

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

MARK ALCORN ENTERPRISES, INC, )  
an Illinois Corporation, a/k/a CARLYLE )  
AUTO SALES )  
 )  
Taxpayer- Petitioner, )  
 )  
vs. )  
 )  
THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS, )  
 )  
Respondent. )

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**Petition**

NOW COMES, Petitioner, MARK ALCORN ENTERPRISES, INC, an Illinois Corporation, a/k/a CARLYLE AUTO SALES, by and through his attorneys, HOWARD & HARDYMAN, LLP and in support of its petition to reverse and/or modify the Notice of Tax Liability (“Notice”) issued by the Illinois Department of Revenue (“Department”), states as follows:

1. The Notice was issued by the Department on March 22, 2016 assessing a late payment penalty and late filing penalty in the amount of **\$65,058** for the reporting period **January 1, 2012 through December 31, 2014**. A copy of the Notice is attached hereto as Exhibit A.
2. Petitioner is a corporation with its principal place of business 1708 Broadway, Rockford, Illinois. The Petitioner’s phone number is (815) 398-5010. The Petitioner’s EIN is 20-2570722 and taxpayer account number is 3617-6362.
3. The Petitioner is engaged in the purchase and sale of used automobiles.



4. The Petitioner uses a third-party processing company to process all ST-556 forms and remit the taxes to the Department.

5. When entering the information into the system provided by the third-party processing company, the "Delivery Date" was automatically generated by the computer program as the date the data was being entered. There employee that entered the information never adjusted the date.

6. Petitioner was not aware of any issues with the filings. Petitioner never received any notices of deficiency or other information from the Department that the filing was incorrect.

7. All tax liability was paid in full. Indeed, Petitioner has maintained a credit balance with the Department. The only issue before this Tribunal is the imposition of late filing and payment penalties and interest thereon.

8. It was not until audit, that the Petitioner first became aware of issues with the ST filings.

9. Once aware, Petitioner corrected the issue.

10. The Department imposed penalties for the late filing of the returns and the late payment of the taxes pursuant to section 3-3 of the Uniform Penalty and Interest Act ("UPIA") (35 ILCS 735/3-1 et seq.).

11. Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalties and states in part as follows:

"The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or 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."



(35 ILCS 735/3-8)

12. The Department has promulgated rules interpreting reasonable cause at 86

Ill. Admin. Code, Ch. I, § 700.400. These rules provide as follows:

The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The 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, Ch. I, § 700.400(b))

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. A determination of whether the taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return. (86 Ill. Admin. Code, Ch. I, § 700.400(c))

The Department will also consider a taxpayer's filing history in determining whether the taxpayer acted in good faith in determining and paying his tax liability. Isolated computational or transcriptional errors will not generally indicate a lack of good faith in the preparation of the taxpayer's return. (86 Ill. Admin. Code, Ch. I, § 700.400(d))

13. The Petitioner made a good faith effort to pay its proper tax liability in a timely fashion and exercised ordinary business care in doing so. Indeed, Petitioner's filing history shows consistent payments to the Department.

14. That some of those payments were untimely was due not to the negligence of the Petitioner, but to a computer glitch that was not recognized by the Petitioner's employees.

15. The actions of the Petitioner constitute a showing of reasonable cause for alleviating the penalty under Illinois law.



WHEREAS, the Petitioner request that the Notice be modified or canceled for the reasons contained herein.

Dated: 5/18/16

**Mark Alcorn Enterprises, Inc**, an Illinois Corporation, a/k/a Carlyle Auto Sales, Petitioner

By: Howard & Hardyman, LLP,

By:   
Attorney Robert C. Torbert

Attorney Robert C. Torbert (#6270746)  
HOWARD & HARDYMAN, LLP  
124 N. Water Street, Suite 100  
Rockford, Illinois 61107  
(815) 964-8888  
rtorbert@howardhardyman.com



# Notice of Tax Liability

for Form EDA-556, Sales Tax Transaction Audit Report



#BWNKMGV  
#CNXX X2X8 2188 4325#  
MARK ALCORN ENTERPRISES INC  
CARLYLE AUTO SALES  
ATTN: MARK ALCORN  
1708 BROADWAY  
ROCKFORD IL 61104-5408

March 22, 2016  
  
Letter ID: CNXXX2X821884325

Account ID: 3617-6362

We have audited your account for the reporting period **January 01, 2012 through December 31, 2014**. As a result, we have assessed the amounts shown below.

**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.**

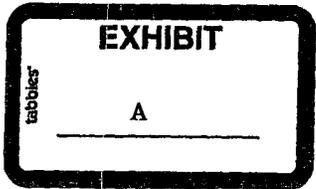
- **If the amount of this tax liability, exclusive of penalty and interest is more than \$15,000 or if no tax liability is assessed but the total penalties and interest is more than \$15,000**, file a petition with the Illinois Independent Tax Tribunal within **60 days** of this notice. Your petition 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 **May 21, 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](http://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](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 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.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Late Payment Penalty Increase	52,144.00	-33,967.10	18,176.90
Late Filing Penalty Increase	12,914.00	0.00	12,914.00
<b>Assessment Total</b>	<b>\$65,058.00</b>	<b>-\$33,967.10</b>	<b>\$31,090.90</b>

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.

**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.

**Late-payment penalty for underpayment of estimated, quarter-monthly, semi-weekly, or monthly tax** - You owe this penalty if you were required to make these payments and failed to do so, or if you failed to pay the required amount by the payment due date.

**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.

**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.

**Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.

**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.

**Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.

**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.

**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.

**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.

**Audit penalty** - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

**Nonfiling penalty for transaction return** - You owe this penalty if you are a retailer required to file a transaction return and do not file a processable transaction return (ST-556, Sales Tax Transaction Return or ST-556-LSE, Transaction Return for Leases) by the due date, and that transaction return, if it had been properly filed, would not have resulted in the imposition of a tax.

### Motor Fuel Violation penalties

**IFTA penalty** - You owe this penalty if you receive a citation for operating a qualified motor vehicle in Illinois

- without a valid IFTA license and without properly displaying the required decals;
- without a valid Illinois Single-Trip Permit; or
- without a 30-day IFTA temporary permit.

**Dyed Diesel penalty** - You owe this penalty if you receive a citation for

- failing to display the required notice,
- operating a licensed motor vehicle that has dyed diesel within its ordinary fuel tanks; or
- selling or attempting to sell dyed diesel for highway use.

### Are penalties ever abated?

If you were unable to either timely pay the required amount of 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. A bad check or negligence penalty may be waived 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. A fraud penalty or cost of collection fee cannot be waived.

### 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. Interest cannot be waived.

**Sales and Excise Taxes and Fees** - 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.

**IFTA Interest** - Prior to July 1, 2013, interest is calculated at the rate of one percent per month or fraction of the month until paid. **Effective July 1, 2013**, interest is calculated at an annual rate of 2 percent above the underpayment rate established under Internal Revenue Code Section 6621(a)(2) and will accrue at 1/12 the annual rate per month or fraction of the month until paid in full. The rate will be adjusted each January 1.

## 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 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.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.



# Taxpayer Statement



March 23, 2016

TDD 1 800 544-5304



Letter ID: CNXXX171113128X1

#BWNKMGV  
#CNXX X171 1131 28X1#  
MARK ALCORN ENTERPRISES INC  
CARLYLE AUTO SALES  
ATTN: MARK ALCORN  
1708 BROADWAY  
ROCKFORD IL 61104-5408

Account ID: 3617-6362  
Total amount due: \$31,090.90



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.

## ST-556/ST-556-LSE Sales Tax

You have available credits of \$18,065.09

Account ID: 3617-6362

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
13-Mar-2010	1,459.00	-	-	-	(1,614.00)	(155.00)
15-Oct-2010	145.00	-	-	-	(374.00)	(229.00)
28-Oct-2010	752.00	-	-	-	(832.57)	(80.57)
28-Dec-2010	623.00	-	-	-	(744.00)	(121.00)
20-Jan-2011	245.00	-	-	-	(499.00)	(254.00)
22-Mar-2011	7,219.00	-	-	-	(7,281.21)	(62.21)
04-May-2011	992.00	-	-	-	(992.28)	(0.28)
01-Jun-2011	125.00	-	-	-	(125.06)	(0.06)
04-Aug-2011	642.00	-	-	-	(874.94)	(232.94)
13-Aug-2011	189.00	-	-	-	(452.00)	(263.00)
25-Aug-2011	77.00	-	-	-	(77.09)	(0.09)
23-Sep-2011	126.00	-	-	-	(312.00)	(186.00)
27-Sep-2011	220.00	-	-	-	(315.31)	(95.31)
27-Oct-2011	449.00	-	-	-	(537.60)	(88.60)
08-Nov-2011	75.00	-	-	-	(303.03)	(228.03)

SOA

Statement continues on the following page(s).

Retain this portion for your records.

P-000224

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

## Taxpayer Statement

(R-12/08)

(136)



Letter ID: CNXXX171113128X1  
MARK ALCORN ENTERPRISES INC

Total amount due: \$31,090.90

Write the amount you are paying below.

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

\$ \_\_\_\_\_  
Write your Account ID on your check.

\$65,058.00 is subject to protest.

Do not pay any Income Tax liability that you intend to protest.

000 006 002688462886 731 123199 2 0000003109090



# Taxpayer Statement

March 23, 2016

## ST-556/ST-556-LSE Sales Tax

You have available credits of \$18,065.09

Account ID: 3617-6362

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
08-Feb-2012	368.00	-	-	-	(736.00)	(368.00)
23-Apr-2012	300.00	-	-	-	(600.00)	(300.00)
26-Apr-2012	318.00	-	-	-	(636.00)	(318.00)
09-May-2012	349.00	-	-	-	(698.00)	(349.00)
09-Jun-2012	253.00	-	-	-	(506.00)	(253.00)
15-Jun-2012	352.00	-	-	-	(704.00)	(352.00)
26-Jun-2012	225.00	-	-	-	(229.00)	(4.00)
01-Aug-2012	298.00	-	-	-	(303.00)	(5.00)
02-Aug-2012	1,655.00	-	-	-	(1,662.00)	(7.00)
06-Aug-2012	349.00	-	-	-	(355.00)	(6.00)
09-Aug-2012	1,154.00	-	-	-	(1,168.00)	(14.00)
07-Sep-2012	262.00	-	-	-	(524.00)	(262.00)
19-Sep-2012	281.00	-	-	-	(562.00)	(281.00)
24-Sep-2012	637.00	-	-	-	(1,274.00)	(637.00)
11-Oct-2012	187.00	-	-	-	(374.00)	(187.00)
31-Oct-2012	318.00	-	-	-	(636.00)	(318.00)
16-Nov-2012	100.00	-	-	-	(200.00)	(100.00)
21-Nov-2012	137.00	-	-	-	(274.00)	(137.00)
01-Dec-2012	318.00	-	-	-	(636.00)	(318.00)
14-Feb-2013	131.00	-	-	-	(262.00)	(131.00)
08-Mar-2013	318.00	-	-	-	(636.00)	(318.00)
08-Apr-2013	306.00	-	-	-	(612.00)	(306.00)
11-Apr-2013	280.00	-	-	-	(560.00)	(280.00)

SOA



# Taxpayer Statement

March 23, 2016

\_\_\_\_\_  
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## ST-556/ST-556-LSE Sales Tax

You have available credits of \$18,065.09

Account ID: 3617-6362

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
01-May-2013	105.00	-	-	-	(210.00)	(105.00)
25-May-2013	474.00	-	-	-	(948.00)	(474.00)
30-May-2013	193.00	-	-	-	(386.00)	(193.00)
05-Jun-2013	474.00	-	-	-	(948.00)	(474.00)
07-Jun-2013	418.00	-	-	-	(836.00)	(418.00)
08-Jun-2013	443.00	-	-	-	(886.00)	(443.00)
14-Jun-2013	362.00	-	-	-	(724.00)	(362.00)
29-Jun-2013	381.00	-	-	-	(762.00)	(381.00)
12-Jul-2013	293.00	-	-	-	(586.00)	(293.00)
07-Aug-2013	393.00	-	-	-	(786.00)	(393.00)
17-Aug-2013	318.00	-	-	-	(636.00)	(318.00)
04-Sep-2013	1,045.00	-	-	-	(2,090.00)	(1,045.00)
05-Sep-2013	256.00	-	-	-	(512.00)	(256.00)
21-Sep-2013	431.00	-	-	-	(862.00)	(431.00)
17-Oct-2013	318.00	-	-	-	(636.00)	(318.00)
19-Nov-2013	381.00	-	-	-	(762.00)	(381.00)
30-Jan-2014	381.00	-	-	-	(762.00)	(381.00)
16-May-2014	443.00	-	-	-	(886.00)	(443.00)
20-Jun-2014	349.00	-	-	-	(698.00)	(349.00)
22-Aug-2014	193.00	-	-	-	(386.00)	(193.00)
29-Sep-2014	441.00	-	-	-	(882.00)	(441.00)
26-Nov-2014	506.00	-	-	-	(1,012.00)	(506.00)
31-Dec-2014	-	65,058.00	-	-	(33,967.10)	31,090.90
• \$65,058.00 of this amount is subject to protest.						
04-Feb-2015	-	-	-	-	(374.00)	(374.00)
11-Feb-2015	-	-	-	-	(435.00)	(435.00)
14-Feb-2015	462.00	-	-	-	(924.00)	(462.00)
30-Jul-2015	506.00	-	-	-	(1,012.00)	(506.00)
04-Sep-2015	443.00	-	-	-	(886.00)	(443.00)

