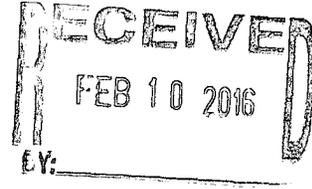


**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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

Docket No.



**PETITION**

Petitioner, Nationwide Communities Stonegate, 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 Stonegate, 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 20-4186091.
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:

<b>Filing period</b>	<b>Tax</b>	<b>Penalty</b>	<b>Interest</b>	<b>Total</b>
03/2008	505.98	222.62	234.63	963.23
06/2008	505.98	222.62	218.50	947.10
09/2008	439.20	193.24	178.59	811.03
12/2008	354.24	155.85	134.92	645.01
03/2009	176.31	77.58	62.95	316.84
06/2009	193.11	84.97	64.40	342.48
09/2009	156.66	34.45	24.52	215.63
12/2009	184.41	40.56	27.01	251.98
03/2010	193.26	42.52	26.45	262.23
06/2010	196.56	43.24	24.87	264.67
09/2010	229.32	50.46	26.74	306.52
12/2010	229.32	50.46	24.65	304.43
03/2011	330.65	72.74	33.04	436.43
06/2011	336.00	73.92	30.77	440.69
09/2011	608.40	133.85	49.67	791.92
12/2011	617.40	135.83	44.76	797.99
03/2012	526.25	115.78	34.26	676.29
06/2012	568.35	125.04	32.70	726.09
09/2012	569.05	125.19	28.44	722.68
12/2012	876.95	192.93	39.42	1,109.30
03/2013	688.95	151.57	30.97	871.49
06/2013	896.50	197.23	40.30	1,134.03
09/2013	785.25	172.76	35.30	993.31
12/2013	927.55	204.06	39.34	1,170.95
<b>TOTAL</b>	<b>\$11,095.65</b>	<b>\$2,919.47</b>	<b>\$1,487.20</b>	<b>\$15,502.32</b>

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 9801 W. 70<sup>th</sup> St., Shreveport, Louisiana 71129.

(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 Stonegate,  
Inc.

Dated: February 8, 2016

By:   
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: CNXXXX2218912165

\_\_\_\_\_  
#BWNKMGV  
#CNXX XX22 1891 2165#  
NATIONWIDE COMMUNITIES STONEGATE INC  
100 N LA SALLE ST STE 1111  
\_\_\_\_\_  
CHICAGO IL 60602-3537

Taxpayer ID: 20-4186091--  
Audit ID: A2110840832  
Audit periods: 01/2007 - 12/2013  
Total Deficiency: \$15,502.32  
Balance due: \$15,720.42



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](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

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

EXHIBIT A

# Statement

Date: December 9, 2015  
Name:  
Taxpayer ID: 20-4186091

## Reasons for deficiency

We obtained information from the Internal Revenue Service under authorization of the Internal Revenue Code, Section 6103(d).

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 1-1-2008 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

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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: 20-4186091

## Interest

Interest in the amount of \$1,513.70 has been computed through December 9, 2015.