

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

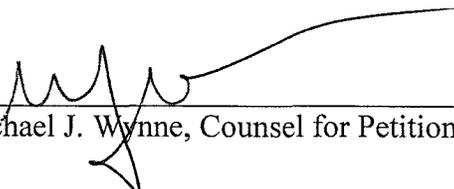
Derse, Inc.,)	
)	
Petitioner,)	No. 16-TT-30
)	
v.)	Chief Judge Conway
)	
Illinois Department of Revenue,)	
)	
Respondent.)	

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on May 26, 2016, I caused to be filed with the Clerk of the Illinois Independent Tax Tribunal in Cook County, Illinois, the **Motion for Default and for Judgment Against Respondent, the Illinois Department of Revenue**, in the above captioned matter, a copy of which is attached hereto and herewith served upon you.

Dated: May 26, 2016

By:



Michael J. Wynne, Counsel for Petitioner

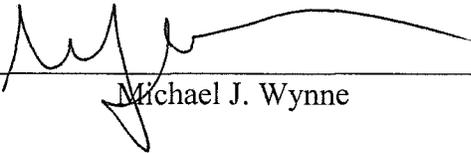
Michael J. Wynne
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Firm ID: 44486

CERTIFICATE OF SERVICE

I, Michael J. Wynne, an attorney, hereby certify that on May 26, 2016, I caused a copy of the **Motion for Default and for Judgment Against Respondent, the Illinois Department of Revenue**, in the above captioned matter, to be served on all parties of record in this cause by (i) enclosing the same in an envelope, postage fully prepaid; (ii) by depositing said envelope in the United States Postal Service mail chute at 10 South Wacker Drive, Chicago, Illinois, 60606, before the hour of 5:00 p.m. on May 26, 2016; and (iii) by addressing said envelope to:

Michael Coveny
James R. Reynolds
Assistant Attorneys General
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, Illinois 60601

By:



Michael J. Wynne

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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

Derse, Inc.,)	
)	
Petitioner,)	No. 16-TT-30
)	
v.)	Chief Judge Conway
)	
Illinois Department of Revenue,)	
)	
Respondent.)	

MOTION FOR DEFAULT AND FOR JUDGMENT AGAINST RESPONDENT, THE ILLINOIS DEPARTMENT OF REVENUE

INTRODUCTION

Petitioner, Derse, Inc., by its undersigned counsel, moves pursuant to 86 Ill. Admin. Code § 5000.310(b)(4) for a determination of default and judgment against Respondent, the Illinois Department of Revenue (the “Department”). In support thereof, Derse states as follows:

1. Derse filed its Petition with the Tribunal on February 16, 2016. See attached **Exhibit 1**.
2. On February 16, 2016, the Tribunal entered an Order accepting Derse’s Petition and setting a deadline for the Department’s Answer at March 29, 2016. See attached **Exhibit 2**.
3. The Department failed to provide an Answer by March 29, 2016.
4. On April 13, 2016, the Tribunal Ordered the Department to file an Answer in 3 weeks, *i.e.*, by May 4, 2016. See attached **Exhibit 3**.
5. The Department disregarded the Court’s Order, did not request a further extension of time to answer, and did not file an Answer by May 4, 2016.

6. As of the date of the filing of this Motion for Default, the Department has still not filed an Answer, and has not communicated to Petitioner as to when an Answer might be filed.

7. As a result of the Department's failure to Answer within the proscribed time, the Department is in technical default and should be determined to be in default.

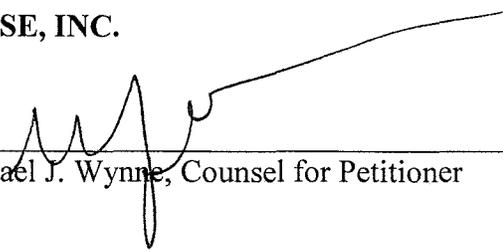
WHEREFORE, Petitioner, Derse, Inc., respectfully request that this Court enter an Order:

- (1) Finding Respondent, the Illinois Department of Revenue, to be in default;
- (2) Granting Petitioner, Derse, Inc. judgment in its favor on its unanswered Petition; and
- (3) Granting any other and further relief as is warranted.

Respectfully submitted,

DERSE, INC.

By:

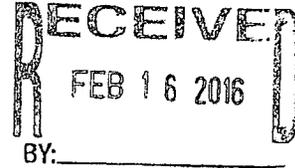


Michael J. Wynne, Counsel for Petitioner

EXHIBIT 1

IN THE
ILLINOIS INDEPENDENT TAX TRIBUNAL
COOK COUNTY, ILLINOIS

DERSE, INC.,)
Petitioner,)
Account ID: See Exhibit A)
Telephone Number: See Exhibit A)
Tax Type: ROT / SOT / UT)
TPE: July 1, 2010 – December 31, 2012)
v.)
ILLINOIS DEPARTMENT OF REVENUE,)
Respondent.)



No. 16- TT- _____

(6TT30

PETITION OF THE TAXPAYER

Derse, Inc. (“Derse” or “Taxpayer”), by its attorneys of record, Reed Smith LLP, pursuant to Section 1-80 of the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010/1-5, *et seq.*] (the “Tax Tribunal Act”), complains of the Illinois Department of Revenue (the “Department” of “IDOR”) as follows:

A. Jurisdiction and Venue

1. This timely petition involves a Notice of Tax Liability (“NTL”) that assesses an amount in excess of \$15,000 in tax, penalty and interest under a tax identified in Section 1-45 of the Tax Tribunal Act.
2. Derse accepts the Tax Tribunal’s designation of its office in Cook County to conduct the hearing in this matter.

B. Facts Common to All Counts

1. The Parties

a. Petitioner Derse

3. Derse is a corporation that maintains its principal office at 3800 West Canal Street, Milwaukee, Wisconsin.
4. Derse carries on the business begun in 1948 by The Derse Company, a sign painting business founded by James F. Derse in the back of his mother's Milwaukee garage. Derse is now comprised of 475 employees in six full-service divisions, through which Derse drives client programs in 50 countries. Derse's business is to bring a smarter approach to trade shows, auto shows, marketing environments, and marketing events with capabilities that include: (i) strategic planning; (ii) portfolio planning; (iii) engagement training, (iv) accountability assessment; (v) iQ lead collection; (vi) experiential marketing; (vii) 3D/2D/multimedia design; (viii) fabrication; (ix) program management; (x) project management; (xi) rental; (xii) warehousing; (xiii) international projects and partnerships; and (xiv) on-site labor.
5. Derse maintains six full-service facilities operating on the same platform, capable of pulling resources and people, as workloads demand, in: (1) Las Vegas, Nevada; (2) Dallas, Texas; (3) Waukegan, Illinois; (4) Milwaukee, Wisconsin; (5) Atlanta, Georgia; and (6) Pittsburgh, Pennsylvania.

6. Derse has the resources—including design, fabrication, program management, logistics and warehousing—to coordinate programs of any size, in 5,000 shows per year between 500 clients.
7. Derse’s collective expertise of experiential, architectural, multimedia and strategic professionals strives to turn a client’s exhibit into an immersion that promotes the client’s brand and business.

b. Respondent IDOR

8. The Department is an executive agency authorized, among other functions, to administer and enforce the provisions of the Retailers’ Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act. 20 ILCS 2505/2505-25; 20 ILCS 2505/2505-90; and 20 ILCS 2505/2505-100.

2. Derse’s Trade Show Exhibit Manufacture, Sales and Related Services

9. Derse’s services with respect to exhibits it designs and manufactures are separately priced and negotiated for even though the services may relate to the same exhibit or trade show.
10. Derse does not bundle or package multiple services into a single price, so manufacturing, transportation by third parties to trade-show locations, logistics services, set-up and other on-site services, transportation by third parties from trade-show locations, and storage, cleaning, and refurbishing of exhibits, etc. are separately bid and negotiated.

11. The sale and pricing of Derse's construction and other services are not contingent on, and not on account of, Derse's customer acceptance or declination of any of the services offered by Derse.
12. Derse manufactures trade show exhibits and "permanent installs" at its facilities throughout the United States, including in Waukegan, Illinois.
13. A purchasing customer may use a trade show exhibit at multiple trade shows in multiple locations.
14. Derse customers have the option to separately agree for Derse to arrange transport for their exhibit to various locations after a trade show, or to provide or contract with a third party for transportation to their chosen location.
15. Derse's customers may use their trade show exhibit at multiple trade shows before needing to provide storage for their exhibit until its next use.
16. If not agreed to at the time of the initial sale of the exhibit, Derse customers may decide at any time after the sale of the exhibit whether Derse will store their exhibit in between uses of the exhibit and, if desired, may designate the location of storage.
17. After Derse sells a trade show exhibit, except as provided by contract with Derse's customer, and then only pursuant to such contract terms, Derse has no control over a trade show exhibit sold to a customer once the exhibit is purchased by the customer.

18. In addition to the sale of the trade show exhibit, Derse also builds custom crates to safely transport the various components of the exhibit to its destinations. The custom crates are separately priced and paid for by Derse's customer, and are reused by Derse pursuant to the services agreement with the customer when the disassembled exhibit is returned to its destined storage location. The customer's custom crates for its trade show exhibits continue to be reused during the life of the exhibit. If damaged or if needed as a result of ordinary wear and tear, the customer's custom crates are refurbished by Derse at a charge to the customer to allow the customer's continued use of the trade show exhibit.
19. Derse's standard shipping terms dictate that prices are F.O.B. Shipping Point unless otherwise noted. Under most circumstances, Derse's exhibits are transported via contract carrier such that possession of the exhibit transfers to the customer at the location of first delivery. Transportation of an exhibit to a trade show may be arranged by either Derse or the purchasing customer.
20. Because the cost of assembly and set-up of an exhibit can cost several thousand dollars, a customer's first inspection of a completed trade show exhibit occurs upon the delivery of the exhibit at its first delivery destination where it is first assembled and positioned.
21. Typical billing for trade show exhibits requires payment of a 50% deposit for Derse to begin its construction, with the remaining amount due from

Derse's customer within the agreed upon credit terms (e.g., 30 days) after the delivery of the trade show exhibit. Payment terms may vary based on the customer's credit history or profile.

22. A customer's trade show exhibit returned to a Derse facility for storage undergoes a pull, prep, and receive service to clean the exhibit for its next show, remove and store any graphic arts on the exhibit that may be reused or replaced upon its next delivery, all at a charge to the customer as a separate service from the agreed storage charge.
23. During the course of its use, a trade show exhibit may be returned to several Derse facilities for interim storage, based on the trade show itinerary contemplated for the exhibit.

a. Derse's Trade Show Exhibit Tax Compliance

24. Derse charged the tax on the customer's purchase of the trade show exhibit that is applicable in the State or locality to which the trade show exhibit will be first transported and delivered.
25. Derse did not charge Illinois Service Occupation Tax on exhibits manufactured in Illinois and transported and first delivered outside Illinois because the sale of the item was for delivery to the purchaser outside Illinois and thus qualified for the so-called "interstate commerce exemption" offered by the Service Occupation Tax Act.
26. Derse did not charge Illinois use tax on its separately negotiated charges to customers for temporary storage in Illinois of trade show exhibits purchased by Derse customers.

b. Derse's Special Order Transactions

27. Derse custom builds certain items for certain particular customers' needs, to the specifications of the customers, which renders the items of use by and value to only to the purchasing customer.
28. Derse charged Illinois Service Occupation Tax on the cost of materials incident to the custom build service for any exhibits transported and delivered to the customer in Illinois.

c. Derse's Contractor Transactions

29. Derse built and installed custom show cases attached to the Illinois building structure of a particular customer.
30. The custom show case is not capable of being removed from the building structure of the customer without destroying its functionality for further use.
31. Derse charged Illinois Service Occupation Tax on the cost of materials incident to its custom construction and installation of the show case.

C. The Controversy

32. The IDOR conducted a sales and use tax audit of Derse for the tax periods July 1, 2010 through December 31, 2012.
33. On December 17, 2015, the Department issued a Notice of Tax Liability ("NTL") to Derse Inc. assessing Tax in the amount of \$276,078.00, Excess Tax and Excess 911 Surcharge in the amount of \$7,280.00, Late Payment Penalty in the amount of \$21,487.00, and interest in the amount of \$26,786.00, for a total assessment amount of \$331,631.00.

1. **Trade Show Exhibits**

34. The Department disallowed Derse's use of the interstate commerce exemption under the Service Occupation Tax Act.

35. Service Occupation Tax Act, in pertinent part, provides as follows:

Sec. 3-45. Interstate commerce exemption. No tax is imposed under this Act upon the privilege of engaging in a business in interstate commerce or otherwise when the business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.

36. The wording of the "interstate commerce" exemption in the Service Occupation Tax Act is identical to the wording of the same exemption in the Retailers' Occupation Tax Act, at 35 ILCS 120/2-60.

37. Neither the interstate commerce exemption of the Retailers' Occupation Tax Act or that of the Service Occupation Tax Act make the exemption of the retailer or a serviceman contingent on the purchaser never returning the purchased item to Illinois.

38. The only requirement in the Retailer's Occupation Tax Act that a retailer must verify is that a purchaser who takes delivery or receipt of the purchased item in Illinois will solely use the item outside when the purchase is made by a purchaser who holds a permit issued by the IDOR for "centralized purchasing" in Illinois. 35 ILCS 120/2-5(38); 35 ILCS 115/3-5(26).

39. The Illinois Use Tax Act provides an exemption for persons that acquire property outside of Illinois and bring it to Illinois for temporary storage before transporting it for use solely outside Illinois [35 ILCS 105/3-55(e)]

and for persons who obtain a permit from the Department to make centralized purchasing and temporarily store in Illinois property purchased in Illinois before transportation and use of the property solely outside Illinois. 35 ILCS 105/3-55(j).

40. No Illinois occupation or use tax statute requires that a retailer making a sale of tangible personal property for delivery to a purchaser outside of Illinois establish or otherwise agree that the purchased item never return to Illinois as a precondition of claiming the interstate commerce exemption under an Illinois occupation or use tax statute.
41. The Department's Service Occupation Tax Act regulations, in pertinent part, provide as follows:

The serviceman does not incur [SOT] liability on property which he resells as an incident to a sale of service under an agreement by which the serviceman is obligated to make physical delivery of the goods from a point in [Illinois] to a point outside [Illinois], not to be returned to a point within Illinois, provided that such delivery is actually made. Nor does the tax apply to property which the serviceman resells as an incident of a sale of service under an agreement by which the serviceman, by carrier (when the carrier is not also the purchaser) or by mail, delivers the property from a point in [Illinois] to a point outside of [Illinois], not to be returned to a point within [Illinois]."

86 Ill. Admin. Code § 140.501(b).

42. The Department erroneously deprived Derse of the statutory interstate commerce exemption, by disregarding Derse's customers' separately negotiated storage services and, notwithstanding the sale of the trade show exhibits to Derse customers, continuing to treat Derse as if it had an owner's possession and control of the delivered trade show exhibits.

43. The Department's regulation § 140.501(b) requirement that tangible personal property sold by a serviceman for delivery to a purchaser outside Illinois, not to return to a point within Illinois, is extraneous to the terms of the Service Occupation Tax Act, and it exceeds the scope of the Service Occupation Tax Act, the Retailers' Occupation Tax Act, and the Use Tax Act, none of which require that the tangible personal property be transferred in the retail transaction be transferred solely for use outside Illinois, not to be returned to a point within Illinois, as a condition to qualifying for the statutory interstate commerce exemption.
44. The taxpayer in *Exhibits, Inc. v. Sweet*, 303 Ill. App. 3d 423 (1999), which applied the Department's regulation § 140.501(b) notwithstanding that certain of its terms exceed the scope of the statute it administers, as a condition of the sale of exhibits contracted at the time of sale for the purchaser to store the exhibits in Illinois.
45. Unlike the taxpayer in *Exhibits, Inc. v. Sweet*, Derse does not condition its design, manufacture and sale of trade show exhibits on an agreement that the purchaser store the exhibit in Illinois between uses at trade shows, and Derse customers may, and do, choose to transport or store exhibits on their own or through a third-party independent contractor, or may at any later date after sale choose to contract with Derse for transportation and storage for one or more intervals between trade shows.

46. Like the taxpayer in *Honeywell v. Illinois Department of Revenue*, 366 Ill. App. 3d 187 (2006), in which the Department's regulation § 140.501(b) was also applied despite certain of its terms exceeding the scope of the Service Occupation Tax, Derse's transfer of tangible personal property to its customers outside of Illinois should not be subject to Service Occupation Tax.
47. Despite effectively treating Derse as the owner of the trade show exhibits notwithstanding their sale to Derse's customers, the Department took the inconsistent position of denying to Derse a credit against the Service Occupation Tax on the transactions on which Derse properly paid tax to the States to which the trade show exhibits were first delivered.
48. Based on the Department's position of denying a credit against the Service Occupation Tax for taxes legally owed to and paid to another state or local taxing jurisdiction, Derse would have to charge both Illinois Service Occupation Tax and tax based on the first delivery destination of the exhibit as neither jurisdiction would allow a credit for tax paid to the other, which is inconsistent and inequitable in the context of interstate commerce.

2. Special Order Transactions

49. The Department erroneously applied Retailers' Occupation Tax to the full selling price of items that Derse custom built to the specifications of its customers and which were of use and value only to Derse's customer,

and therefore assessed tax on Derse's gross receipts in excess of its cost of materials on which Derse paid Service Occupation Tax.

3. Contractor Transactions

50. The Department's Retailers' Occupation Tax regulations, in pertinent part, provide as follows:

c) Construction Contractors--When Not Liable For Tax

A construction contractor does not incur Retailers' Occupation Tax liability as to receipts from labor furnished and tangible personal property (materials and fixtures) incorporated into a structure as an integral part thereof for an owner when furnished and installed as an incident of a construction contract. The construction contractor incurs Use Tax on the cost price of the tangible personal property that is incorporated into real estate. (See also Section 130.2075 of this Part.)

86 Ill. Admin. Code § 130.1940(c)(1).

51. The Department erroneously assessed Retailers' Occupation Tax on the selling price of custom showcases built into and permanently attached to the customer's real estate, contrary to the Department's regulation and applicable examples thereof. See 86 Ill. Admin. Code § 130.1940(c)(1).

Count I

52. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.

53. The Department's assessment is erroneous and contrary to law because, among other reasons:

Trade Show Exhibits

- (a) It misapplies portions of the Department's regulation § 140.501(b) which would result in no tax liability because the tangible personal property was transferred to the customer outside of Illinois and tax was paid on the transaction outside of Illinois.
- (b) It misapplies *Exhibits, Inc. v. Sweet* to erroneously assess tax on transactions in which, contrary to the facts in *Exhibits, Inc. v. Sweet*, the storage of trade show exhibits was not a condition for, and contemporaneously agreed with, a serviceman's sale of the trade show exhibits.
- (c) It relies on a portion of the Department's regulation § 140.501(b) which exceeds the scope of the Service Occupation Tax by improperly and without authority denying Derse the benefit of the interstate commerce exemption on sales of trade show exhibits shipped to customers and first delivered for use at trade shows outside Illinois. Derse's customer's contract with Derse for the shipment and storage of show exhibits, separately from the sale of the exhibits, and thus exercise control over their exhibits at all times by directing pursuant to such separate contracts.
- (d) Even if correct in its assessment of tax liability, it erroneously denies Derse credit for taxes paid to other states on trade show exhibits delivered to purchasers in such states.

Special Order Transactions

- (e) It erroneously applies the Retailers' Occupation Tax Act to sales of service in which the transfer of tangible personal property is incident to the design and manufacture to the custom specifications of the purchaser which render the items purchased of use and value solely to the purchaser.

Contractor Transactions

- (f) It erroneously, and contrary to its own regulation and examples, applies the Retailers' Occupation Tax Act to the selling price of items designed, manufactured and permanently affixed to the purchaser's real estate in a sale of service by Derse.
- (g) It included the real property transaction within a sample of Derse's sales of tradeshow exhibits and tradeshow exhibit services despite the fact that Derse is not ordinarily in the business of performing real property work. The specific transaction discussed was not one sold in the ordinary course of business by Derse and thus should not have been included within a sample of transactions that were sold within the ordinary course of business.

Count II

- 54. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.
- 55. The Department employed sampling and estimation methods to conduct its audit, which are not provided for in statute and regulations.

56. The Department's use of sampling and estimation methods was not necessary nor reasonable as there were no records necessary to the audit that were unavailable or incomplete to justify the Department's use of sampling methodologies in lieu of a detailed audit.
57. The Department initially developed a sampling plan discussed with Derse that selected a certain number of invoices to review as part of the audit. However, the Department deviated from the sampling plan by selecting and incorporating additional invoices to review and include within the sample, which effectively went beyond the scope of the sampling procedures and the sample itself as originally agreed to between the Department and the taxpayer.
58. The Department's use of sampling and estimation methods was factually flawed and produced statistically unsound results as it did not properly account for the fact that each "sales order" of Derse's may be reflected in multiple invoices.
59. The Department's use of flawed sampling and estimation methods was not authorized by Derse.

COUNT III

(In the Alternative)

60. Petitioner incorporates by this reference and realleges paragraphs 1 through 51 as though fully set forth herein.
61. The Department imposed a late-payment penalty pursuant to Section 3-3(b-20)(2) of the UPIA.

62. Section 3-8 of the UPIA provides that penalties, other than a fraud penalty, “shall not apply if the taxpayer shows that his failure to . . . pay tax at the required time was due to reasonable cause.” 35 ILCS 735/3-8.
63. Derse made a good faith effort to determine the correct reporting of its sales and use tax liability through the exercise of ordinary business care and prudence.
64. Derse acted with reasonable cause and therefore, under section 3-8 of the UPIA, no penalties should apply to the audit deficiencies that the Department assessed against Innophos.

WHEREFORE, Derse, prays that the Tax Tribunal enter an order in its favor and against the Department finding that:

- a. The liability is erroneously assessed and contrary to law and the NTL is therefore not prima facie true and correct;
- b. The Department’s sampling and estimation methodology was unauthorized by law, unauthorized by Derse, Inc. and, regardless of authority, was statistically unsound to support the NTL and the NTL is therefore not prima facie true and correct;
- c. The provision in the Department’s regulation Section 140.501(b), which strips a serviceman of the interstate commerce exemption unless the serviceman’s customer does not return the tangible personal property transferred incident to the sale of service to Illinois, exceeds the scope of

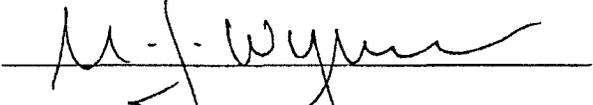
the Service Occupation Tax Act and cannot be enforced to deprive Derse of the statutory exemption;

d. Alternatively, to the extent any part of the NTL becomes a finally assessed liability, that Derse has demonstrated reasonable cause under the UPIA for abatement of the penalty imposed; and,

e. Grants such other relief as is just.

Respectfully submitted,

DERSE, INC.

By: 
Michael J. Wynne, attorney for Petitioner.

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Chicago, IL 60606
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EXHIBIT A

Notice of Tax Liability
for Form EDA-105-R, ROT Audit Report



#BWNKMGV
#CNXX X112 7X11 4727#
DERSE INC
3696 BURWOOD DR
WAUKEGAN IL 60085-8399

December 17, 2015



Letter ID: CNXXX1127X114727

Account ID: 2155-1294



We have audited your account for the reporting periods July 01, 2010, through December 31, 2012. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	276,078.00	0.00	276,078.00
Excess Tax and Excess E911 Surcharge	7,280.00	0.00	7,280.00
Late Payment Penalty Increase	21,487.00	0.00	21,487.00
Interest	26,786.00	0.00	26,786.00
Assessment Total	\$331,631.00	\$0.00	\$331,631.00

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

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

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is February 16, 2016. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, 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 liability 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 assessment total 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 to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 **Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 **Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 **Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 **Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 **Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 **Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.
- 10 **100 percent interest penalty** - You owe this penalty if you
 - were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
 - are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
 - did not report or pay that liability before we issued a Notice of Deficiency.
- 11 **Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.
- 12 **Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

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.

Taxpayer Statement



December 18, 2015 TDD 1 800 644-6304



Letter ID: CNXXXX3425598888

Account ID: 2155-1294
Total amount due: \$331,631.00

#BWNKMGV
#CNXX XX34 2559 8888#
DERSE INC
3696 BURWOOD DR
WAUKEGAN IL 60085-8399



This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Sales/Use Tax & E911 Surcharge Account ID: 2155-1294

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2012	299,330.00	21,487.00	26,786.00	-	(15,972.00)	331,631.00

* \$331,631.00 of this amount is subject to protest.

SOA

Retain this portion for your records.

P-000106

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX3425598888
DERSE INC

Total amount due: \$331,631.00

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mall this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

\$331,631.00 is subject to protest.
Do not pay any Income Tax liability that you intend to protest.

000 006 017836073767 731 123199 0 0000033163100

EXHIBIT 2

ILLINOIS INDEPENDENT
TAX TRIBUNAL

DERSE, INC.,)	
)	
Petitioner,)	
)	
v.)	16 TT 30
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Respondent.)	

ORDER

The petition in this matter has been accepted by the Tribunal and the Department is to file its answer on or before March 29, 2016. The initial status conference is set for April 13, 2016 at 10:15 a.m. by telephone. The Tribunal will initiate the call to both parties.

At the initial status conference, the parties should be prepared to discuss: 1) the nature of the case; 2) factual and legal issues; 3) settlement potential and discussions to date; 4) anticipated discovery; and 5) potential motions to be filed.

 s/ James Conway
JAMES M.CONWAY
Chief Administrative
Law Judge

Date: February 16, 2016

EXHIBIT 3

