

16. On May 14, 2015, the Department issued a Notice of Deficiency to CCRF in the amount of \$11,372.89 for Form IL-1120-ST, Small Business Corporation Replacement Tax for the reporting period of December 2010, Audit ID no. A1601413120. A copy is attached as Exhibit A.

ANSWER: The Department admits the statements contained in Paragraph 16.

17. On May 14, 2015, the Department issued a Notice of Deficiency to CCRF in the amount of \$3,836.54 for form IL-1120-ST, Small Business Corporation Replacement Tax for the reporting period of December 2011, Audit ID no. A1601413120. A copy is attached as Exhibit B.

ANSWER: The Department admits the statements contained in Paragraph 17.

18. On May 15, 2015, the Department issued a Notice of Deficiency to CCRF in the amount of \$28,450.24 for form IL-1123-C¹, Composite Income and Replacement Tax for the reporting period of December 2010, Audit no. A1212422144. A copy is attached as Exhibit C.

ANSWER: The Department admits that it issued a Notice of Deficiency to CCRF in the amount of \$28,450.24 for Form IL-1023-C, Composite Income and Replacement Tax for the reporting period of December 2010, Audit ID no. A1212422144

¹ The tax form that was submitted was an IL-1023-C

19. On May 15, 2015, the Department issued a Notice of Deficiency to CCRF in the amount of \$7,787.01 for Form IL-1120-ST², Composite Income and Replacement Tax for the reporting period of December 2011, Audit ID no. A1212422144. A copy is attached as Exhibit D.

ANSWER: The Department admits that it issued a Notice of Deficiency to CCRF in the amount of \$7,787.01 for Form IL-1023-C, Composite Income and Replacement Tax for the reporting period of December 2011, Audit ID no. A1212422144.

20. Petitioner disputes each of these four Assessments.

ANSWER: The Department admits the statements contained in Paragraph 20.

APPLICABLE LAW

A. Capital gains from the sale of membership interests can be allocated to Illinois only if taxpayer had commercial domicile in Illinois.

21. Under Illinois law, “[c]apital gains and losses from sales or exchanges of intangible property are allocable to this state if the taxpayer had its commercial domicile in this state at the time of such sale or exchange.” 35 ILCS 5/303(b)(2).

ANSWER: Paragraph 21 contains Petitioner’s a summary of the referenced statutory section and does not contain the entire relevant statutory section and, therefore, does not accurately reflect the entire relevant law. 35 ILCS 5/303(b)(2) in its entirety speaks for itself.

B. Capital gains on sale of membership interests may be classified as business income only where companies are part of a “unitary business group,” as statutorily defined.

² The tax form that was submitted was an IL-1023-C.

22. Illinois defines a “unitary business group” as “a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other.” 35 ILCS 5/1501(27)³.

ANSWER: The Department denies the statement contained in Paragraph 22. 35 ILCS 5/1501(a)(27) in its entirety speaks for itself.

23. The statute provides further guidance as to factors that demonstrate whether a unitary business group exists:

Unitary business activity can ordinarily be illustrated where the activities of the members are: (1) in the same general line (such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance); or (2) are steps in a vertically structured enterprise or process (such as the steps involved in the production of natural resources, which might include exploration, mining, refining, and marketing); and, in either instance, the members are functionally integrated through the exercise of strong centralized management (where, for example, authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing and capital investment is not left to each member).

ANSWER: The Department denies the statement in Paragraph 23. 35 ILCS 5/1501(a)(27) in its entirety speaks for itself.

ERROR 1 – PETITIONER IS NOT A PROPER PARTY.

24. The Assessments are improper because Petitioner is not a proper party to the Assessments. CCRF was not the entity who transferred the membership interest – it was Acquisitions.

³ Petitioner, throughout its Petition, did not correctly cite the sub-section of this statutory provision and the Department trusts that it is referring to 35 ILCS 5/1501(a)(27) throughout the Petition.

ANSWER: The Department denies that the Assessments were improper. Paragraph 24 contains a legal conclusion, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

ERROR 2 – PETITIONER HAS COMMERCIAL DOMICILE IN OHIO.

25. The Assessments are improper because Petitioner has a commercial domicile in Ohio, not Illinois.

ANSWER: The Department denies the allegations contained in Paragraph 25.

26. Pursuant to the applicable Illinois law, any capital gains from the sale of the membership interest in Unirush could be allocated to Illinois only if the seller-taxpayer had a commercial domicile in Illinois at the time of that sale. 35 ILCS 5/303(b)(2).

ANSWER: The Department denies the allegations contained in Paragraph 26.

27. As set forth above, neither CCRF nor Acquisitions had a commercial domicile in Illinois. The commercial domicile of each is Ohio. Thus, the sale itself generated nonbusiness income which is allocated to Ohio.

ANSWER: The Department denies the allegations contained in Paragraph 27.

ERROR 3 – THERE IS NO UNITARY BUSINESS GROUP.

28. The Assessments are improper because there is no unitary relationship between CCRF and Unirush (or between Acquisitions and Unirush).

ANSWER: The Department denies the Assessments are improper. The Department denies that there is no unitary relationship between CCRF and Unirush (or between Acquisitions and Unirush).

29. The applicable Illinois statute defines a “unitary business group” as a “group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other.” 35 ILCS § 5/1501(27).

ANSWER: The Department denies the statement contained in Paragraph 29. 35 ILCS § 5/1501(A)(27) in its entirety speaks for itself.

30. Unirush, a joint venture, between two completely unrelated and sophisticated parties during the Audit Period: (1) did not have “common ownership” with CCRF, and (2) was not integrated with, dependent upon, nor contribute to CCRF.

ANSWER: Paragraph 30 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

A. There is no common ownership between Petitioner and Unirush.

31. “Common ownership” in the case of corporations is defined as the direct or indirect control or ownership of *more than 50%* of the outstanding voting stock of the persons carrying on unitary business activity. 35 ILCS § 5/1501(27) (emphasis added).

ANSWER: Paragraph 31 contains a legal conclusion, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). 35 ILCS 5/1501(a)(27) in its entirety speaks for itself.

32. CCRF never owned more than 50% of Unirush. In fact, at the time of the sale at issue, CCRF indirectly owned only 37.5% of Unirush – far below the “more than 50%” threshold. 35 ILCS § 5/1501(27).

ANSWER: With respect to the statements contained in Paragraph 32 referencing the percentages of ownership, the Department states that because Unirush is a pass through LLC, the unitary common ownership test addressed in § 1501(a)(27) for a

corporation is not applicable, nevertheless the Department has insufficient knowledge or information to form a belief as to the truth or falsity of these statements.

B. None of the indicia of unitary business activity exist in this case.

33. The statute also explains that, “unitary business activity can ordinarily be illustrated where the activity of the members are: (1) in the same general line of business, or (2) are steps in a vertically structured enterprise or process; *and*, in either instance, the members are *functionally integrated through the exercise of strong centralized management.*” 35 ILCS § 5/1501(27) (emphasis added). None of these factors are present in the case at hand.

ANSWER: The Department denies the statements contained in Paragraph 33 because it only contains a portion of § 5/1501(a)(27) and does not contain the entire relevant statutory section and 35 ILCS 5/1501(a)(27) in its entirety speaks for itself. Petitioner’s statement that “[n]one of these factors are present in the case at hand” is a legal conclusion, not a material statement of fact, and, therefore, does not require an answer pursuant to Rule 310(b)(2).

34. CCRF and Unirush are in different lines of business:
- a. CCRF is a holding company of special purpose limited liability companies that purchase, service, collect and/or sell distressed consumer account receivables;
 - b. In contrast, Unirush provides debit card marketing for Rushcard.

ANSWER: The Department denies the allegations contained in Paragraph 34.

35. Moreover, CCRF and Unirush are not functionally integrated through the exercise of strong centralized management. As indicated above, Taxpayer’s responses to the Unitary Questionnaire clearly demonstrate that the two companies have different directors, CEOs, COOs, CFOs and operating officers.

ANSWER: Paragraph 35 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

36. This separation is further reflected in the fact that while Unifund and affiliated companies had intercompany loans with each other, there were *no* such loans with Unirush.

ANSWER: Paragraph 36 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

37. Likewise, CCRF performed functional services and centralized cash management for its majority-owned Unifund entities, but, other than certain clerical tasks, it did *not* provide these same services to Unirush.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 37.

ERROR 4 – NO PRESUMPTION OF CORRECTNESS.

38. Based on the Department's conduct in the audit leading to the Assessments (including, notably, its failure to apply facts provided by the Petitioner to the applicable law), and the Department's lack of responsiveness to questions from the Petitioner as to the legal basis for the Assessments, the Department is not entitled to the presumption of correctness under 35 Ill. Comp. Stat. 5/904 and the burden of proof must be shifted to the Department.

ANSWER: The Department denies the statements contained in Paragraph 38.

ERROR 5 – ABATEMENT OF PENALTY FOR REASONABLE CAUSE.

39. All penalties imposed by the Department must be abated for reasonable cause.

ANSWER: The Department denies the statements contained in Paragraph 38.

40. The Department has assessed penalties on each of the Assessments

ANSWER: The Department admits the statement contained in Paragraph 40.

41. Illinois law provides that no penalties shall be imposed on a taxpayer if the failure to pay tax was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8. The Department denies the statement contained in Paragraph 29.

ANSWER: The Department denies the statements contained in Paragraph 41. Paragraph 41 contains only a portion of § 3-8, does not contain the entire relevant 35 ILCS 735/3-8 in its entirety speaks for itself. Additionally, the Department states that Petitioner failed to allege any facts that support the abatement of penalties based on reasonable cause.

42. 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 the proper tax liability and to file and pay the proper liability in a timely fashion. 86 Illinois Admin. Code §700.400(b).

ANSWER: The Department denies the statements contained in Paragraph 42.

43. 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).

ANSWER: Paragraph 43 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Additionally, the Department states that Petitioner failed to allege any facts to support its position that it exercised ordinary business care and prudence and made a good faith effort in determining and paying its proper tax liability.

44. Petitioner made a good faith effort to determine its proper tax liability and to file and pay its proper liability in a timely fashion.

ANSWER: Paragraph 44 contains legal conclusions, not material allegations of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Additionally, the Department states that Petitioner failed to allege any facts to support its position that it made a good faith effort in determining and paying its proper tax liability.

45. Petitioner exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability in a timely fashion.

ANSWER: Paragraph 45 contains legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). With respect to Petitioner's timely filing its tax return, the Department admits that Petitioner timely filed its tax return. However, the Department states that Petitioner failed to allege any facts to support its position that it exercised ordinary business care and prudence in determining and paying its proper tax liability.

CONCLUSION

46. In short, CCRF, a corporation commercially domiciled in Ohio, realized a gain from the sale of certain membership interests in a minority-held Ohio entity that had no presence in Illinois and whose sophisticated joint venture partner was located in New York. There is simply no basis to impose Illinois tax liability on this event.

ANSWER: The Department denies that there was no basis to impose Illinois tax liability in this matter. The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity as to the remaining statements contained in Paragraph 46.

WHEREAS, the Department prays that this Tribunal enter an Order that:

- a. Finds the Notices of Deficiency are correct as issued;
- b. Orders judgment in favor of the Department and against the Taxpayer; and
- c. Grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
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By: _____

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