ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

INDEED, INC.	)	
	)	
Petitioner,	)	
	)	**Case No. 16-TT-012**
v.	)	
	)	**Brian F. Barov**
ILLINOIS DEPARTMENT OF REVENUE,	)	**Administrative Law Judge**
	)	
Respondent.	)	

ANSWER

NOW COMES the Illinois Department of Revenue (the "Department"), through its attorney, Lisa Madigan, Illinois Attorney General, and for its Answer to the Petition of Indeed, Inc. ("Petitioner") respectfully pleads as follows:

1. Petitioner is a corporation with its principal place of business in Stamford, Connecticut.

ANSWER: Upon information and belief, the Department believes the allegations in Paragraph 1 to be true.

2. It is located at 177 Broad Street, 6th Floor, and its telephone number is 203-653-4918. The Taxpayer Account number is 26-0129478.

ANSWER: Upon information and belief, the Department believes the allegations in Paragraph 2 to be true.

3. The Notice has a Letter ID of CNXXXX9869X984X6.

ANSWER: Admit.

4. The Notice was issued by the Department on November 16, 2015 assessing the amount of $714,467.00 in tax, $38,174.52 in penalties and $7,641.15 in interest for the

reporting period December 2014. A copy of the Notice is attached to this Petition.

ANSWER: Admit.

5. The Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the alleged tax liability in question from the Illinois Income Tax Act and the aggregate amount at issue exceeds, $15,000, exclusive of penalties and interest, and because Petitioner has remitted the $500 filing fee.

ANSWER: Department admits that the aggregate amount at issue in the Department's Notice exceeds $15,000 exclusive of penalties and interest. Department lacks sufficient information to either admit or deny that the Petitioner has remitted the $500 filing fee. The remaining allegations in Paragraph 5 are legal conclusions, which do not require an answer pursuant to Title 86, Section 5000.310(b). 86 Ill. Admin. Code 5000.310(b).

6. The Tax Tribunal also has jurisdiction because the original petition in this matter was filed within 60 days of the date of the Notices of Tax Deficiency.

ANSWER: Denied. Subject matter jurisdiction is not granted to the Tribunal solely based on filing the petition within 60days of the date of the Notice of Deficiency.

7. Petitioner filed an Illinois Corporation Income and Replacement Tax Return, 2014 Form IL-1120, for the taxable period ending December 31, 2014 on or before October 15, 2015 ("the 2014 return").

ANSWER: Admit.

8. Petitioner filed an Illinois Corporation Income and Replacement Tax Return, 2013 Form IL-1120, for the taxable period ending December 31, 2013 on or before October 15, 2014 ("the 2013 return").

ANSWER: Admit.

9. Petitioner filed an Illinois Corporation Income and Replacement Tax Return,

2012 Form IL-1120, for the taxable period ending December 31, 2012 on or before October 15, 2013 ("the 2012 return").

ANSWER: Admit.

10. The 2012 return reported Base income or loss allocable to Illinois on page 2, Line 34 of ($2,302,829).

ANSWER: Admit.

11. The 2013 return reported Base income or loss allocable to Illinois on page 2, Line 34 of ($2,945,909).

ANSWER: Admit.

12. Petitioner reported 2012 Illinois net loss of $2,302,829 and 2013 Illinois net loss of $2,945,909 on Line 1 of 2014 Schedule NLD included as part of its filing with the 2014 return.

ANSWER: Admit.

13. Petitioner claimed a deduction for the Illinois Net Loss Deduction in the amount of $5,248,738 (the entire sum of 2012 and 2013 losses reported on Line 1, Schedule NLD) on Line 5 of 2014 Schedule NLD included as part of its filing with the 2014 return.

ANSWER: Admit.

14. Petitioner has not previously been subject to income tax examination in the State of Illinois or received prior notification from the Department concerning its net loss deductions, so Petitioner's net losses reported to Illinois on the 2012 return and on the 2013 return have never been adjusted.

ANSWER: Department admits Petitioner's net losses reported to Illinois on the 2012 return and on the 2013 return have never been adjusted by the Department. The phrase “income tax examination” is ambiguous. Therefore, Department denies the remaining factual allegations in

Paragraph 14.

15. In the "Computation of Deficiency" in the Notice, the "Corrected Amount" of "IL net loss deduction (NLD)" reported by the Department was $0.00.

ANSWER: Admit. The Notice speaks for itself.

16. The "Reason for Deficiency" reported on the Notice was as follows: "We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly."

ANSWER: Admit. The Notice speaks for itself.

17. Upon information and belief, Petitioner has never received any inquiry from the Department that relates to the Petitioner's losses reported in the 2012 return or the 2013 return, which were subsequently also reported in the 2014 Schedule NLD.

ANSWER: Admit.

18. Upon information and belief, Petitioner has no reason to believe that its 2012, 2013 or 2014 returns contained any errors.

ANSWER: Department lacks sufficient information to either admit or deny what Petitioner could reasonably believe.

19. The Petitioner relies upon the Illinois Income Tax Act (hereinafter "UTA") 35 ILCS Section 207 and Section 1402 to dispute the above referenced Illinois Income Tax.

ANSWER: Admit.

20. The Illinois Income Tax Act provides, in relevant part, as follows: Sec. 207. Net Losses.

> (a) If after applying all of the (i) modifications provided for in paragraph (2) of Section 203(b), paragraph (2) of Section 203(c) and paragraph (2) of Section 203(d) and (ii) the allocation and apportionment provisions of Article 3 of this Act and subsection (c) of this Section, the taxpayer's net income results in a loss;

(1) for any taxable year ending prior to December 31, 1999, such loss shall be allowed as a carryover or carryback deduction in the manner allowed under Section 172 of the Internal Revenue Code;

(2) for any taxable year ending on or after December 31, 1999 and prior to December 31, 2003, such loss shall be allowed as a carryback to each of the 2 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of such loss; and

(3) for any taxable year ending on or after December 31, 2003, such loss shall be allowed as a net operating loss carryover to each of the 12 taxable years following the taxable year of such loss.

(a-5) Election to relinquish carryback and order of application of losses.

(A) For losses incurred in tax years ending prior to December 31, 2003, the taxpayer may elect to relinquish the entire carryback period with respect to such loss. Such election shall be made in the form and manner prescribed by the Department and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year in which such loss is incurred, and such election, once made, shall be irrevocable.

(B) The entire amount of such loss shall be carried to the earliest taxable year to which such loss may be carried. The amount of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the deductions for carryback or carryover of such loss allowable for each of the prior taxable years to which such loss may be carried.

(b) Any loss determined under subsection (a) of this Section must be carried back or carried forward in the same manner for purposes of subsections (a) and (b) of Section 201 of this Act as for purposes of subsections (c) and (d) of Section 201 of this Act.

(c) Notwithstanding any other provision of this Act, for each taxable year ending on or after December 31, 2008, for purposes of computing the loss for the taxable year under subsection (a) of this Section and the deduction taken into account for the taxable year for a net operating loss carryover under paragraphs (1), (2), and

(3) of subsection (a) of this Section, the loss and net operating loss carryover shall be reduced in an amount equal to the reduction to the net operating loss and net operating loss carryover to the taxable year, respectively, required under Section 108(b)(2)(A) of the Internal Revenue Code, multiplied by a fraction, the

numerator of which is the amount of discharge of indebtedness income that is excluded from gross income for the taxable year (but only if the taxable year ends on or after December 31, 2008) under Section 108(a) of the Internal Revenue Code and that would have been allocated and apportioned to this State under Article 3 of this Act but for that exclusion, and the denominator of which is the total amount of discharge of indebtedness

> income excluded from gross income under Section 108(a) of the Internal Revenue Code for the taxable year. The reduction required under this subsection (c) shall be made after the determination of Illinois net income for the taxable year in which the indebtedness is discharged. (Source: P.A. 95-233, eff. 8-16-07.)
>
> **Sec. 1402. Notice.**
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> Whenever notice is required by this Act, such notice may, if not otherwise provided, be given or issued by mailing it by first-class mail addressed to the person concerned at his last known address. Notice to a person who is under a legal disability or deceased, shall be mailed to his last known address or, if the Department has received notice of the existence of a fiduciary for such person or his estate, to such fiduciary. (Source: P.A. 76-261.)

ANSWER: Department admits the existence, force, and effect of the statutes quoted in Paragraph 20. The statute speaks for itself.

21. Petitioner realleges and reincorporates paragraphs 1-20 of the Petition herein.

ANSWER: Department incorporates its answers to Paragraphs 1 through 20 as if fully set forth herein.

22. Petitioner properly filed the 2012 and 2013 returns claiming losses that were reported and claimed on 2014 Schedule NLD, and because the NLD loss suspension did not apply to tax year ended December 31, 2014, the Department erred by adjusting the "IL net loss deduction (NLD)" on the Notice from $5,248,738 to zero.

ANSWER: Denied.

23. Petitioner contends that the Department erred in assessing Illinois Income Tax in the above referenced notice, as the Petitioner filed 2012 and 2013 returns properly reporting and claiming net loss deductions and properly carrying the losses forward to 2014.

ANSWER: Denied.

24. Petitioner realleges and reincorporates paragraphs 1-20 of the Petition herein.

ANSWER: Department incorporates herein its answers to Paragraphs 1 through 20 as if fully set

forth herein.

25. Taxpayer received no notice of the denial of the net loss deduction carryforward prior to the issuance of the November 16, 2015 Notice of Deficiency.

ANSWER: Denied.

26. Taxpayer performed a detailed review of its tax files and has no record of a notice ever being received by them.

ANSWER: Department lacks sufficient information to either admit or deny the records received by Petitioner.

27. Under 35 ILCS 5/1402, "Whenever notice is required by this Act, such notice shall, if not otherwise provided, be given or issued by mailing it by registered or certified mail addressed to the person concerned at his last known address."

ANSWER: Department admits the existence, force, and effect of the statutes quoted in Paragraph 20. The statute speaks for itself.

28. Petitioner contends that the Department erred in assessing Illinois Income Tax in the above referenced notice, as the Petitioner filed 2012 and 2013 returns claiming net loss deductions and carrying forward such losses to 2014 for which taxpayer received no notice of adjustments prior to the November 16, 2015 Notice of Deficiency.

ANSWER: Denied.

29. Petitioner realleges and reincorporates paragraphs 1- 20 of the Petition herein.

ANSWER: Department realleges and incorporates its answers to Paragraphs 1 through 20 as if fully set forth herein.

30. Petitioner contends that the Department erred in assessing Petitioner with audit late payment penalty, late payment penalty increase, and late filing penalty increase on the Illinois Income tax allegedly owed to the State of Illinois.

ANSWER: Department denies that it erred in assessing Petitioner with audit late payment, late payment, and late filing penalties.

31. The Petitioner does not owe any Illinois income tax to the State of Illinois as alleged by the Department on the Notices of Tax Deficiency, and therefore no penalties may be assessed by the Department. Notwithstanding, even if any tax is due, any penalties assessed on such tax should be abated for reasonable cause. 35 ILCS 735-3/8.

ANSWER: Department denies the allegations in Paragraph 31.

32. The Petitioner has relied in good faith on its understanding of Illinois law with respect to these transactions.

ANSWER: Department lacks sufficient information to either admit or deny whether Taxpayer's understanding of Illinois law is in good faith.

33. The Department's regulation on reasonable cause looks to whether the taxpayer "made a good faith effort" and exercised "ordinary business care in prudence". Illinois Admin. Code tit. 86 Section 700.400.

ANSWER: Paragraph 33 contains a legal conclusion. Therefore Paragraph 33 does not require an answer pursuant to Title 86, Section 5000.310(b). 86 Ill. Admin. Code 5000.310(b).

34. The Petitioner has viable defenses based on Illinois law that the net loss deductions claimed were valid.

ANSWER: Department denies the allegations in Paragraph 34.

WHEREFORE, Department requests this Tribunal enter an order:

a. denying each prayer for relief in the Petitioner's Petition;

b. finding the Notices of Deficiency at issue correct as issued;

c. ordering judgment in favor of Department and against Petitioner; and

d. granting such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully Submitted,

LISA MADIGAN
Attorney General of an for the
State of Illinois

By: ___*/s/ Jennifer Kieffer*_____
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