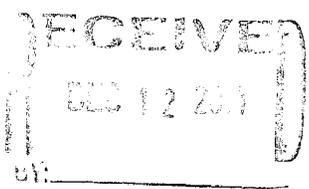


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RPMG INC.)
)
 Petitioner,)
)
 v.)
)
 THE ILLINOIS DEPARTMENT OF REVENUE,)
)
 Respondent.)

No. 14-TT-149
Chief Judge James M. Conway



PETITIONER’S RESPONSE TO RESPONDENT’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS II, III, AND IV

Petitioner, RPMG, Inc. (“RPMG” or “Petitioner”), through its undersigned counsel, Horwood Marcus & Berk Chartered, for its Response to Respondent’s Motion for Partial Summary Judgment on Counts II, III, and IV of Petitioner’s Petition states as follows:

INTRODUCTION

On June 2, 2014, the Illinois Department of Revenue (“Department”) issued two Notices of Deficiency (“Notices”) stemming from the Department’s combination of Petitioner’s parent, a partnership, with Petitioner, a C corporation, for purposes of Illinois income tax. The Department’s combination is based on the Department’s determination that Petitioner and its parent are engaged in a unitary business relationship.

On or about August 1, 2014, Petitioner filed a Petition with this Tribunal, protesting the Department’s assessment of tax against Petitioner on the basis that such treatment necessarily results in unconstitutional double taxation of Petitioner’s income, once at the Petitioner’s level, and again at its shareholder partnership’s partner level. Moreover, Petitioner contends that even if the Department’s treatment of Petitioner and its parent’s partners is constitutional, the Department never issued guidance indicating that a partnership parent’s income should be combined with the income of its unitary corporate subsidiary. In fact, the Department’s guidance

provides that a partnership's income should not be included in the unitary group except under certain circumstances which are not involved in this case. Additionally, even if such treatment was proper under the United States Constitution and Illinois law, Petitioner is entitled to alternative apportionment of its income on the basis that such treatment results in the apportionment of income to the state out of all appropriate proportion of the business Petitioner conducts in the state. Finally, Petitioner contends that double interest imposed under the Tax Delinquency Amnesty Act ("Amnesty Act") should be abated based on reasonable cause.

The Department raises three arguments that serve the sole purpose of undermining any fairness owed to Petitioner. First, the Department makes the rather bizarre argument that it does not have an obligation to give taxpayers "correct and complete information to help [taxpayers] comply with the tax laws in Illinois[.]" stating that it was instead Petitioner's duty to obtain a private letter ruling with respect to this issue. The Department next contends that Petitioner and, in fact, no taxpayer, is entitled to request alternative apportionment in response to a notice of deficiency at the Illinois Independent Tax Tribunal. Finally, despite admitting that double interest under the Amnesty Act is in fact a "sanction," the Department contends that such sanctions are not penalties and therefore may not be abated for reasonable cause. For the reasons stated below, each of these arguments fails, and is instead a poor attempt to distract this Tribunal from the fatal unconstitutionality of the Department's treatment of Petitioner's income.

ARGUMENT

I. **The Illinois Taxpayer Bill of Rights Requires that the Department Provide Correct and Complete Information Upon Which Taxpayers are Entitled to Rely**

In its Petition, Petitioner contends that the Department's Notices must be withdrawn because the assessment violates Petitioner's rights under the Illinois Taxpayer Bill of Rights,

which entitles taxpayers to correct and complete information, and entitles taxpayers to rely on information provided by the Department. The Department responds that such language does not exist in the Illinois Taxpayer Bill of Rights and that no language exists that is “remotely close to the language proffered in the Petition.” Respondent’s Motion, Paragraph 9. The Department goes on to argue that it has no obligation to provide guidance as to how taxpayers are to compute their taxable income. It is, according to the Department, taxpayers’ obligations to obtain private letter rulings.

It is true that the language contained in Petitioner’s Petition at paragraph 28, is not directly found in the Illinois Taxpayer Bill of Rights. This language is, instead, a paraphrase, in the Department’s own words, of the Department’s responsibilities under the Taxpayer Bill of Rights found on the Department’s website. A print-out of the Department’s language is attached hereto as Exhibit A. In addition to the paraphrased language provided by the Department which the Department now apparently rejects, there can be no doubt that the Taxpayer Bill of Rights confers the right to taxpayers to reasonably rely on guidance provided by the Department. Indeed, the Taxpayer Bill of Rights specifically entitles taxpayers the right to have all taxes and penalties abated based upon erroneous written information or advice given by the Department. 20 ILCS 2520/4(c). Given the clear language provided in the Department’s reporting instructions, Petitioner complied with the rules as they were written. The Department may not revise Petitioner’s reporting obligations post hoc based on the position that the Department could not have, at the time, “anticipate[d] every conceivable business scenario in drafting its regulations and instructions.” Department’s Motion, Paragraph 12.

The Department’s Exhibit A provides the 2008 Schedule UB Instructions. Those instructions are clear with respect to partnerships. The Instructions provide: “Partnerships are

not included in Schedule UB. If you have a partnership that is a member of a unitary business group, see the instructions for the Schedule K-1-P(1).” The Department has completely disregarded this language, and has not provided the instructions for the Schedule K-1-P(1) in its Motion. The instructions for Schedule K-1-P(1) provide specific guidance with respect to when a partnership is engaged in a unitary business with its corporate partner, the reverse of the facts in this case. In such a case, the partnership’s income and factors flow from the partnership up to the individual partner, which may be a corporation. K-1-P(1) does not relate to situations where a partnership is engaged in a unitary relationship with a corporate subsidiary.¹ A copy of the 2008 Schedule K-1-P(1) Instructions is attached hereto as Exhibit B. Because the K-1-P(1) instructions do not relate to the facts involved with Petitioner and its partnership parent, the general rule provided in the 2008 Schedule UB Instructions apply. Thus, Petitioner was not required to have included its partnership parent in the Schedule UB when calculating its taxable Illinois income. If the Department wishes to change its reporting rules now, despite the clear unconstitutionality of such a change, Petitioner is at a minimum entitled to rely upon the clear guidance provided in the 2008 Schedule UB Instructions for the years prior to that change. *See also Hartney Fuel Oil Company v. Hamer*, 376 Ill. Dec. 294 (2013); *see also Dep’t of Revenue v. John Doe*, IT 09-4 (2004) (noting that the “Department’s forms and instructions have the force and effect of regulations pursuant to section 1501(a)(1) of the Illinois Income Tax Act[.]”).

¹ The reason the K-1-P(1) does not relate to situations where a partnership is engaged in a unitary relationship with a corporate subsidiary is clear. As described in Count I of Petitioner’s Petition, doing so results in unconstitutional double taxation. There is no other explanation for why the Department would have provided guidance with respect to partnerships’ relationship to a unitary group and not discussed what would otherwise have been a fairly ordinary circumstance, where a partnership has a corporate subsidiary. To suggest that the Department’s failure to address this is simply a product of the Department not being able to “anticipate every conceivable business scenario” is disingenuous at best.

II. Petitioner is Entitled to Petition for Alternative Apportionment before this Tribunal

In its Motion, the Department contends that Petitioner is not entitled to alternative apportionment of its income because it did not petition the Department's Director for alternative apportionment. To that end, the Department contends that "the Director has *sole and exclusive authority* to grant a petition for an alternative apportionment formula." Department's Motion, Paragraph 19. As such, the Department contends the Tribunal is without jurisdiction to grant alternative apportionment. This argument also fails, and is merely a weak attempt to distract this Tribunal from the substance of Petitioner's Petition.²

The Department's attempt to claim sole authority in granting alternative apportionment notwithstanding, the statute permitting alternative apportionment, 35 ILCS 5/304(f) ("Section 304(f)"), sets no such limitation. Instead, the statute provides that a "person may petition for, or the Director may, without a petition, permit or require" alternative apportionment. The Department's regulations, further refine the extent to which a taxpayer's petition is considered timely filed. The regulations provide that a petition is timely filed when filed "as a part of a protest to a notice of deficiency issued as a result of the audit of the taxpayer's return and supporting books and records; provided that the audit adjustments being protested result in the need for alternative apportionment." 86 Ill. Admin. Code 100.3390(e)(3).

In its Motion, the Department makes a half-hearted attempt to suggest that Petitioner could have petitioned for alternative apportionment from the Director prior to the issuance of the Notices, and as such, is prohibited from requesting alternative apportionment at this stage. Of

² Notably, the Department never argues that Petitioner has not satisfied the showing required in Section 304(f). Indeed, if the Department's treatment of Petitioner's income is upheld, double taxation of the partners in Petitioner's partnership parent will be assured, once at the level of the combined group, and then again at the parent partnership's partner level. The Department's attempt to focus exclusively on the procedural aspects of alternative apportionment undoubtedly stems from the inability to argue that alternative apportionment would not be appropriate under such circumstances.

course, there can be no question that Petitioner invokes alternative apportionment now only because the Department has taken a novel approach, in direct contradiction to the 2008 UB Schedule Instructions, by including Petitioner's partnership parent in its UB Schedule. Because Petitioner could not have petitioned for alternative treatment of its income until the Department made such changes, the petition was "timely filed" as a protest to the Notices per the Department's regulations. The Department does not pursue this argument far, because there is little doubt that if a protest could have been brought to the Department, it would have considered to petition for alternative apportionment to have been brought timely.

The Department's real motivation with respect to this argument is to completely deprive taxpayers of the ability to invoke alternative apportionment in response to notices of deficiency before the Illinois Independent Tax Tribunal. To be clear, the statute governing taxpayers' ability to invoke alternative apportionment nowhere grants the Department sole and exclusive authority to grant a petition for an alternative apportionment formula. The Department may not, through regulation, limit the rights of taxpayers granted by statute. The Illinois Independent Tax Tribunal Act of 2012 ("the Act") specifically provides that the Tribunal "shall provide administrative hearings in all tax matters except those reserved to the Department of Revenue or another entity by statute, and shall render decisions and orders relating to matters under its jurisdiction." 35 ILCS 1010/1-5(b). Moreover, the Act specifically enumerates matters over which the Tribunal does not have jurisdiction, and nowhere does this include reference to petitions for alternative apportionment. 25 ILCS 1010/1-45(e)(1)-(6).

Petitioning for alternative apportionment of income outside the Department is not without precedent. Under the Illinois Protest Monies Act, taxpayers may bring a challenge to a notice of deficiency in Illinois Circuit Court without resorting to the Department's administrative protest

procedures. In such cases, circuit courts are free to review petitions for alternative apportionment in response to a count in the complaint alleging a taxpayer is entitled to alternative apportionment of income.

The Department's reading of the alternative apportionment statute and regulation is unfortunate and inequitable. Under the administrative code, taxpayers are undoubtedly entitled to petition for alternative apportionment in response to a notice of deficiency in a protest filed with the Department. However, such protests may no longer be brought in cases where the amount at issue is in excess of \$15,000. The effect of the Department's argument would be to deprive all taxpayers of the ability to invoke alternative apportionment in response to the issuance of a notice of deficiency in cases where the amount at issue exceeds \$15,000. Nowhere in Section 304(f), nor in the Act, did the General Assembly ever create, nor could it have intended to create, such a restriction.

Taxing statutes are to be strictly construed against the government and in favor of taxpayers. *Van's Material Company v. Dep't of Revenue*, 131 Ill. 2d 196 (1989). Here, nothing in Section 304(f) limits Petitioner's ability to invoke alternative apportionment before this Tribunal. In light of the lack of authority supporting the Department's position, the inequitable result of finding in the Department's favor, and the support in Section 304(f) as well as the practice of petitioning for alternative apportionment in matters brought directly to Illinois' circuit courts, the Department's contention that Petitioner may not petition this Tribunal for alternative apportionment should be rejected.

III. Petitioner is Entitled to Abatement of Double Interest Imposed under the Tax Amnesty Act

The Department's final argument in its Motion is that Petitioner is not entitled to abatement of double interest imposed under the Tax Amnesty Act. The Department contends

that the Uniform Penalty and Interest Act (“UPIA”), Section 3-8, specifically provides for abatement of penalties under Sections 3-3-, 3-4, 3-5, and 3-7.5 of the UPIA, but conspicuously excludes Section 3-2, which includes the provision imposing double interest. Because Section 3-8 makes no mention of Section 3-2, the Department argues that the double interest penalty may not be abated based on reasonable cause.

First, the Department’s arguments regarding abatement of the double interest penalty are premature. Indeed, this Tribunal only needs to reach this question in the event that Petitioner’s primary arguments fail. Because courts, and by extension this Tribunal, emphasize the importance of judicial restraint, the question of whether a taxpayer is entitled to abatement of double interest should not be answered until an answer on Petitioner’s substantive claims has been reached.

Nonetheless, Petitioner is entitled to abatement of the Amnesty double interest penalty. Notably, the UPIA is not the only authority which provides for abatement of penalties due to reasonable cause. Indeed, 35 ILCS 5/1005(b)(4) creates a general reasonable cause exception to penalties imposed with respect to income tax filings. 35 ILCS 5/1005(e) specifically mentions Amnesty penalties, and notes that the penalties under 35 ILCS 5/1005 will not apply to the double interest and penalties imposed by the Amnesty Act. However, Subsection 5/1005(e) does not indicate that the reasonable cause exception should not apply to double interest penalties. In fact, the opposite is true. 35 ILCS 5/1005 specifically envisions scenarios where increased interest penalties could be subject to abatement.

Moreover, the Taxpayer Bill of Rights entitles Petitioner to the abatement of the double interest penalty under the Amnesty Act. As described above, the Department’s guidance with respect to how a partnership engaged in a unitary business should report its income was clear on

the face of the 2008 UB Schedule Instructions: the partnership should not have been included in the UB schedule. To the extent the Department is correct that the partnership should be included in the UB Schedule, this erroneous advice should, at a minimum, entitle Petitioner to abatement of penalties under the Taxpayer Bill of Rights provision which entitles Taxpayers to abatement of penalties assessed based on erroneous written information or advice given by the department. 20 ILCS 2520/4(c).

Finally, Petitioner is entitled to abatement of the double interest penalties as a matter of equity. “The Illinois Independent Tax Tribunal shall provide administrative hearings in **all tax matters** except those matters reserved to the Department of Revenue or another entity by statute[.]” 35 ILCS 1010/1-5 (emphasis added). 20 ILCS 2505/2505-505 provides that the Department may create a board of appeals which has the power to review departmental actions involving the determination of tax liability arising under the tax laws administered by the Department. The Board of Appeals is, in effect, a board of equity in which taxpayers may have not only penalties, but tax and interest abated for either reasonable cause or financial hardship. Nothing in Illinois statute indicates that this authority is exclusive to the Department of Revenue. Thus, under 35 ILCS 1010/1-5, this Tribunal, too, possesses the jurisdiction to review departmental actions and to resolve them equitably.

The Department contends that “[p]enalties and interest are not interchangeable; one is not ‘in essence’... equivalent to the other.” Department’s Motion, paragraph 32. Petitioner agrees that penalties and interest are not the same thing. However, “double interest” is a misnomer, and is not actually interest. The Department may not hide behind semantics in order to justify assessment of a penalty where reasonable cause exists for abatement. The term “interest” is defined as a “charge for borrowed money generally a percentage of the amount borrowed.”

Merriam-Webster Dictionary, 2014. During 2008, the Department had a set interest rate which compensated it for the money owed it in the hands of taxpayers. This rate is based on the federal underpayment rate. During 2008, the Department's interest rate ranged from 5-7%. Double interest, however, has no bearing on the taxpayer's obligation to compensate the Department for borrowed money. Thus, the Department's assertion that "[p]enalties and interest are not interchangeable" is correct; double interest is not interest at all, but is instead a penalty subject to waiver based on reasonable cause. The Department goes so far as to agree with this conclusion, calling double interest a "sanction." Consequently, because Petitioner reasonably relied on the 2008 UB Schedule Instructions providing that partnerships not be included in the UB Schedule except under certain circumstances not present here, and because combining the partnership's receipts in Petitioner's income violates the United States Constitution, Petitioner is at a minimum entitled to abatement of all penalties, including Amnesty double interest.

CONCLUSION

The Department's Motion for Partial Summary Judgment should be denied. The Department has failed to demonstrate that Petitioner is not entitled to rely on information provided by the Department, nor has it demonstrated that it is not required to provide such information. The Department has also failed to show that Petitioner is not entitled to petition this Tribunal for alternative apportionment. Section 304(f) undoubtedly entitled Petitioner to file such a Petition. Finally, the Department's contention that Petitioner is not entitled to even request abatement of double interest penalties is premature. Nonetheless, the Department has failed to show that Petitioner may not request such abatement. Double interest, characterized by the Department itself as a sanction, is a penalty, and Illinois law clearly entitles Petitioner to abatement of penalties for reasonable cause.

Respectfully Submitted,

RPMG, INC.

Petitioner

A handwritten signature in black ink, consisting of a stylized, cursive 'R' followed by a long horizontal stroke that tapers to the right.

One of its Attorneys

Fred O. Marcus
Christopher T. Lutz
Horwood Marcus & Berk Chartered
500 W. Madison St., Ste. 3700
Chicago, Illinois 60661
(312) 606-3210

EXHIBIT A

About IDOR

 SEARCH

What are my rights?

The Taxpayers' Bill of Rights identifies your rights and our responsibilities to ensure that those rights are protected.

Taxpayers' Bill of Rights

- You have the right to call the Illinois 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 departments findings.
- You have the right to appeal our decisions, in many instances, within specified time periods, by asking for department review, or by taking the issue to court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.

For more information about these rights and other departmental procedures you may use this website or contact us at the address below.

Write:

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19044
SPRINGFIELD IL 62794-9044

Call:

1 800 732-8866
217 782-3336
1 800 544-5304 (TDD-telecommunications device for the deaf)

Our responsibilities

We must give you correct and complete information to help you comply with tax laws in Illinois. Our forms and instructions explain the specific filing and payment requirements and methods, appeal processes, and limitation periods we both must follow, according to each tax act.

If we send you a bill or notice, we will tell you why you received it, what actions you may take to resolve the matter, any protest actions that may be available to you, and what number to call for assistance.

We must give you courteous and responsive answers if you contact us with questions about your account, need help meeting your tax obligations, or have questions about a particular tax matter.

All information you give us on your returns, in your correspondence, and during meetings with our auditors or representatives is kept confidential. However, we will follow the laws that require or allow us to share confidential information with other government agencies (e.g., the Internal Revenue Service and other state and local taxing authorities) to ensure that you have met your payment obligations. These agencies must agree to keep this information confidential.

Your responsibilities

The Illinois tax system is based, in large part, on your ability to calculate the amount of tax you owe and pay that amount when it is due. To help you meet this responsibility, we provide the most recent tax information on our returns and in our instructions, bulletins, booklets, and publications. It is your responsibility to obtain this information and use it concerning your registration, filing, and payment requirements.

EXHIBIT B



General Information

What is the purpose of Schedule K-1-P?

The purpose of Schedule K-1-P, Partner's or Shareholder's Share of Income, Deductions, Credits, and Recapture, is for you to supply each individual or entity who was a partner or shareholder at any time during your tax year with that individual's or entity's share of the amounts you reported on your federal income tax return and your Illinois business income tax return.

For Illinois Income Tax purposes, you **must** give a completed Schedule K-1-P **and** a copy of the Schedule K-1-P(2), Partner's and Shareholder's Instructions, to each partner or shareholder. This must be done by the due date, including any extended due date, of your Form IL-1065 or Form IL-1120-ST.

Do not attach any Schedule K-1-P that you complete and issue to your partners or shareholders to your Form IL-1065 or Form IL-1120-ST. However, you must

- keep a copy of each Schedule K-1-P available for inspection by our authorized agents and employees, and
- attach any Schedule K-1-P issued to you by another partnership or S corporation, as described in Schedule K-1-P(2), Partner's and Shareholder's Instructions.

What is business income?

Business income means all income, other than employee compensation, that may be apportioned by formula among the states in which you are doing business without violating the Constitution of the United States. All income of a partnership or subchapter S corporation is business income unless it is clearly attributable to only one state and is earned or received through activities totally unrelated to any business you are conducting in more than one state. Business income is net of all deductions attributable to that income.

When is business income allocable to Illinois?

For a resident of Illinois, all income received, regardless of the source, is allocable to Illinois.

For a nonresident of Illinois whose business income is derived

- wholly inside Illinois, the entire amount of business income is allocable to Illinois.
- wholly outside Illinois, none of the business income is allocable to Illinois.
- inside and outside Illinois, Step 6 of Form IL-1065 or Form IL-1120-ST should be completed. See the specific instructions for these forms.
- from trusts, estates, and other partnerships or S corporations, the business income paid to this partnership or S corporation may be allocable to Illinois. See the Schedule K-1-T, Beneficiaries Share of Income and Deductions, furnished by the fiduciary or Schedule K-1-P furnished by the other partnership or S corporation to determine what income is allocable to Illinois.

What is nonbusiness income?

Nonbusiness income is all income other than business income or employee compensation. It is income you can clearly classify as having no connection to your business. For information about types of nonbusiness income, see the instructions for Illinois Schedule NB, Nonbusiness Income.

When is nonbusiness income allocable to Illinois?

For a resident of Illinois, all nonbusiness income is allocable to Illinois.

For a nonresident partner or shareholder, items of income and deduction that constitute nonbusiness income received through the partnership or S corporation completing Schedule K-1-P are treated as if received directly by the partner or shareholder and are allocable to Illinois according to the following rules:

- **Interest and dividend income** received by partnerships or corporations is allocable to Illinois if the entity's commercial domicile was in Illinois at the time the interest or dividend was paid or accrued. Interest and dividend income received by a nonresident individual, trust, or estate is not allocable to Illinois.
- **Net rents and royalties**
Real property - Rents and royalties from real property are allocable to Illinois if the property is located in Illinois.
Tangible personal property - Rents and royalties from tangible personal property are allocable to Illinois to the extent that the property is used in Illinois. The extent of use of tangible personal property in a state is determined by multiplying the rents and royalties derived from the property by a fraction. The numerator is the number of days of physical location of the property in Illinois during the rental and royalty period in the tax year, and the denominator is the number of days of physical location of the property everywhere during all rental or royalty periods in the tax year.
- **Patent and copyright royalties** are allocable to Illinois to the extent that the patent or copyright is used in Illinois.
A patent is used in Illinois to the extent that it is employed in production, fabrication, manufacturing, or other processing in Illinois or to the extent that a patented product is produced in Illinois.
A copyright is used in Illinois to the extent that printing or other publication originates in Illinois.
- **Gains and losses** from sales or exchanges of real or tangible personal property are in Illinois if the property is located in Illinois at the time of the sale or exchange. Gains or losses from the sale or exchange of intangible personal property are allocable to the state of residence or commercial domicile of the partner or shareholder.
- **Income from trust, estates, and other partnerships or S corporations** paid to this partnership or S corporation is allocable as if your partner or shareholder received it directly. See the Schedule K-1-T furnished by the fiduciary or Schedule K-1-P furnished by the other partnership or S corporation to determine what income is allocable to Illinois.

What if a partner is engaged in a unitary business with this partnership?

If partners owning substantially all of a partnership are engaged in a unitary business with that partnership, the partners and the partnership must be included on a Schedule UB, Combined Apportionment for Unitary Business Group. Substantial ownership is defined as owning more than 90 percent of all the interest in the partnership. Otherwise, if a partner is engaged in a unitary business with this partnership, the partner must determine the portion of its business income taxed by Illinois by adding its share of this partnership's business income and apportionment factors (Illinois and everywhere) to its own business income and apportionment factors (Illinois and everywhere). See Illinois Income Tax Regulations, Section 100.3380(d) for more information. The business income and factors of this partnership that must be added to the unitary partner's business income and factors must include any business income and factors that flow through to this partnership from another unitary partnership. See the "Unitary instructions" in the following steps to help you report the unitary partner's share.

What if I am an investment partnership?

If you are an investment partnership as defined in the Illinois Income Tax Act (ITA), Section 1501(a)(11.5), you are exempt from Illinois income taxation. Also, all income that one of your partners receives from you is treated as nonbusiness income that is allocable to the partner's state of residence or commercial domicile, unless the partner's investment in you is directly or integrally related to another business activity of the partner; or where the partner's contribution to you was made out of working capital from its trade or business. Because you cannot be expected to know the facts necessary to make this determination, you should complete the Schedule K-1-P by filling in only Column A and attaching the Schedule K-1-P(2), to allow the partner to make its own determination.

Step-by-Step Instructions

Step 1 — Identify your partnership or S corporation

Line 1 - Check the appropriate box to identify yourself as a partnership or an S corporation.

Line 2 - Write the name of your partnership or S corporation as shown on your Form IL-1065 or Form IL-1120-ST.

Line 3 - Write your federal employer identification number (FEIN). If you are a foreign entity and do not have a FEIN, leave Line 3 blank. If you leave this line blank, you may be contacted for further information.

Line 4 - Write the apportionment factor from Step 6, Line 42, of your Form IL-1065 or Form IL-1120-ST. If you were not required to complete Step 6, write "1" on this line.

Note If you are an investment partnership, write "investment partnership" on Line 4.

Unitary instructions: If this partner is engaged in a unitary business with this partnership, write "see attached schedule of factors" on Line 4. Attach a schedule showing this partner's share of the partnership's apportionment factors (Illinois and everywhere), and business income that the partnership directly earns, plus any factors and business income passed up to this partnership from another unitary partnership. The schedule must direct this partner to include the apportionment factors and business income shown on the schedule with its own apportionment factors and business income in apportioning its business income to Illinois.

Step 2 — Identify your partner or shareholder

Line 5 - Write the name of the partner or shareholder to whom you will issue the Schedule K-1-P.

Line 6 - Write the mailing address of the partner or shareholder.

Line 7 - Write the Social Security number or FEIN of the partner or shareholder here and in the space provided at the top of Page 2.

Line 8 - Write the percentage that represents this partner's or shareholder's share of income, gain, loss, deduction, or credit that was allocated among the members as required by the Internal Revenue Code (IRC) Section 704 for partners, and IRC Section 1366 for shareholders. In the event that the partnership agreement provides for a specific allocation of certain items that differs from that used to allocate income or loss, report the special items and percentage allocation on a separate sheet and attach it to this schedule.

Line 9a - Check the appropriate box to identify this partner or shareholder as an individual, a partnership, a corporation, an S corporation, a trust, or an estate.

Line 9b - Do not check the grantor trust or disregarded entity checkbox, or enter a name or identification number on this line. These are available for your partner or shareholder to complete, as applicable.

Steps 3 through 6 —

Note If you are a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust or estate, you need to complete a pro forma Schedule K-1-P that identifies each partner's or shareholder's share of your share of items received from that entity. Write across the top of the pro forma Schedule K-1-P "the following information is included in the Schedule K-1-P from _____" (the name of your partnership or S corporation).

Column A — Member's share — If the individual or entity was a partner or shareholder at any time during your tax year, you must complete Column A of Steps 3 through 6.

Column B — Illinois share — You must determine how much of each item in Column A is allocable or apportionable to Illinois and write that amount in Column B for each partner or shareholder. Nonresidents are taxed only on the Illinois share of each item, and residents need to know the Illinois share of each item to compute the credit they are allowed for taxes paid to other states.

For all line items: If you are an investment partnership, leave Column B blank.

Step 3 — Figure your partner's or shareholder's share of your nonbusiness income

Column A - Member's share

Lines 10 through 19 - Write the partner's or shareholder's share of nonbusiness income reported on the equivalent lines of your federal Schedule K-1. Line 19 should include any items of nonbusiness income or deduction (e.g., IRC Section 179) which are included in the computation of unmodified base income on Step 3, Line 13, of your Form IL-1065 or Form IL-1120-ST and are not included in Schedule K-1-P, Lines 10 through 18.

If you filed a federal Form 1065-B, you should complete a pro forma federal Form 1065, Schedule K-1, for each partner to use as a guide for completing Step 3.

Note Write "0" on Lines 10 through 19 if you made the election on your Form IL-1065 or IL-1120-ST to treat all of your income as business income. All items of income and expense from your federal K-1 should be reported in Step 4 - Figure your partner's or shareholder's share of your business income (loss).

Unitary instructions: If this partner is engaged in a unitary business with this partnership, report this partner's share of all items of nonbusiness income in the same manner as you would for any other partner.

Column B - Illinois share

For all line items - If you are an investment partnership, leave Column B blank.

Lines 10, 11, and 18 - If the partner or shareholder uses an Illinois address, write its share of nonbusiness income from Column A. Otherwise, write "0."

Lines 12 through 17, and 19 - Write the partner's or shareholder's share of nonbusiness income allocable to Illinois as reported on your Schedule NB, Column B. Identify any amount reported on Line 19 and, if needed, attach a breakdown of that amount.

Step 4 — Figure your partner's or shareholder's share of your business income (loss)

Note When completing Lines 20 through 31, be sure to exclude from these amounts any nonbusiness income reported in Step 3.

Column A - Member's share

Lines 20 through 31 - Write the partner's or shareholder's share of business income identified on these lines. See the information on the partner's or shareholder's federal Schedule K-1 and the amounts written in Step 3, Column A. Line 31 should include any items of business

income or deduction (e.g., IRC Section 179) which are included in the computation of unmodified base income on Step 3, Line 13, of your Form IL-1065 or Form IL-1120-ST, and are not included in Lines 20 through 30.

Note If you filed a federal Form 1065-B, you should complete a pro forma federal Form 1065, Schedule K-1, for each partner to use as a guide for completing Step 4.

Column B - Illinois share

For all line items - If you are an investment partnership, leave Column B blank.

Lines 20 through 31 - Write the partner's or shareholder's share of business income apportioned to Illinois. If the business income is from your partnership or S corporation, multiply the amount in Column A by the apportionment factor on Step 1, Line 4. If you received business income from any other partnership, S corporation, or trust, see the Schedule K-1-P or Schedule K-1-T from that entity. Write the total in Column B. Identify any amount reported on Line 31 and, if needed, attach a breakdown of that amount.

Unitary instructions: If you are included in a Schedule UB, include the combined amount of each item of business income reported in Step 2, Column E of the Schedule UB, multiplied by the apportionment factor in Step 1, Line 4 of this Schedule K-1-P. If you are a partnership and the partner to whom you are sending this Schedule K-1-P is engaged in a unitary business with you, and you are not included in the Schedule UB with this partner, report only this partner's share of the items of business income and expense you derived from nonunitary partnerships, trusts, or estates.

Step 5 — Figure your partner's or shareholder's share of Illinois additions and subtractions

Column A - Member's share

For each line in Step 5, Column A, multiply the amounts you reported on your Illinois return by the percentage shown on Step 2, Line 8.

Unitary instructions: If the partner is engaged in a unitary business with your partnership, report the partner's share of nonbusiness additions and subtractions of the partnership and of all additions and subtractions passed through to the partnership from nonunitary partnerships, trusts, or estates. Business additions and subtractions directly incurred by the partnership should be included in the business income reported in the attached schedule described in the "Unitary instructions" in Step 1.

Line 32 - Write the partner's or shareholder's share of the federally tax-exempt interest income reported on Line 15 of your Form IL-1065 or Form IL-1120-ST.

Line 33 - Write the partner's or shareholder's share of Illinois replacement tax deducted in arriving at unmodified base income and reported on Line 16 of your Form IL-1065 or Form IL-1120-ST.

Line 34 - Write the partner's or shareholder's share of Illinois Special Depreciation that must be added to the unmodified base income, as reported on Line 17 of your Form IL-1065 or Form IL-1120-ST.

Line 35 - Write the partner's or shareholder's share of Related-Party Expenses that must be added to the unmodified base income, as reported on Line 18 of Form IL-1065 or Form IL-1120-ST.

Line 36 - Write the partner's or shareholder's distributive share of additions from any partnership, S corporation, trust, or estate from which you received income, as reported on Line 19 of your Form IL-1065 or Form IL-1120-ST.

Line 37 - Write the partner's or shareholder's share of each of the "other additions" figured on Illinois Schedule M, Other Additions and Subtractions for Businesses, and reported on your Form IL-1065, Line 22, or Form IL-1120-ST, Line 21.

Line 38a - Write the partner's or shareholder's share of the interest from U.S. government obligations that is included as business income on your Form IL-1065, Line 24, or Form IL-1120-ST, Line 23.

Line 38b - Write the partner's or shareholder's share of the interest from U.S. government obligations that is included as nonbusiness income on your Form IL-1065, Line 24, or Form IL-1120-ST, Line 23.

Line 39 - Write the partner's or shareholder's distributive share of River Edge Redevelopment Zone Dividend subtraction from your Form IL-1065, Line 28, or Form IL-1120-ST, Line 25.

Line 40 - Write the partner's or shareholder's distributive share of High Impact Business within a Foreign Trade Zone (or sub-zone) Dividend subtraction from your Form IL-1065, Line 29, or Form IL-1120-ST, Line 27.

Line 41 - Write the shareholder's distributive share of the Contribution subtraction from your Form IL-1120-ST, Line 29.

Line 42 - Write the shareholder's distributive share of the Interest Subtraction - River Edge Redevelopment Zone from your Form IL-1120-ST, Line 26.

Line 43 - Write the shareholder's distributive share of the Interest Subtraction - High Impact Business within a Foreign Trade Zone (or sub-zone) from your Form IL-1120-ST, Line 28.

Line 44 - Write the partner's or shareholder's share of any Illinois Special Depreciation subtraction allowed for property placed in service after September 11, 2001, from Line 30 of your Form IL-1065 or Form IL-1120-ST.

Line 45 - Write the partner's or shareholder's share of any Related-Party Expenses subtraction allowed from Line 31 of your Form IL-1065 or Form IL-1120-ST.

Line 46 - Write the partner's or shareholder's distributive share of subtractions from any partnership, S corporation, trust, or estate from which you received income from Line 32 of your Form IL-1065 or Form IL-1120-ST. Do not include any August 1, 1969, appreciation amounts included in the share.

Line 47 - Write the partner's or shareholder's share of each of the "other subtractions" figured on Illinois Schedule M and reported on Line 33 of your Form IL-1065 or Form IL-1120-ST.

Do not include any August 1, 1969, appreciation amounts included in the share.

Column B - Illinois share

For all line items - If you are an investment partnership, leave Column B blank.

Lines 32 through 37 - Write the partner's or shareholder's share of additions apportioned to Illinois. If the amount is business income from your partnership or S corporation, multiply the amount of business income in Column A by the apportionment factor on Step 1, Line 4. Allocate the amount of nonbusiness income in Column A according to the allocation rules. See "When is nonbusiness income allocable to Illinois?" in the General Information for the rules governing the allocation of nonbusiness income. If you received amounts from any other partnership, S corporation, trust, or estate, see the Schedule K-1-P or Schedule K-1-T from that entity. Write the total in Column B.

Special Note If you reported recaptured business expenses on Line 37, multiply those expenses in Column A by the fraction on Line f of the Schedule NB, Apportionment Factor Worksheet, and include the resulting amount in Column B.

Lines 38a and 39 through 47 - Write the partner's or shareholder's share of subtractions apportioned to Illinois. If the amount is business income from your partnership or S corporation, multiply the amount of business income in Column A by the apportionment factor on Step 1, Line 4. Allocate the amount of nonbusiness income in Column A according to the allocation rules. See "When is nonbusiness income allocable to Illinois?" in the General Information for the rules governing the allocation of nonbusiness income. If you received amounts from any other partnership, S corporation, trust or estate, see the Schedule K-1-P or Schedule K-1-T from that entity. Write the total in Column B.

Line 38b - If the partner or shareholder uses an Illinois address, write the amount from Column A. Otherwise, write "0."

Note Do not include any amount in Column B of Lines 38a, 38b, 39, or 40, unless the item was included in Column B in Step 3 or 4. This same rule applies to certain items from Illinois Schedule M (for businesses), including any refund of an overpayment of Illinois replacement tax, and income exempt from taxation by Illinois by reasons of its statutes or Constitution, or the Constitution, treaties, or statutes of the United States.

Step 6 — Figure your partner's or shareholder's (except a corporate partner or shareholder) share of your Illinois August 1, 1969, appreciation amounts

If you reported a gain on the disposition of property acquired before August 1, 1969, this gain may be reduced by the August 1, 1969, appreciation amount. See Schedule F, Gains from Sales or Exchanges of Property Acquired Before August 1, 1969 (Form IL-1065 or Form IL-1120-ST), for detailed instructions and information necessary to complete Lines 48 through 51.

Note Corporations are not allowed to subtract the August 1, 1969, appreciation amount. However, S corporations may pass the subtraction through to their shareholders.

Column A - Member's share

For each line in Step 6, Column A, multiply the amounts you reported on your Illinois Schedule F (Form IL-1065 or Form IL-1120-ST) by the partner's or shareholder's share percentage shown on Step 2, Line 8.

Line 48 - Write the partner's or shareholder's share of the August 1, 1969, appreciation amount for Sections 1245 and 1250 gains reported on your Form IL-1065 or Form IL-1120-ST, Schedule F, Line 3.

Line 49 - Write the partner's or shareholder's share of the August 1, 1969, appreciation amount for Section 1231 gain reported on your Form IL-1065 or Form IL-1120-ST, Schedule F, Line 4.

Line 50 - Write the partner's or shareholder's share of the August 1, 1969, appreciation amount for Section 1231 gain, less casualty and theft gain, reported on your Form IL-1065 or Form IL-1120-ST, Schedule F, Line 6. If you do not report casualty or theft gain for federal income tax purposes, leave this line blank.

Line 51 - Write the partner's or shareholder's share of the August 1, 1969, appreciation amount for capital gain reported on your Form IL-1065 or Form IL-1120-ST, Schedule F, Line 7.

Column B - Illinois share

For all line items - If you are an investment partnership, leave Column B blank.

Lines 48 through 51 - Write the partner's or shareholder's share of the August 1, 1969, appreciation amounts that are allocated or apportioned to Illinois.

If these appreciation amounts result from a gain on the disposition of nonbusiness property, include the August 1, 1969, amount from Column A in Column B, only if the gain from the disposition of the property was included in Column B.

If these appreciation amounts result from gain on the disposition of your business property, apportion them to Illinois by multiplying the amount on Lines 48 through 51, Column A, by the apportionment factor on Step 1, Line 4. If you received amounts from any other partnership, S corporation, trust or estate, see the Schedule K-1-P or Schedule K-1-T from that entity.

Step 7 — Figure your partner's or shareholder's share of your Illinois credits, recapture, pass-through entity payments, and federal income subject to surcharge

Line 52 - Illinois credits - The following credits are reported on your Illinois Schedule 1299-A or Form IL-477. You must complete the appropriate line (Lines 52a through 52p) to pass any of these credits through to your partners or shareholders. For each line used in Step 7, multiply the amount reported on your Illinois Schedule 1299-A or Form IL-477 by the partner's or shareholder's share percentage shown on Step 2, Line 8. Use the line reference chart to complete Lines 52a through 52p.

Note Partnerships may no longer make the election to flow through their investment credits to their partners. Investment credits earned by the partnership or the S corporation and allocable to their partners or shareholders subject to replacement tax will automatically flow through to those partners or shareholders.

Line	Write this partner's or shareholder's share of the	from your Schedule 1299-A, Line
Line 52a -	Film Production Services Tax Credit	16c
Line 52b -	Enterprise Zone Investment Credit	19
Line 52c -	River Edge Redevelopment Zone Investment Credit	22
Line 52d -	Tax Credit for Affordable Housing Donations	25
Line 52e -	EDGE Tax Credit	28
Line 52f -	Research and Development Credit	37
Line 52g -	Ex-Felons Jobs Credit	40
Line 52h -	Veterans Jobs Credit	43
Line 52i -	Student-Assistance Contributions Credit	46
Line 52j -	Angel Investment Credit	49
Line 52k -	New Markets Credit	52
Line 52l -	River Edge Historic Preservation Credit	55
Line 52m -	Live Theater Production Credit	58
Line 52n -	Hospital Credit	65
Line 52o -	Historic Preservation Credit	68
Line 52p -	Replacement Tax Investment Credits	5

Line 53 - Recapture - Each partner's or shareholder's share of any recapture is limited to his or her share of the original investment credit. If a partner or shareholder who shared in the original credit is no longer an owner in the year of recapture, report that former owner's share of the recapture on Lines 53a and 53b. You must send a copy of Schedule K-1-P (that will show an amount only on Lines 53a and 53b) and Schedule 4255, Recapture of Investment Tax Credits, to this former owner.

If the partner's or shareholder's share in the year of the credit is different from his or her share in the year of the recapture, report that member's share of the recapture on Lines 53a and 53b, and attach a separate sheet explaining the difference. You must attach a copy of Schedule 4255 to this partner's or shareholder's Schedule K-1-P.

On Line	Write this partner's or shareholder's share of the	shown on your Schedule 4255,
Line 53a -	Enterprise Zone/River Edge Redevelopment Zone Investment Credit recapture	Step 4, Column A, Line 17
Line 53b -	Replacement Tax Investment Credit recapture	Step 4, Column C, Line 17

Unitary instructions: If a partner is engaged in a unitary business with your partnership, report the partner's share of credits and recapture amounts in the same manner as you would for any other partner.

Line 54a - Write the partner's or shareholder's share of pass-through entity payments that you made on behalf of your nonresident partners or shareholders on Form IL-1000. This amount should also be reported on Schedule B of your Form IL-1065 or IL-1120-ST.

Note If you underestimated your Illinois business income when you filed your Form IL-1000, you should file Form IL-1000-X and pay the additional pass-through entity amount promptly to minimize penalties and interest. Report the total payments you made for the partner or shareholder here.

If you overestimated your Illinois business income when you filed your Form IL-1000, do not file Form IL-1000-X to claim a refund. Report the total payments you made for this partner or shareholder here, and the partner or shareholder must claim any refund due.

Line 54b - Write the partner's or shareholder's share of composite return payments that you made on behalf of your nonresident partners or shareholders on Form IL-1023-C. This amount should also be included on Form IL-1023-C, Schedule BC.

Line 55 - Fiscal filers only. For taxpayers with tax years ending on or after January 1, 2014. Write the partner's or shareholder's share of any federal income attributable to transactions subject to the surcharge. Attach a breakdown of any items reported on this line.

Definitions related to the Compassionate Use of Medical Cannabis Pilot Program Act Surcharge —

Organization registrant means a corporation, partnership, trust, limited liability company (LLC), or other organization, that holds either a medical cannabis cultivation center registration issued by the Illinois Department of Agriculture or a medical cannabis dispensary registration issued by the Illinois Department of Financial and Professional Regulation.

Transactions subject to the surcharge means sales and exchanges of

- capital assets;
- depreciable business property;
- real property used in the trade or business; and
- Section 197 intangibles

of an organization registrant.

What is the surcharge?

For each taxable year beginning or ending during the Compassionate Use of Medical Cannabis Pilot Program, a surcharge is imposed on all taxpayers on income arising from the transactions subject to the surcharge of an organization registrant under the Compassionate Use of Medical Cannabis Pilot Program Act.

The amount of the surcharge is equal to the amount of federal income tax liability for the taxable year attributable to the transactions subject to the surcharge.

To whom does the surcharge apply?

The surcharge is imposed on any taxpayer who incurs a federal income tax liability on the income realized on a "transaction subject to the surcharge", including individuals and other taxpayers who are not themselves the "organization registrant" that engaged in the transaction.

A partnership will not incur a surcharge because it has no federal income tax obligation. An S corporation would incur a surcharge on a transaction subject to built-in gains tax. Partners and shareholders who incur a federal income tax liability on income from a transaction subject to surcharge passed through to them by a partnership or S corporation will incur a surcharge.

Note Although a unitary business group filing combined Illinois returns is treated as a single taxpayer and its members are jointly and severally liable for any surcharge imposed on the group, the group itself is not an organization registrant and transactions of any member that is not itself an organization registrant are not subject to the surcharge.

What do I report to my partners or shareholders?

Write this partner's or shareholder's share of any federal income attributable to transactions subject to the surcharge on Line 55. In order to enable your partner or shareholder to correctly figure the surcharge, attach a report itemizing any amount reported on Line 55 and provide it to your partner or shareholder along with this schedule.

Note Report **federal income** attributable to transactions subject to the surcharge on Line 55. **Do not** report your federal income tax liability for the taxable year attributable to the transactions subject to the surcharge on this line.

For more information, see Illinois Income Tax Regulations, Section 100.2060.

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing present **Petitioner's Response to Respondent's Motion for Partial Summary Judgment on Counts II, III, and IV** to be served on other counsel of record by electronic mail and also by enclosing the same in an envelope, properly addressed, first-class postage prepaid and deposited in the U.S. Mail at 500 W. Madison Street, Chicago, Illinois 60661, before the hour of 5:00 p.m. on the 12th day of December, 2014, addressed as follows:

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



A handwritten signature in black ink, appearing to read 'S. Cullinan', is written over a horizontal line.

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

RPMG INC.)
)
) Petitioner,)
))
) v.) No. 14 TT 149
))
) THE ILLINOIS DEPARTMENT OF REVENUE,)
))
) Defendant.)

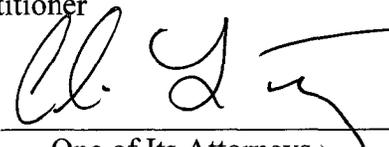
NOTICE OF FILING

TO: See attached Certificate of Service.

PLEASE TAKE NOTICE THAT on December 12, 2014, Petitioner, RPMG Inc., filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, Illinois, a copy of the **PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS II, III, AND IV**, a copy of which is attached and served upon you herewith.

Respectfully submitted,

RPMG Inc.
Petitioner

By: 

One of Its Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
Christopher T. Lutz (clutz@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200