

6. On May 1, 2007, Mr. Nallapati incorporated Cosmos Granite & Marble Corp. in Illinois.
7. Mr. Nallapati is the president and sole shareholder of Cosmos Granite & Marble Corp.
8. In the incorporation, Mr. Nallapati was assisted by Natwar Patel, of Des Plaines, Illinois, who held himself out to be an accountant and experienced in corporate and tax matters.
9. Mr. Patel did not explain the requirements of complying with sales tax to Mr. Nallapati.
10. After a few months of operating his business, Mr. Nallapati became aware of the requirement to register for a sales tax number and the duty to collect and remit sales tax. He promptly applied for a sales tax number.
11. Mr. Nallapati then consulted with Mr. Patel, who took care of the process of filing returns and remitting the collected sales tax.
12. In approximately 2008, Mr. Nallapati became aware of the requirement inquire as to whether a purchaser was exempt. He was not aware of the requirement to collect a CRT-61 nor verify the sales tax exemption number.
13. Mr. Nallapati would verbally ask the purchaser if they were exempt. If they said yes, Mr. Nallapati would ask for and record the exemption certificate number that was provided.
14. It wasn't until the Department audited the Taxpayer's sales tax returns, that Mr. Nallapati learned of the need to collect the CRT-61.
15. At that time, Mr. Nallapati went to his customers that had stated they were exempt from sales tax and requested the CRT-61. Most customers did not provide the form.
16. Later in the audit, Mr. Nallapati learned of the need to verify the number that was provided. Mr. Nallapati asked both his current CPA, Ron Jachim of Catalano Caboor & Co. and the auditor how to verify the number and neither were able to provide direction.

Mr. Nallapati searched online to find out how to verify the exemption number and was not able to find the needed information. Finally, the Mr. Jachim found the information.

17. When Mr. Nallapati attempted to verify the exempt certificate numbers that were provided to him, Mr. Nallapati discovered that most of the numbers provided to him by his purchasers were not valid.
18. At no time did Mr. Nallapati's advisor tell Mr. Nallapati about the requirement to collect Form CRT-61 or the requirement to check the validity of the sales tax exemption number online.
19. The Taxpayer has remitted all collected sales tax funds to the State.
20. The Taxpayer had retained the required records and during the audit, provided most of the documents requested by the Department.

ERROR I - THE DEPARTMENT ERRONEOUSLY ASSESSED FRAUD PENALTIES AGAINST THE TAXPAYER

21. Fraud means "actual, intentional wrongdoing, and the intent required is the specific purpose to evade a tax believed to be owing." *Mitchell v. Commissioner*, 118 F.2d 308, 310 (5th Cir. 1941); *Pavlic v. Commissioner*, T.C. Memo 1984-182. Fraud will never be presumed or imputed. *Goldberg v. Commissioner*, 239 F.2d 316, 321 (5th Cir. 1956). The required state of mind is one which, "if translated into action, is well calculated to cheat or deceive the government." 10 Mertens, *Law of Federal Income Taxation* @55.10, p. 46 (1984). *Harrison v. IRS*, 1991 Bankr. LEXIS 152, *32 (Bankr. N.D. Ind. 1991)
22. The fraud addition is properly applied in cases where (1) there is an underpayment of tax and (2) the taxpayer intended to conceal, mislead, or otherwise prevent the collection of taxes. *Steinsmith v. Commissioner*, 60T.C. Memo 1990-397; *Thomas v. Commissioner*, 60

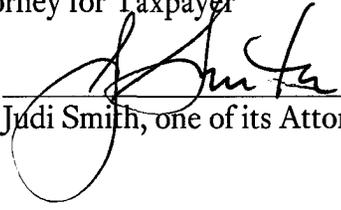
T.C. Memo 1990-365; *see also*, *Candela v. United States*, 635 F.2d 1272, 1274 (7th Cir. 1980); *accord*, *Zell v. Commissioner*, 763 F.2d 1139, 1143 (10th Cir. 1985) (“the required state of mind is one which, if translated into action, is well calculated to cheat or deceive the government”). *Id.*

23. The standard used by Illinois Court in evaluating the application of a fraud penalty in the context of sales tax is “clear and convincing evidence.” While the taxpayer bears the burden of proving that an assessment proposed by the Department is not correct, when the issue relates to the imposition of a fraud penalty, the Department bears the burden of showing the existence of fraud by clear and convincing evidence. *The Department of Revenue of State of Illinois v. “Anaheim Liquors, Inc.”*, ST 00-11, 8 (2000).
24. Mr. Nallapati was not accustomed to the business practices of Illinois when he first started his business.
25. Upon learning of the sales tax, Mr. Nallapati took reasonable steps to hire professionals to help him comply with the laws.
26. Mr. Nallapati’s reasonably relied on the advisors he hired to inform him about the requirements of sales tax compliance.

WHEREFORE, Taxpayer respectfully requests judgment in their favor for abatement of the fraud penalties assessed as a result of the Department’s audit for the aforementioned periods.

Date: July 17, 2015

Respectfully submitted,
THE LAW OFFICE OF JUDI SMITH, LLC
Attorney for Taxpayer

By: 
Judi Smith, one of its Attorneys

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



#BWNKMGV
#CNXX X16X 9254 6725#
COSMOS GRANITE & MARBLE CORP
ATTN: POA-CATALANO CABOOR/RON JACHI
101 W 22ND ST STE 207
LOMBARD IL 60148-4989

May 20, 2015



Letter ID: CNXXX16X92546725

Account ID: 3903-7436

We have audited your account for the reporting periods January 01, 2011, through March 31, 2013. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	323,456.00	0.00	323,456.00
Late Payment Penalty Increase	64,691.00	0.00	64,691.00
Fraud Penalty	161,728.00	0.00	161,728.00
Late Filing Penalty Increase	2,168.00	0.00	2,168.00
Interest	21,896.39	0.00	21,896.39
Assessment Total	\$573,939.39	\$0.00	\$573,939.39

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 July 20, 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.

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

217 785-6579

Taxpayer Statement



May 20, 2015

TDD 1 800 544-5304



Letter ID: CNXXXX8262396320

#BWNKMGV
#CNXX XX82 6239 6320#
COSMOS GRANITE & MARBLE CORP
ATTN: POA-CATALANO CABOOR/RON JACHI
101 W 22ND ST STE 207
LOMBARD IL 60148-4989

Account ID: 3903-7436
Total amount due: \$573,939.39

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2013	327,778.00	228,609.34	21,896.39	-	(4,344.34)	573,939.39
• \$573,939.39 of this amount is subject to protest.						
31-Jan-2015	6,893.00	-	-	-	(20,869.00)	(13,976.00)
31-Mar-2015	29,548.00	-	-	-	(40,332.00)	(10,784.00)

SOA

Retain this portion for your records.

P-000259

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX8262396320
COSMOS GRANITE & MARBLE CORP

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

Total amount due: \$573,939.39

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

\$573,939.39 is subject to protest.

Do not pay any Income Tax liability that you intend to protest.

000 006 005994463520 731 123199 4 0000057393939