

**IN THE
ILLINOIS INDEPENDENT TAX TRIBUNAL
COOK COUNTY, ILLINOIS**

EIS KALT, LLC)
Petitioner,)
)
)
v.)
)
ILLINOIS DEPARTMENT OF)
REVENUE,)
Respondent.)

No. 16 TT 109

RECEIVED
JUN 06 2016
BY: _____

PETITION OF THE TAXPAYER

Eis Kalt, LLC by its attorneys of record, Reed Smith LLP, pursuant to Section 1-50 of the Illinois Independent Tax Tribunal Act of 2012, 35 ILCS 1010/1-5 *et seq.*, complains of the Illinois Department of Revenue (the "Department"), as follows:

JURISDICTION AND VENUE

1. This timely petition involves a Notice of Deficiency that assesses an amount in excess of \$15,000.00 in tax, penalty, and interest under a tax law identified in Section 1-45 of the Tax Tribunal Act. Therefore, the Tax Tribunal has jurisdiction over this petition.
2. Eis Kalt, LLC accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

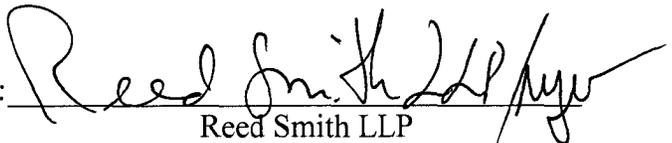
3. Eis Kalt, LLC is located at 1 Transam Plaza Dr, Suite 120, Oakbrook Terrace, IL 60181-4286. Eis Kalt, LLC's taxpayer ID is 30-0081264.
4. Eis Kalt, LLC's primary investment was its holding of Dvorkin Holdings, LLC.
5. The Illinois Department of Revenue is an executive agency, authorized, among other functions, to administer and enforce the provisions of the Illinois Income Tax Act. 35 ILCS 5/101 *et seq.*
6. On April 11, 2016, the Department issued a Notice of Deficiency for the 2011 tax period assessing tax of \$42,642.00, penalties of \$4,514.20, and interest of \$3,823.68, for a total amount due of \$50,979.88. The NOD is attached as **Exhibit 1**.
7. For the tax periods at issue, the penalty amounts referenced in paragraph number 6 are comprised of a late-payment penalty of \$4,264.20 and a late-filing penalty of \$250.00, pursuant to Section 3-3(b-20) of the Illinois Uniform Penalty and Interest Act ("UPIA").
8. 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.
9. During the time period when Eis Kalt, LLC would have prepared a timely-filed return, Dvorkin Holdings, LLC was undergoing bankruptcy, during which time it was difficult to get access to accurate financial information because assets were being liquidated by the Bankruptcy Trustee.
10. Furthermore, the managing member of Eis Kalt, LLC, Daniel Dvorkin, was arrested during this time, and was kept in jail until he was later convicted and sentenced to eight years in prison, a sentence which Mr. Dvorkin is currently serving.

11. The other member of Eis Kalt, LLC was Mr. Dvorkin's wife, Fran Dvorkin, who had no knowledge of Eis Kalt, LLC's business operations and had nothing to do with the criminal acts committed by Mr. Dvorkin. A taxpayer's experience, knowledge, and education, or lack thereof as is the case here, are relevant to whether a taxpayer acted with reasonable cause. *See* 86 Ill. Admin. Code § 700.400(c).
12. Ms. Dvorkin, exercising ordinary business care and prudence, retained tax professionals who are diligently working to get Eis Kalt, LLC's Illinois tax return filed.
13. Ms. Dvorkin only recently received access to the information necessary to complete an accurate 2011 Illinois tax return for Eis Kalt, LLC. Furthermore, Eis Kalt, LLC only recently received its Illinois Form K-1 from Dvorkin Holdings, LLC. An inability to timely obtain records necessary to determine the amount of tax for reasons beyond the taxpayer's control, as was the case here, is an example of reasonable cause sufficient to abate a penalty. *See* 86 Ill. Admin. Code § 700.400(e)(4).
14. After receiving the information necessary to file a 2011 Illinois tax return, Ms. Dvorkin filed the return within a reasonable time.
15. Eis Kalt, LLC, through Ms. Dvorkin, made a good faith effort to report its income tax liability in as timely a manner as possible by exercising ordinary business care and prudence, taking into consideration the external factors (bankruptcy, arrest and conviction of the managing member, and Ms. Dvorkin's lack of knowledge and access to crucial information) that made it impossible to file a timely return.
16. Eis Kalt, LLC therefore acted with reasonable cause and, under Section 3-8 of the UPIA and 86 Ill. Admin. Code § 700.400, no late-filing penalties should apply to Eis Kalt, LLC's 2011 tax return.

WHEREFORE, Eis Kalt, LLC prays that the Tax Tribunal find and determine that the penalties assessed against Eis Kalt, LLC violate Section 3-8 of the UPIA and 86 Ill. Admin. Code § 700.400 and must therefore be abated or withdrawn.

Respectfully submitted,

EIS KALT, LLC

By: 
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EXHIBIT 1

Notice of Deficiency

for Form IL-1065, Partnership Replacement Tax Return



April 12, 2016



Letter ID: CNXXXX774328X8X2

#BWNKMGV
#CNXX XX77 4328 X8X2#
EIS KALT LLC
1 TRANSAM PLAZA DR STE 120
OAKBROOK TERRACE IL 60181-4286

Taxpayer ID: 30-0081264
Reporting period: December 2011
Total deficiency: \$50,979.88
Balance due: \$50,979.88



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). If we do not receive your protest within 60 days, this deficiency will become final. A protest of this notice does not preserve your rights under any other notice.
- In any case, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total deficiency under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

If you have questions, contact us at the telephone number shown below.

Sincerely,

Constance Beard
Director of Revenue

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19014
SPRINGFIELD IL 62794-9014
217 557-9676

EIS KALT LLC



Letter ID: CNXXXX774328X8X2
Taxpayer ID: 30-0081264
Reporting Period: December 2011

STATEMENT

Computation of Deficiency

Tax year ending: December 2011

	Corrected Amount
Base income(loss) allocable to IL	\$2,843,802.00
IL net loss deduction(NLD)	\$0.00
Minus exemption	\$1,000.00
Net Income	\$2,842,802.00
Tax Due	\$42,642.00
Plus late-filing or nonfiling penalty	\$250.00
Plus late-payment penalty	\$4,264.20
Plus interest on tax through 04/12/2016	\$3,823.68
Total deficiency	*\$50,979.88

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

Computation of balance due

Reporting Period: 12/31/2011

Deficiency (this notice)	*\$50,979.88
Minus tax withheld per Form W-2	\$0.00
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$0.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$50,979.88

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