

IN THE ILLINOIS INDEPENDENT
TAX TRIBUNAL

| | | |
|---------------------|---|-----|
| INDEED, INC., |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. |
| |) | |
| |) | |
| ILLINOIS DEPARTMENT |) | |
| OF REVENUE, |) | |
| |) | |
| Respondent, |) | |

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BY: _____
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PETITION

The Petitioner, Indeed, Inc, (hereinafter “Petitioner”), a corporation, by its attorneys of record, Kupiec & Martin, LLC, hereby petitions the Illinois Independent Tax Tribunal to review, and reverse and/or modify the Notice of Tax Deficiency (hereinafter “Notice”) issued by the Illinois Department of Revenue (hereinafter “Department”) on November 16, 2015, for the reasons set forth below.

INTRODUCTION

1. Petitioner is a corporation with its principal place of business in Stamford, Connecticut.
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.
3. The Notice has a Letter ID of CNXXXX9869X984X6.

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.

JURISDICTION

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.

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.

BACKGROUND AND RELEVANT FACTS

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”).

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”).

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”).

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

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

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.

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.

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.

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.

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."

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.

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

APPLICABLE LAW

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

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.

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.)

ERROR I – THE NET LOSS DEDUCTIONS WERE IMPROPERLY DISALLOWED AND TAX LIABILITY ASSESSED

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

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.

ERROR II – PROPER NOTICE WAS NOT GIVEN

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

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

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.”

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.

ERROR III – ABATEMENT OF PENALTIES

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

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.

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

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.

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

CONCLUSION AND RELIEF REQUESTED

THEREFORE, the Department is precluded from assessing the Illinois Income Tax, penalties, and interest as set forth in the aforementioned Notices of Tax Deficiency as the Net Loss Deductions claimed were valid. The Petitioner will provide evidence showing the validity of the net loss deductions.

WHEREAS, for the reasons set forth above, Petitioner respectfully requests the Illinois Income Tax, penalties, and interest assessed in the aforementioned November 16, 2015 Notice of Tax Deficiency in the total amount of amount of \$714,467.00 in tax, \$38,174.52 in penalties and \$7,641.15 in interest be cancelled.

Respectfully Submitted,
Indeed, Inc.

By: 
One of the Petitioner's Attorneys

David J. Kupiec
Natalie M. Martin
Kupiec & Martin, LLC
600 W. Van Buren #202
Chicago, IL 60607
(312) 632-1022
dkupiec@kupiecandmartin.com
Attorney No. 58817

January 15, 2016

Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



November 16, 2015



Letter ID: CNXXX9869X984X6

Taxpayer ID: 26-0129478
Reporting period: December 2014
Total deficiency: \$760,282.67
Balance due: \$425,282.67

#BWNKMGV
#CNXX XX98 69X9 84X6#
INDEED INC
INDEED INC

177 BROAD STREET 6TH FLOOR
STAMFORD CT 06901

We have determined that you owe amounts for the reporting period listed above. The attached statement explains the computation of your deficiency and the balance due. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, you must pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to "Illinois Department of Revenue," write your taxpayer ID on your check, and mail a copy of this notice along with your payment.

If you do not agree, you may contest this notice by following the instructions listed below.

- **If the amount of this tax deficiency, exclusive of penalty and interest, is more than \$15,000, or if no tax deficiency is assessed but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- **In all other cases**, file a protest with us, the Illinois Department of Revenue, **within 60 days** of this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to rules adopted by the Department and is presided over by an administrative law judge. Submit your protest on Form EAR-14, Format for Filing a Protest for Income Tax, (available on our website at tax.illinois.gov). If we do not receive your protest **within 60 days**, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- **In any case**, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, contact us at the telephone number shown below.

Sincerely,

Constance Beard
Director of Revenue

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19014
SPRINGFIELD IL 62794-9014
217 557-9676

INDEED INC



Letter ID: CNXXXX9869X984X6
Taxpayer ID: 26-0129478
Reporting Period: December 2014

STATEMENT

Computation of Deficiency

Tax year ending: December 2014

| | Corrected Amount |
|---|-----------------------------|
| Base income(loss) allocable to IL | \$7,520,703.00 |
| IL net loss deduction(NLD) | \$0.00 |
| Net Income | \$7,520,703.00 |
| Tax Due | \$714,467.00 |
| Plus late-filing or nonfiling penalty | \$0.00 |
| Plus late-payment penalty | \$38,174.52 |
| Plus interest on tax through 11/16/2015 | \$7,641.15 |
| Total deficiency | *\$760,282.67 |

*If you intend to pay under protest, you must pay this total deficiency amount.

Computation of balance due

Reporting Period: 12/31/2014

| | |
|----------------------------------|---------------|
| Deficiency (this notice) | *\$760,282.67 |
| Minus additional tax withheld | \$0.00 |
| Minus estimated tax payments | \$335,000.00 |
| Remaining amount due or overpaid | |
| Current amount due (this notice) | \$425,282.67 |

*The 'amount to be paid' is for this Notice of Deficiency and is in addition to any previous liabilities.



Letter ID: CNXXXX9869X984X6
Taxpayer ID: 26-0129478
Reporting Period: December 2014

| |
|------------------|
| STATEMENT |
|------------------|

Reason for deficiency

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.

Penalties

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. This penalty is based on the amount required to be shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days after the due date.

[35 ILCS 735-3-3(b-20)(2)]

We are imposing a late-payment penalty for underpayment of estimated tax because you did not make your required estimated tax payments or pay the required amount of estimated tax payment by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date.

[35 ILCS 735-3-3(b-20)(1)]

Interest

Interest in the amount of 7,641.15 has been computed through November 16, 2015.

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

| | | |
|----------------------------|---|------|
| INDEED, INC. |) | Doc. |
| Petitioner |) | |
| Vs. |) | |
| THE ILLINOIS DEPARTMENT OF |) | |
| REVENUE |) | |
| Defendant |) | |

NOTICE OF FILING

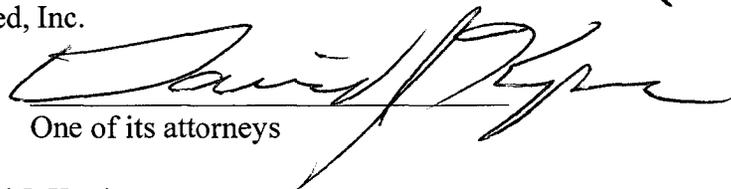
TO:

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

Please take note that on January 15, 2016, the undersigned representative for Indeed, Inc., filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: January 15, 2016

Respectfully Submitted,
Indeed, Inc.

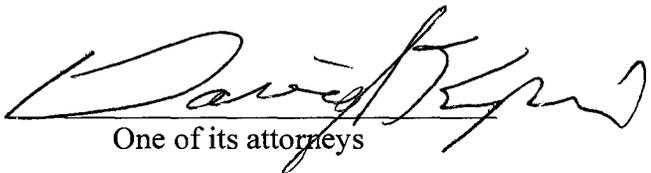
By: 
One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered in person before the hour of 5:00p.m. on the 15th day of January, 2016.

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

By: 
One of its attorneys

David J. Kupiec
Kupiec & Martin, LLC
600 West Van Buren Street, Ste 202
Chicago, Illinois 60607