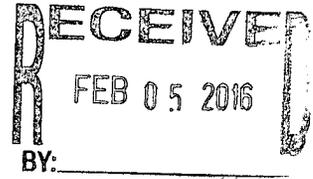


ILLINOIS INDEPENDENT TAX TRIBUNAL

NATIONWIDE COMMUNITIES)
PINECREST, INC.,)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT OF)
REVENUE,)
)
Respondent.)

Docket No.



16TT 22

PETITION

Petitioner, Nationwide Communities Pinecrest, Inc., hereby petitions for a redetermination of the Notice of Deficiency set forth by Respondent, Illinois Department of Revenue, and as the basis for Petitioner’s case alleges as follows:

1. Petitioner is Nationwide Communities Pinecrest, Inc., an Illinois corporation. Petitioner’s mailing address is 100 N. LaSalle St., Suite 1111, Chicago, Illinois 60602. Petitioner’s telephone number is 312-345-1111.
2. Petitioner’s representative is David B. Shiner. Address: Chuhak & Tecson, P.C., 30 S. Wacker Drive, Suite 2600, Chicago, IL 60606. Telephone: 312-444-9300. Email: dshiner@chuhak.com.
3. Petitioner’s federal taxpayer identification number is 20-4569701.
4. A copy of the Notice of Deficiency dated December 9, 2015 is attached hereto and marked as Exhibit A.

5. The Illinois Independent Tax Tribunal has original jurisdiction over this case pursuant to 35 ILCS 1010/1-45(a).

6. The liabilities as determined by Respondent are in employment tax and penalties or interest for the following periods and for the following amounts:

| Filing period | Tax | Penalty | Interest | Total |
|----------------------|------------|----------------|-----------------|--------------|
| 03/2007 | 1,311.24 | 576.94 | 844.23 | 2,732.41 |
| 06/2007 | 1,394.49 | 613.57 | 841.59 | 2,849.65 |
| 09/2007 | 1,628.94 | 716.74 | 917.38 | 3,263.06 |
| 12/2007 | 1,950.09 | 858.03 | 1,022.91 | 3,831.03 |
| 03/2008 | 2,459.22 | 1,082.06 | 1,205.48 | 4,746.76 |
| 06/2008 | 1,742.82 | 766.84 | 798.73 | 3,308.39 |
| 09/2008 | 2,040.00 | 897.60 | 883.51 | 3,821.11 |
| 12/2008 | 2,172.48 | 955.88 | 884.94 | 4,013.30 |
| 03/2009 | 1,793.70 | 789.22 | 687.90 | 3,270.82 |
| 06/2009 | 1,984.23 | 873.06 | 714.32 | 3,571.61 |
| 09/2009 | 1,794.12 | 394.71 | 304.46 | 2,493.29 |
| 12/2009 | 2,072.85 | 456.03 | 331.09 | 2,859.97 |
| 03/2010 | 1,256.04 | 276.33 | 188.51 | 1,720.88 |
| 06/2010 | 1,333.29 | 293.32 | 186.37 | 1,812.98 |

| Filing period | Tax | Penalty | Interest | Total |
|----------------------|--------------------|--------------------|--------------------|--------------------|
| 09/2010 | 1,355.31 | 298.18 | 175.93 | 1,829.42 |
| 12/2010 | 1,404.03 | 308.88 | 169.45 | 1,882.36 |
| 03/2011 | 1,902.25 | 418.50 | 215.24 | 2,535.99 |
| 06/2011 | 1,928.45 | 424.26 | 202.13 | 2,554.84 |
| 09/2011 | 2,120.55 | 466.52 | 201.16 | 2,788.23 |
| 12/2011 | 2,156.35 | 474.40 | 184.67 | 2,815.42 |
| 03/2012 | 1,914.10 | 421.10 | 149.93 | 2,485.13 |
| 06/2012 | 2,157.05 | 474.55 | 152.64 | 2,784.24 |
| 09/2012 | 1,591.55 | 350.14 | 100.59 | 2,042.28 |
| 12/2012 | 1,981.85 | 436.01 | 115.32 | 2,533.18 |
| 03/2013 | 1,735.55 | 381.82 | 100.99 | 2,218.36 |
| 06/2013 | 2,000.50 | 440.11 | 116.41 | 2,557.02 |
| 09/2013 | 1,611.35 | 354.50 | 93.77 | 2,059.62 |
| 12/2013 | 1,757.50 | 386.66 | 97.79 | 2,241.95 |
| TOTAL | \$50,549.90 | \$15,185.96 | \$11,887.44 | \$77,623.30 |

The entire above stated liabilities in employment tax and penalties or interest determined or proposed is in dispute.

7. The determination of tax and penalties or additions to tax set forth in the said Notice of Deficiency is based upon the following errors:

(a) Petitioner disputes Respondent's determination that Petitioner did not notify Respondent of a final federal change.

(b) Petitioner disputes Respondent's determination that Petitioner did not file a withholding tax return (Form IL-941) for the applicable periods.

(c) Petitioner disputes Respondent's determination that late payment penalties should be imposed.

(d) Petitioner disputes Respondent's determination that late filing penalties should be imposed.

(e) Petitioner disputes Respondent's determination that interest should be imposed.

8. The facts upon which Petitioner relies, as the basis of Petitioner's case, are as follows:

(a) Petitioner is in the business of real estate management.

(b) Specifically, Petitioner manages a certain mobile home park located at 6700 Jefferson Paige Rd., Shreveport, Louisiana 71119.

(c) Petitioner retained property managers in Louisiana to manage the real estate operations.

(d) All activity related to Petitioner's real estate operations were conducted in Louisiana and not Illinois.

(e) Petitioner employed employees and properly withheld all applicable employment taxes.

(f) During the applicable periods, the owners of Petitioner were not paid a salary.

(g) Nevertheless, during an audit, the Internal Revenue Service determined that the owners of Petitioner should have been paid a salary and assessed employment tax on such deemed salaries for 2007, 2008 and 2009.

(h) The imposition of employment tax on deemed salaries to the owners of Petitioner was improper.

(i) In contrast to *Joseph Radtke, S.C. v. United States*, 895 F.2d 1196 (7th Cir. 1990) and *Spicer Accounting Inc. v. United States*, 918 F.2d 90 (9th Cir. 1990), Petitioner is not a personal service corporation, Petitioner had no history of paying dividends and Petitioner was owned by three individuals unrelated to each other.

(j) Accordingly, Petitioner could not and was not used as a "personal pocketbook" of Petitioner's owners to take dividends when they needed money.

(k) On May 18, 2015, Petitioner filed with the Internal Revenue Service an offer in compromise doubt as to liability as to the employment tax liability for years 2007, 2008 and 2009.

(l) The offer in compromise doubt as to liability is still pending with the Internal Revenue Service.

(m) Petitioner is unaware of any federal change for years 2010, 2011, 2012 and 2013.

(n) Further, despite a request under the Freedom of Information Act, the Internal Revenue Service has not produced to Petitioner a copy of the audit documents assessing employment tax.

(o) Moreover, any applicable state employment tax would be payable to Louisiana and not Illinois.

(p) Additionally, because no employment tax should be imposed, late filing penalties, late payment penalties and interest should be abated.

9. Because the Notice of Deficiency provided no explanation for the determination and calculation of the alleged deficiency, the presumption of correctness otherwise applicable to Respondent's Notice of Deficiency should not apply and the burden of proof should shift to Respondent. See, *United States v. Janis*, 428 U.S. 433 (1976).

WHEREFORE, Petitioner prays that this Court try this case, determine that there is no deficiency as determined by Respondent and grant such other and further relief as the Court may deem fit and proper.

Respectfully submitted,

Nationwide Communities Pinecrest,
Inc.

Dated: February 3, 2016

By: David B. Shiner
One of their attorneys

David B. Shiner
Chuhak & Tecson, P.C.
30 South Wacker Drive
Suite 2600
Chicago, IL 60606
312-444-9300
dshiner@chuhak.com

Notice of Deficiency

for Form IL-941, Illinois Quarterly Withholding Tax Return



December 9, 2015



Letter ID: CNXXX12842155683

#BWNKMGV
#CNXX X128 4215 5683#
NATIONWIDE COMMUNITITES PINECREST INC
100 N LA SALLE ST STE 1111

CHICAGO IL 60602-3537

Taxpayer ID: 20-4569701
Audit ID: A568493056
Audit periods: 01/2007 - 12/2013
Total Deficiency: \$77,623.30
Balance due: \$77,623.30

We have audited your account for the 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 the deficiency, 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 are 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

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD, IL 62794-9012
(217) 524-2230

EXHIBIT A

Statement

Date: December 9, 2015
Name:
Taxpayer ID: 20-4569701

Reasons for deficiency

We determined that you did not timely notify us of a final federal change (e.g., RAR, federal amended return). [35 ILCS 5/506(a), (b)]

We determined that you did not file a withholding tax return (Form IL-941) for the reporting period from 1-1-2007 through 12-31-2013.
[35 ILCS 5/704(a)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

Penalties

We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date. This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return.
~~This penalty cannot exceed \$250.~~

[35 ILCS 735/3-3(a-10)] (For liabilities due on or after 1/1/01: Tier 1)

We are imposing a late-payment penalty because you did not pay the required quarter-monthly or semi-monthly payments of withholding tax. 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)] (For liabilities due after 1/1/05)

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%.

[35 ILCS 735/3-3(b-20)(2)] (For liabilities due after 1/1/05)

Statement

Date: December 9, 2015
Name:
Taxpayer ID: 20-4569701

Interest

Interest in the amount of \$11,887.44 has been computed through December 9, 2015.

Statement

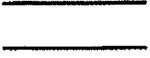
Date: December 9, 2015
 Name:
 Taxpayer ID: 20-4569701

Audit Periods

| Filing Period | Tax Balance | Penalty Balance | Interest Balance | Period Balance |
|---------------|------------------|----------------------|-----------------------|----------------|
| 03/2007 | \$1311.24 | \$576.94 | \$844.23 | \$2732.41 |
| 06/2007 | \$1394.49 | \$613.57 | \$841.59 | \$2849.65 |
| 09/2007 | \$1628.94 | \$716.74 | \$917.38 | \$3263.06 |
| 12/2007 | \$1950.09 | \$858.03 | \$1022.91 | \$3831.03 |
| 03/2008 | \$2459.22 | \$1082.06 | \$1205.48 | \$4746.76 |
| 06/2008 | \$1742.82 | \$766.84 | \$798.73 | \$3308.39 |
| 09/2008 | \$2040.00 | \$897.60 | \$883.51 | \$3821.11 |
| 12/2008 | \$2172.48 | \$955.88 | \$884.94 | \$4013.30 |
| 03/2009 | \$1793.70 | \$789.22 | \$687.90 | \$3270.82 |
| 06/2009 | \$1984.23 | \$873.06 | \$714.32 | \$3571.61 |
| 09/2009 | \$1794.12 | \$394.71 | \$304.46 | \$2493.29 |
| 12/2009 | \$2072.85 | \$456.03 | \$331.09 | \$2859.97 |
| 03/2010 | \$1256.04 | \$276.33 | \$188.51 | \$1720.88 |
| 06/2010 | \$1333.29 | \$293.32 | \$186.37 | \$1812.98 |
| 09/2010 | \$1355.31 | \$298.18 | \$175.93 | \$1829.42 |
| 12/2010 | \$1404.03 | \$308.88 | \$169.46 | \$1882.36 |
| 03/2011 | \$1902.25 | \$418.50 | \$215.24 | \$2535.99 |
| 06/2011 | \$1928.45 | \$424.26 | \$202.13 | \$2554.84 |
| 09/2011 | \$2120.55 | \$466.52 | \$201.16 | \$2788.23 |
| 12/2011 | \$2156.35 | \$474.40 | \$184.67 | \$2815.42 |
| 03/2012 | \$1914.10 | \$421.10 | \$149.93 | \$2485.13 |
| 06/2012 | \$2157.05 | \$474.55 | \$152.64 | \$2784.24 |
| 09/2012 | \$1591.55 | \$350.14 | \$100.59 | \$2042.28 |
| 12/2012 | \$1981.85 | \$436.01 | \$115.32 | \$2533.18 |
| 03/2013 | \$1735.55 | \$381.82 | \$100.99 | \$2218.36 |
| 06/2013 | \$2000.50 | \$440.11 | \$116.41 | \$2557.02 |
| 09/2013 | \$1611.35 | \$354.50 | \$93.77 | \$2059.62 |
| 12/2013 | \$1757.50 | \$386.66 | \$97.79 | \$2241.95 |
| | Tax Total | Penalty Total | Interest Total | Total |
| | \$50549.90 | \$15185.96 | \$11887.44 | \$77623.30 |

Statement

Date: December 9, 2015
Name:
Taxpayer ID: 20-4569701



Computation of balance due

Reporting Period: 01/2007 - 12/2013

| | |
|--------------------------------|-------------|
| Total deficiency (this notice) | \$77,623.30 |
| Total balance due | \$77,623.30 |

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the 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 Department's findings.
- ~~You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.~~
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.