

**IN THE  
ILLINOIS INDEPENDENT TAX TRIBUNAL**

---

**10 SOUTH STATE STREET PROPERTY  
INVESTOR, L.P.,** )  
 )  
 **Petitioner,** )  
 )  
 **v.** )  
 )  
 )  
 **ILLINOIS DEPARTMENT** )  
 **OF REVENUE,** )  
 )  
 **Respondent.** )

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**RECEIVED**  
FEB 05 2016  
BY: AMC  
Case No. 16TT24

**PETITION**

COMES NOW 10 South State Street Property Investor, L.P., (“Petitioner”) and petitions the Illinois Independent Tax Tribunal (“Tribunal”) for an order abating the tax, interest and late-payment penalty set forth in the Notice of Deficiency issued December 7, 2015, by the Illinois Department of Revenue (“Department”). A copy of the Notice of Deficiency is attached to this petition as Exhibit A. In support of this petition, Petitioner states as follows:

**PARTIES AND FACTUAL BACKGROUND**

1. Petitioner’s address is c/o Corona Capital, 800 Boylston Street, Suite 1600, Boston, Massachusetts, 02199-8034; its telephone number is (857) 453-6593; and its taxpayer identification number is 20-4141913.
2. Petitioner is a Limited Partnership, established on January 13, 2006. Shortly after it was established, Petitioner acquired real estate located in Chicago, Illinois that it leased to commercial tenants.

3. All of Petitioner's Limited Partners were nonresidents of Illinois. Petitioner's General Partner was an LLC that was owned by the Limited Partners. The General Partner provided a power of attorney and signing authority to a representative ("Petitioner's representative"), who provided management services to Petitioner.

4. For the years 2006 through 2013, Petitioner timely filed Federal and Illinois tax returns. For each of these years, Petitioner incurred losses and had no income tax liability.

5. In July of 2014, Petitioner sold its Chicago real estate. As a result of the gain from this sale, Petitioner had taxable income in tax year 2014, for the first time.

6. Prior to the April 15, 2015 filing deadline, Petitioner's accountants informed Petitioner's representative that a payment of \$1,581,886 would be due to the Department for Petitioner's 2014 Partnership Replacement Income Tax and Pass-Through Withholding Payments with respect to its nonresident partners. Petitioner's representative and the accountants agreed that an electronic funds transfer to the Department would be made via the accountants' tax preparation software. The accountants requested the following information in order to make the transfer: Petitioner's bank account name, account number, and ABA routing number.

7. Petitioner's representative provided the accountants with the requested information. The routing number provided by Petitioner's representative, however, was a wire transfer routing number, rather than an Account Clearing House (ACH) routing number. ACH routing numbers are used to make an electronic funds transfers to the Department. Neither Petitioner nor Petitioner's accountants were aware that the wrong type of routing number was provided by Petitioner's representative.

8. On April 15, 2015, Petitioner's accountants attempted to pay \$1,581,886 to the Department using the information provided by Petitioner. At the time of the attempted transfer,

there were funds substantially in excess of this amount in Petitioner's bank account, and to the best of Petitioner's knowledge, the correct account number and routing number had been provided to the accountants. The payment instruction entered by the accountants was accepted by the software system. A copy of the information submitted via the accountants' tax software is attached to this petition as Exhibit B.

9. The accountants timely filed extensions to file Petitioner's 2014 federal and Illinois tax returns.

10. The Department issued a notice dated April 17, 2015 when Petitioner's payment was not received. The April 17, 2015 notice was mailed to Petitioner's former tax accountants, Heckler and O'Keefe CPAs, and forwarded by the former accountants to Petitioner on April 27, 2015. A copy of the notice is attached to this petition as Exhibit C.

11. The notice issued by the Department indicates that information concerning the transfer was transmitted to the Department, but that Petitioner's bank did not honor the debit. The notice states that "[t]he reason stated was 'no account/unable to locate account.'" After receiving the notice, Petitioner's representative verified that the account number and other information provided for the transfer was correct. Petitioner's representative contacted Petitioner's current accountants, Petitioner's bank, and the Department to determine why the payment had not been transferred.

12. Upon determining the cause of the unsuccessful attempted transfer on April 15, Petitioner's representative used the Department's website to make an electronic transfer of the \$1,581,886. The payment was successfully submitted to the Department on June 3, 2015. A copy of the Department's payment confirmation is attached to this petition as Exhibit D.

13. The funds that were used to make the payment to the Department were held by Petitioner in a non-interest bearing bank account, and Petitioner received no benefit from the delay in payment to the Department.

14. On September 15, 2015, Petitioner's accountants filed Petitioner's 2014 Illinois Partnership Replacement Income Tax Return, Form IL-1065 (the "2014 Return") pursuant to the extension, and paid the \$348,446 balance due shown on the return.

15. On the 2014 Return, Petitioner claimed a net loss deduction of \$2,388,252.

16. The net loss claimed on the 2014 Return was incorrectly reported as originating in 2013. In addition, the amount of the net loss claimed was incorrect. The correct amount of Petitioner's net loss deduction to be carried forward to 2014 is \$3,084,351. These losses originated in taxable years 2006 through 2013. Petitioner will submit an amended 2014 return to properly reflect and claim this correct deduction, if necessary.

17. The Department issued a Notice of Deficiency to Petitioner on December 7, 2015, asserting that Petitioner owed a balance of \$242,763.19, which includes the following amounts for the tax year ending December 2014:

Partnership Replacement Tax	\$35,824.00
Late Payment Penalty	\$196,615.60
Interest (through 12/7/2015)	\$10,323.59
<b>Total Balance Due</b>	<b>\$242,763.19</b>

18. As shown on the Notice of Deficiency, the Department disallowed in full the net loss deduction claimed by Petitioner on the 2014 Return.

19. Petitioner is challenging the full amount of the additional tax assessed by the Department, plus the interest associated with this tax, and the late payment penalty assessed by the Department, as explained in detail below.

### **JURISDICTION**

20. This Tribunal has jurisdiction in this matter pursuant to the Illinois Independent Tax Tribunal Act (35 ILCS § 1010/1-45) in that the determination of the Department at issue is reflected on a Notice of Deficiency issued under the Illinois Income Tax Act (35 ILCS § 5/201(c)) and the amount of tax at issue exceeds \$15,000.

### **REQUEST FOR ABATEMENT OF TAX, INTEREST AND PENALTY**

21. As explained in the foregoing paragraphs, the Department disallowed the net loss deduction in the amount of \$2,388,252 claimed by Petitioner on the 2014 Return. The Department assessed additional tax of \$35,824.00, plus interest and a late payment penalty as a result of this disallowance.

22. Petitioner has net losses in the total amount of \$3,084,351 that were incurred in tax years 2006 through 2013, and that are available to be claimed as a deduction on the 2014 Return. If necessary, Petitioner will file an amended return to claim the proper amount of the net loss deduction for 2014.

23. For these reasons, the disallowance of Petitioner's net loss deduction and the assessment of tax, interest and late payment penalty based on this disallowance, is erroneous and should be set aside by this Tribunal, and Petitioner's 2014 Partnership Replacement Income Tax liability should be re-determined based on a net loss deduction of \$3,084,351.

## **REQUEST FOR ABATEMENT OF LATE PAYMENT PENALTY**

24. The Department assessed a late payment penalty against Petitioner under 35 ILCS § 735/3-3. Under 35 ILCS § 735/3-8, the late payment penalty “shall not apply if the taxpayer shows that his failure to . . . pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.”

25. The Department’s regulations provide that “[t]he most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin Code 700.400(b). The regulations further explain that “[a] taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so.” 86 Ill. Admin Code 700.400(c). In addition, the regulations provide a “non-exclusive list of situations” that “will constitute reasonable cause for purposes of abatement of penalties.” Item 7 in this list states that “[r]easonable cause will exist for purposes of abatement of the penalty if a taxpayer makes an honest mistake, such as inadvertently mailing a Department of Revenue check to a local government, another state’s Department of Revenue, or to the Internal Revenue Service.” 86 Ill. Admin Code 700.400(e)(7).

26. As demonstrated by the facts set forth in the foregoing paragraphs, Petitioner made a good faith effort to timely pay its proper tax liability, by directing its accountants to make an electronic payment of the tax on April 15, 2015. Petitioner made an honest mistake, similar to the mistake described in the Department’s regulations, by providing its accountants with a wire transfer routing number rather than an ACH routing number. In addition, the notice that the

transfer had failed was sent to Petitioner's former accountants, causing a delay in notice to Petitioner. When Petitioner received the notice, it verified that it had provided accurate account information for the transfer, and therefore reasonably concluded that the error in transmission was likely due to a problem caused by the bank or the Department. Petitioner submitted the payment as soon as it was able to determine the cause of the unsuccessful attempted transfer. Petitioner had the funds available for the payment on April 15, and received no benefit from the delay in payment. Petitioner believed in good faith that it had done everything necessary to make the payment on April 15.

27. In addition, Petitioner exercised ordinary business care in engaging accountants to prepare the tax returns and determine its tax liability prior to the due date for filing and paying the tax. Although Petitioner had been filing partnership replacement tax returns since 2006, this was the first year that Petitioner had taxable income and a tax liability. Due to these circumstances, the determination of the correct tax liability took additional time and as a result, a balance was due with the 2014 Return on September 15, 2015.

28. For these reasons, Petitioner's failure to timely pay the taxes at issue was due to reasonable cause, and the late payment penalty should be abated.

WHEREFORE based on the foregoing, Petitioner respectfully requests that this Tribunal: (1) issue a decision finding that Petitioner is not liable for the balance due set forth in the Notice of Deficiency; (2) order the Department to abate the tax, interest and late payment penalty that were assessed on the basis of the Department's erroneous disallowance of Petitioner's net loss deduction; (3) order the Department to re-determine Petitioner's 2014 Partnership Replacement Income Tax liability based on a net loss deduction of \$3,084,351; (4)

abate the late payment penalties that were assessed against Petitioner; and (5) grant Petitioner such other relief as may be authorized under the applicable laws.

Respectfully submitted,

BRYAN CAVE LLP

By: Katharine Lessaris

Jena Valdetero

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kate.lessaris@bryancave.com

Firm I.D. No. 40886

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2016, a copy of the foregoing Petition was served by certified mail, postage prepaid, or hand-delivered to:

Illinois Department of Revenue

Office of Legal Services

100 W. Randolph St., 7-900

Chicago, IL 60601.

Katharine Lessaris

Katharine Lessaris

# Notice of Deficiency

for Form IL-1065, Partnership Replacement Tax Return



December 7, 2015



Letter ID: CNXXXX9X26596XX4

Taxpayer ID: 20-4141913  
Reporting period: December 2014  
Total deficiency: \$2,173,095.19  
Balance due: \$242,763.19

\_\_\_\_\_ #BWNKMGV  
#CNXX XX9X 2659 6XX4#  
10 SOUTH STATE STREET PROPERTY INVESTOR  
L.P.  
\_\_\_\_\_ 800 BOYLSTON ST STE 1600  
BOSTON MA 02199-8034

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](http://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](http://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





Letter ID: CNXXXX9X26596XX4  
 Taxpayer ID: 20-4141913  
 Reporting Period: December 2014

**STATEMENT**

\_\_\_\_\_  
 \_\_\_\_\_

**Computation of Deficiency**

<b>Tax year ending: December 2014</b>	<b>Corrected Amount</b>
Base income(loss) allocable to IL	\$21,331,368.00
IL net loss deduction(NLD)	\$0.00
Minus exemption	\$1,000.00
Net Income	\$21,330,368.00
Tax Due	\$319,956.00
Pass-Through Withholding Payment owed on behalf of members	\$1,646,200.00
Plus late-filing or nonfiling penalty	\$0.00
Plus late-payment penalty	\$196,615.60
Plus interest on tax through 12/07/2015	\$10,323.59
<b>Total deficiency</b>	<b>*\$2,173,095.19</b>

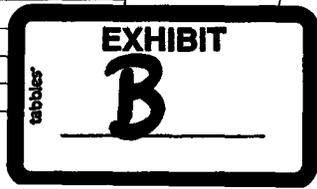
\*If you intend to pay under protest, you must pay this total deficiency amount.

**Computation of balance due      Reporting Period: 12/31/2014**

Deficiency (this notice)	*\$2,173,095.19
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$1,930,332.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$242,763.19

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

1 Shows acceptance of legal responsibility as stated in the implementation guide Debit authorized AuthorizationStatement			
<b>StatePayment</b>			
Checking Account		X	Checking
Savings Account			Savings
RoutingTransitNumber	026009593		RoutingTransitNumber
BankAccountNumber	004648678049		BankAccountNumber
PaymentAmount	1581886.00		PaymentAmount
IdentificationNumber	204141913		IdentificationNumber
AccountHolderName	10 South State Street		AccountHolderName
1 for Business or 2 for Personal		1	AccountHolderType
RequestedPaymentDate	2015-04-15		RequestedPaymentDate
<b>AddendaRecord</b>			
TaxpayerIdentification	204141913		TaxpayerIdentification
<b>TaxTypeCode</b>			
FTACode	023		FTACode
StateTaxTypeCode	1		StateTaxTypeCode
TaxPeriodEndDate	2014-12-31		TaxPeriodEndDate
<b>TXPAmount</b>			
SubAmountType		X	SubAmountType
SubAmount	1581886.00		SubAmount
NotIATTransaction		X	NotIATTransaction
<b>RefundDirectDeposit</b>			
TelephoneNumber			TelephoneNumber
RoutingTransitNumber			RoutingTransitNumber
BankAccountNumber			BankAccountNumber
Amount is only necessary where customer requests direct deposit be split into more than one account			Amount
Checking			Checking
Savings			Savings
<b>ACHCreditInfo</b>			
PaymentAmount			PaymentAmount
IdentificationNumber			IdentificationNumber
RequestedPaymentDate			RequestedPaymentDate
<b>AddendaRecord</b>			
TaxpayerIdentification			TaxpayerIdentification
<b>TaxTypeCode</b>			
FTACode			FTACode
StateTaxTypeCode			StateTaxTypeCode
TaxPeriodEndDate			TaxPeriodEndDate
<b>TXPAmount</b>			
SubAmountType			SubAmountType
SubAmount			SubAmount
<b>DepositTo529Account</b>			
RoutingTransitNumber			RoutingTransitNumber
BankAccountNumber			BankAccountNumber
Amount is only necessary where customer requests direct deposit be split into more than one account			Amount
Checking			Checking
Savings			Savings
<b>BeneficiaryName</b>			
FirstName			FirstName
MiddleInitial			MiddleInitial
LastName			LastName
NameSuffix			NameSuffix
BeneficiarySSN			BeneficiarySSN
<b>EstimatedPayments</b>			
Checking Account			Checking
Savings Account			Savings
RoutingTransitNumber			RoutingTransitNumber
BankAccountNumber			BankAccountNumber
PaymentAmount			PaymentAmount
IdentificationNumber			IdentificationNumber
AccountHolderName			AccountHolderName
1 for Business or 2 for Personal			AccountHolderType



	RequestedPaymentDate		RequestedPaymentDate
AddendaRecord			
	TaxpayerIdentification		TaxpayerIdentification
TaxTypeCode			
	FTACode		FTACode
	StateTaxTypeCode		StateTaxTypeCode
	TaxPeriodEndDate		TaxPeriodEndDate
TXPAmount			
	SubAmountType		SubAmountType
	SubAmount		SubAmount

# Electronic Payment Failed

for



April 17, 2015



Letter ID: CNXXX1776322X641

Account ID: 18362-30912

FEIN: 20-4141913

Reporting Period: December 2014

\_\_\_\_\_  
#BWNKMGV  
\_\_\_\_\_  
#CNXX X177 6322 X641#  
\_\_\_\_\_  
10 SOUTH STATE STREET PROPERTY INVESTOR  
L.P.  
ATTN: HECKLER & O KEEFE CPAS PC  
80 BUSINESS PARK DR STE 205  
ARMONK NY 10504-1701



## Your recent electronic debit payment failed.

The electronic debit of your account in the amount of \$1,581,886.00 was not honored by your financial institution. The reason stated was "no account/unable to locate account".

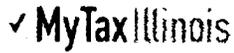
You may make an electronic payment through our website at [tax.illinois.gov](http://tax.illinois.gov). To mail a payment, please send it to us with a copy of this letter.

If your replacement payment is received after the date your payment is due, you may be assessed a late-payment penalty. However, you can minimize your penalty by sending in a replacement payment as soon as possible.

If you have questions, please contact us at 217 782-6257 or email [rev.taxpay@illinois.gov](mailto:rev.taxpay@illinois.gov).

ELECTRONIC PAYMENTS SECTION  
ILLINOIS DEPARTMENT OF REVENUE  
PO BOX 19015  
SPRINGFIELD IL 62794-9015





Cancel Print

**MENU** Log Off

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**NAVIGATION**

My Accounts  
Account: 20-4141945  
Select Period  
Payment  
Request

**CONFIRMATION**

**You have successfully submitted your payment request. It is your responsibility to verify through your account and bank statement that this transaction was successful.**

Your confirmation number is **0-841-457-024**

Request submitted on: 6/3/2015 1:13:42 PM (Central Time)  
Request type: IL Business Income Tax - IL-505-B Payment

**Details of your request:**

Account number: 20-4141945  
 Reporting period: December 2014  
 Amount of request: \$8,255.00  
 Date of debit: 6/3/2015  
 Bank account: \*\*\*\*8049 - BANK OF AMERICA, N.A.

If you want to *make a change*, it is not too late. While a payment is still pending, you can return to your account, cancel this request, and submit a new payment request.

**Important:** Electronic payments may not be reflected in your account balances in MyTax Illinois for up to 5 business days after the date of debit.

You may print this page for your records, but the record of this request will also remain available under your "requests" tab.

If you have questions, please visit our website at [tax.illinois.gov](http://tax.illinois.gov) or call us at 1 800 732-8666. Reference the confirmation number provided above.

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