

IN THE ILLINOIS INDEPENDENT  
TAX TRIBUNAL

KR Komarek, Inc.,

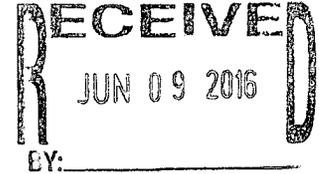
Petitioner,

v.

ILLINOIS DEPARTMENT  
OF REVENUE,

Respondent,

No.



**PETITION**

The Petitioner, KR Komarek, Inc., (hereinafter "Petitioner") by its attorneys of record, David Kupiec and Natalie Martin of Kupiec & Martin, LLC, hereby petitions the Illinois Independent Tax Tribunal to review, and withdraw and/or modify the Notices of Tax Deficiency (hereinafter "Notice" or "Notices") issued by the Illinois Department of Revenue (hereinafter "Department") on December 8, 2015, for the reasons set forth below.

**INTRODUCTION**

1. Petitioner is an S Corporation. The Taxpayer ID associated with Petitioner is 36-2655027.
2. The S Corporation was formed under the laws of Illinois.
3. It is located at 548 Clayton Court, Wood Dale, IL. The phone number is 847-956-0060.
4. The first Notice under dispute was issued by the Department on December 8, 2015, for reporting period ending December 2011, assessing the amount of \$39,588.95 in tax, penalties and interest. A copy of the Notice is attached to this Petition.

5. The Second Notice under dispute was issued by the Department on December 8, 2015, for reporting period ending December 2012 assessing the amount of \$15,462.16 in tax, penalties and interest. A copy of the Notice is attached to this Petition.

### **JURISDICTION**

6. The Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the alleged tax liability in question from the Illinois Income Tax Act in the aggregate exceeds, \$15,000, exclusive of penalties and interest, and because Petitioner has remitted the \$500 filing fee and filed this Petition within 60 days of the Notice of Deficiency.

7. The Tax Tribunal also has jurisdiction because a late discretionary hearing was granted on April 22, 2016 and this filing allowed a tax protest to be filed within 60 days of this letter. This filing is within that 60 day timeframe. A copy of the Late Discretionary Hearing Order is attached to this Petition.

### **BACKGROUND AND RELEVANT FACTS**

8. Petitioner is an S Corporation operating in Illinois.

9. The Illinois Department of Revenue conducted an audit of the Petitioner for periods ending December 31, 2011 and December 31, 2012.

10. The audit of Petitioner resulted in the assessment of additional income tax for the periods at issue. The basis for the audit adjustment includes the following items:

2011:

- Adjustment for bonus depreciation adjustment of \$68,647, increasing Illinois base income.
- Adjustment of \$16,578,106 in sales to Illinois sales factor, originally sourced outside Illinois. Application of throwback rule increased apportionment factor to 99.4%.

2012:

- Adjustment to bonus depreciation of \$49,006, increasing Illinois base income.

- Adjustment of \$15,188,891 sales originally sourced outside Illinois added to Illinois sales factor. Application of the throwback rule increased the apportionment factor to 93.6%.

11. The auditor reviewed the expenditures related to research and development costs. The auditor determined that the eligible expenditures incurred in 2011 and 2012 did not exceed the qualifying expenditures for the base period. As a result of the examination, no research and development credit was allowed for the 2011 and 2012 tax years.

12. Based on the auditor's disallowance of the 2011 and 2012 research and development credits, the auditor disallowed the 2010 IL-1040 carryover of \$55,748 of research and development credits from 2006 and 2008 which impacted the S Corporation owners' individual returns. These results are being challenged under a separate, related Tax Tribunal Petition.

13. As a result of the Petitioner's audit, the Department contends that the above referenced Notices were issued to the Petitioner on December 8, 2015. Petitioner contends that it did not receive the Notices at issue until the Department provided copies of the Notices to Petitioner's Counsel on April 19, 2016. Moreover, the Petitioner has at no time received an Explanation of Audit Adjustments for the 2011 or 2012 audits.

14. The Petitioner in this case is asking that the Notices of Deficiency be withdrawn, cancelled or modified and all tax, penalty and interest be removed.

15. The Petitioner in this case is asking, if the above is not granted, that the penalties and any associated interest to be cancelled and new Notices of Deficiency to be issued without penalty.

### **APPLICABLE LAW AND CASES**

16. Petitioner relies upon the following authority to dispute the Department's assessments: 20 ILCS 2520; 35 ILCS 5/202.5; 35 ILCS 5/304; 35 ILCS 5/904; 35 ILCS 735-3/8; Ill. Adm. Code Sections 100.3370 and 100.7400.

## 20 ILCS 2520 Taxpayers' Bill of Rights Act

Sec. 1. Short title. This Act shall be known and may be cited as the "Taxpayers' Bill of Rights Act".  
(Source: P.A. 86-176; 86-189.)

(20 ILCS 2520/2) (from Ch. 120, par. 2302)

Sec. 2. Legislative Declaration. The General Assembly finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the General Assembly to place guarantees in Illinois law to ensure that the rights, privacy, and property of Illinois taxpayers are adequately protected during the process of the assessment and collection of taxes.

The General Assembly further finds that the Illinois tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will both improve self-assessment and the relationship between taxpayers and government. It is the further intent of the General Assembly to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.  
(Source: P.A. 86-176; 86-189.)

(20 ILCS 2520/4) (from Ch. 120, par. 2304)

Sec. 4. Department responsibilities. The Department of Revenue shall have the following powers and duties to protect the rights of taxpayers:

(a) To furnish each taxpayer with a written statement of rights whenever such taxpayer receives a protestable notice, a bill, a claim denial or reduction regarding any tax. Such statement shall explain the rights of such person and the obligations of the Department during the audit, appeals, refund and collections processes.

(b) To include on all tax notices an explanation of tax liabilities and penalties.

(c) To abate taxes and penalties assessed based upon erroneous written information or advice given by the Department.

(d) To not cancel any installment contracts unless the taxpayer fails to provide accurate financial information, fails to pay any tax or does not respond to any Department request for additional financial information.

(e) To place non-perishable property seized for taxes in escrow for safekeeping for a period of 20 days to permit the taxpayer to correct any Department error. If seized property is of a perishable nature and in danger of immediate waste or decay, such property need not be placed in escrow prior to sale.

(f) To place seized taxpayer bank accounts in escrow with the bank for 20 days to permit the taxpayer to correct any Department error.

(g) To adopt regulations setting standards for setting times and places for taxpayer interviews and to permit any taxpayer to record such interviews.

(h) To pay interest to taxpayers who have made overpayments at the same rate as interest charged on underpayments.

(i) To grant automatic extensions to taxpayers in filing income tax returns when such taxpayer has been granted an extension in filing a federal tax return.

(j) To annually perform a systematic identification of areas of recurrent taxpayer non-compliances with rules or guidelines and to report its findings and recommendations concerning such non-compliance to the General Assembly in an annual report.

(k) In the case of an audit, if no violations are found, the Department shall provide the taxpayer a closing letter acknowledging this and thanking the taxpayer for his, her, or its cooperation. If there are changes, the auditor is required to provide in writing to the taxpayer (i) the audit findings and (ii), unless the taxpayer declines, the audit methods and procedures (but not information concerning audit selection methods). The auditor must, at the request of the taxpayer, provide written information as to what records constitute the minimum requirements for record-keeping. If the auditor recommends changes in the record-keeping process, these recommendations must be provided in writing to the taxpayer.

(Source: P.A. 93-951, eff. 1-1-05.)

(20 ILCS 2520/5) (from Ch. 120, par. 2305)

Sec. 5. Taxpayer's suits. Taxpayers have the right to sue the Department of Revenue if such Department intentionally or recklessly disregards tax laws or regulations in collecting taxes. The maximum recovery for damages in such a suit shall be \$100,000. If a taxpayer's suit is determined by the court to be frivolous the court may impose a penalty on the taxpayer not to exceed \$10,000 to be collected as a tax.

(Source: P.A. 86-176; 86-189.)

(20 ILCS 2520/6) (from Ch. 120, par. 2306)

Sec. 6. Review of liens. The Department of Revenue shall establish an internal review process concerning liens against taxpayers and if the lien is determined to be improper the Department shall publicly disclose this fact and correct the taxpayer's credit record.

(Source: P.A. 86-176; 86-189.)

(20 ILCS 2520/7) (from Ch. 120, par. 2307)

Sec. 7. Costs. The fees for an attorney or accountant to aid a taxpayer in an administrative hearing relating to the tax liability or in court shall be recoverable against the Department of Revenue if the taxpayer prevails in an action under the Administrative Review Law and the Department has made an assessment or denied a claim without reasonable cause.

(Source: P.A. 86-176; 86-189.)

35 ILCS 5/202.5(b)(T) Net income attributable to the period beginning prior to January 1 of any year and ending after December 31 of the preceding year

(T) For taxable years 2001 and thereafter, for the taxable year in which the bonus depreciation deduction is taken on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code and for each applicable taxable year thereafter, an amount equal to "x", where:

(1) "y" equals the amount of the depreciation deduction taken for the taxable year on the taxpayer's federal income tax return on property for which the bonus depreciation deduction was taken in any year under subsection (k) of Section 168 of the Internal Revenue Code, but not including the bonus depreciation deduction;

(2) for taxable years ending on or before December 31, 2005, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(3) for taxable years ending after December 31, 2005:

(i) for property on which a bonus depreciation deduction of 30% of the adjusted basis was taken, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(ii) for property on which a bonus depreciation deduction of 50% of the adjusted basis was taken, "x" equals "y" multiplied by 1.0.

The aggregate amount deducted under this subparagraph in all taxable years for any one piece of property may not exceed the amount of the bonus depreciation deduction taken on that property on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code. This subparagraph (T) is exempt from the provisions of Section 250;

(U) If the taxpayer sells, transfers, abandons, or otherwise disposes of property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (E-10), then an amount equal to that addition modification.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (E-10), then an amount equal to that addition modification.

The taxpayer is allowed to take the deduction under this subparagraph only once with respect to any one piece of property.

### 35 ILCS 5/304 Business Income of Persons Other than Residents

(3) Sales factor.

(A) The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

(B) Sales of tangible personal property are in this State if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f. o. b. point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this State and either the purchaser is the United States government or the person is not taxable in the state of the purchaser; provided, however, that premises owned or leased by a person who has independently contracted with the seller for the printing of newspapers, periodicals or books shall not be deemed to be an office, store, warehouse, factory or other place of storage for purposes of this Section. Sales of tangible personal property are not in this State if the seller and purchaser would be members of the same unitary business group but for the fact that either the seller or purchaser is a person with 80% or more of total business activity outside of the United States and the property is purchased for resale.

### 35 ILCS 735-3/8 Uniform Penalty and Interest Act

Sec. 3-8. No penalties if reasonable cause exists. The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 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. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability.

### 35 ILCS 5/904 Deficiencies and Overpayments

(a) Examination of return. As soon as practicable after a return is filed, the Department shall examine it to determine the correct amount of tax. If the Department finds that the amount of tax shown on the return is less than the correct amount, it shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed. If the Department finds that the tax paid is more than the correct amount, it shall credit or refund the overpayment as provided by Section 909. The findings of the Department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due.

### *86 Ill. Adm. Code Section 100.3370: Sales Factor*

c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

1) Sales of tangible personal property in this State

A) Gross receipts from the sales of tangible personal property (except sales to the United States Government) (see 86 Ill. Adm. Code 100.3370(c)(2)) are in this State:

- i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. point or other conditions of sale; or
- ii) if the property is shipped from an office, store, warehouse, factory or other place of storage in this State and the taxpayer is not taxable in the state of the purchaser. However, premises owned or leased by a person who has independently contracted with the taxpayer for the printing of newspapers, periodicals or books shall not be deemed to be an office, store, warehouse, factory or other place of storage.

86 Ill. Adm. Code Section 700.400: Reasonable Cause

- a) *The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of the 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 this Section. (Section 3-8 of the Act)*
- b) 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.
- c) 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 a 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.
- d) 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 a taxpayer's return. ....

**ERROR I - AUDIT ADJUSTMENTS WERE MADE THAT INCLUDED  
CHANGES TO SALES FACTOR DUE TO THROWBACK AND CHANGES TO BONUS  
DEPRECIATION ADDBACK**

17. Petitioner realleges and reincorporates paragraphs 1-16 of the Petition herein.
18. Petitioner has sales outside of Illinois and Petitioner did not throwback these sales to its Illinois sales factor numerator pursuant to certain business activities and the presence of a foreign owned corporation.
19. The Department's Auditor concluded that these sales should be included in the Illinois sales factor numerator.
20. Pursuant to the sales factor law and regulations, confusion exists as to whether these sales should be included in the sales factor numerator.
21. The Department's Auditor also concluded that certain bonus depreciation subtractions were invalid.

22. Pursuant to the bonus depreciation law and regulations, confusion exists as to whether these deductions should have been denied under audit.

23. Petitioner contends that the Notices of Deficiency at issue should be withdrawn, cancelled or modified as Petitioner was not provided verbal or written notice or explanations of the 2011 or 2012 audit adjustments as required under Illinois Income Tax Act Section 904 and Section k of the Taxpayers' Bill of Rights Act

## **ERROR II – ABATEMENT OF PENALTIES**

24. Petitioner realleges and reincorporates paragraphs 1- 16 of the Petition herein.

25. For the period ending December 31, 2011, Petitioner contends that the Department erred in assessing Petitioner \$6,250.85 in late payment penalty and \$2,756.79 in interest.

26. For the period ending December 31, 2012, Petitioners contends that the Department erred in assessing Petitioner \$2,751.25 in late payment penalty and \$819.71 in interest.

27. The Petitioner filed timely income tax returns and associated tax payments and was audited for periods ending December 31, 2011 and December 31, 2012.

28. Petitioner contends that the issues of sale factor throwback and bonus depreciation addition and subtractions modifications were confused during the audit process and Petitioner exercised ordinary business care and prudence during the preparation of the tax returns at issue.

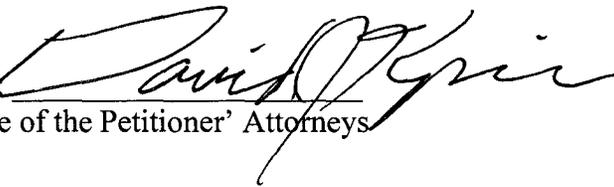
29. The Department's regulation on reasonable cause looks to whether the taxpayer "made a good faith effort" and exercised "ordinary business care in prudence". 86 Illinois Admin. Code Section 700.400. (35 ILCS 735-3/8.) Here, Petitioner made every effort to comply with the tax rules that apply. Further, Petitioner reasonably relied upon the Law and Regulations by filing timely and then retaining a CPA firm for a further analysis of their filing.

**CONCLUSION AND RELIEF REQUESTED**

THEREFORE, the Department is required to withdraw, cancel and/or modify the Notices of Deficiency dated December 8, 2015 for tax periods ending December 31, 2011 and December 31, 2012. The applied penalties and interest as set forth in the aforementioned Notices of Tax Deficiency should be abated, as Petitioner acted in good faith and with reason under the circumstances. We respectfully request that the Tax Tribunal Rule in favor of Petitioner.

Respectfully Submitted,

KR Komarek, Inc.

By   
One of the Petitioner's Attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 W. Van Buren #202  
Chicago, IL 60607  
(312) 632-1022  
[dkupiec@kupiecandmartin.com](mailto:dkupiec@kupiecandmartin.com)  
Attorney No. 58817

# Notice of Deficiency

for Form IL-1120-ST, Small Business Corporation Replacement Tax Return



December 8, 2015



Letter ID: CNXXX13X96664489

Taxpayer ID: 36-2655027  
Audit ID: A182837248  
Reporting period: December 2011  
Total Deficiency: \$39,588.95  
Balance due: \$39,588.95

# CNXX13X96664489#  
K R KOM REK INC  
ATTN: AMANDA MIRAMONTES  
548 CLAYTON CT  
WOOD Dale IL 60191-1115

We have audited your account 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, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", include 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 the date 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 and administrative hearing. 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. 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 liability under protest using Form EAR-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.

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

Sincerely,

Constance Beard  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012  
(217) 782-9339

# Statement

Date: December 8, 2015  
Name: K R KOMAREK INC  
Taxpayer ID: 36-2655027  
Letter ID: CNXXX13X96664489

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.  
Computation of deficiency

Reporting period: 31-Dec-2015

Unmodified base income or loss	
Total unmodified base income or loss	\$3,504,142.00
Income or loss	
Illinois replacement tax deducted	\$24,140.00
Other additions	\$0.00
Total income or loss	\$3,528,282.00
Income allocable to Illinois	
Nonbusiness income or loss	\$0.00
Non-unitary partnership business income/loss	\$0.00
Business income or loss	\$3,528,282.00
Apportionment formula	
Total sales everywhere	\$16,674,681.00
Total Illinois sales	\$16,578,106.00
Apportionment factor	0.994208
Business income/loss apportionable to IL	\$3,507,846.00
Non-business income/loss allocable to IL	\$0.00
Non-unitary part bus income/loss apportion to IL	\$0.00
Base income or net loss allocable to IL	\$3,507,846.00
Net income	
Base income or net loss	\$3,507,846.00
Illinois net loss deduction (NLD)	\$0.00
Net income	\$3,507,846.00
Net replacement tax	
Replacement tax	\$52,618.00
Recapture of investment credits	\$0.00
Replacement tax before investment credits	\$52,618.00
Replacement tax investment credits	\$94.00
Total net replacement tax due	\$52,524.00
Minus tax previously assessed	-\$21,644.00
Total tax deficiency	\$30,880.00
UPIA-5 late-payment penalty (Audit)	\$6,176.00
Plus interest on tax through December 8, 2015	\$2,532.95
Total deficiency	* \$39,588.95

# Statement

Date: December 8, 2015  
Name: K R KOMAREK INC  
Taxpayer ID: 36-2655027  
Letter ID: CNXXX13X96664489

## Computation of deficiency

Reporting period: 31-Dec-2011

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

## Computation of balance due

Reporting period: 31-Dec-2011

Balance due

\* \$39,588.95

# Notice of Deficiency

for Form IL-1120-ST, Small Business Corporation Replacement Tax Return



December 8, 2015



Letter ID: CNXXXX2358521768

# KMGV  
CNXX 23 5852 1768#  
K R KOMAREK INC  
ATTN: AMANDA MIRAMONTES  
548 CLAYTON CT  
WOOD Dale IL 60191-1115

Taxpayer ID: 36-2655027  
Audit ID: A182837248  
Reporting period: December 2012  
Total Deficiency: \$15,462.16  
Balance due: \$15,462.16

We have audited your account 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, pay the total balance due as soon as possible to minimize penalty and interest assessed. Make your check payable to the "Illinois Department of Revenue", include 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 the date 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 and administrative hearing. 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. 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 liability under protest using Form RA-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.

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

Sincerely,

Constance Beard  
Director

ILLINOIS DEPARTMENT OF REVENUE  
AUDIT BUREAU  
PO BOX 19012  
SPRINGFIELD IL 62794-9012

(217) 782-9339

# Statement

Date: December 8, 2015  
Name: K R KOMAREK INC  
Taxpayer ID: 36-2655027  
Letter ID: CNXXXX2358521768

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

## Computation of deficiency

Reporting period: 31-Dec-2012

Unmodified base income or loss	
Total unmodified base income or loss	\$1,773,521.00
Income or loss	
Illinois replacement tax deducted	\$3,785.00
Illinois bonus depreciation addition	\$1,266.00
Other additions	\$0.00
Total income or loss	\$1,778,572.00
Illinois base income or net loss	
Illinois bonus depreciation subtraction	\$253.00
Total subtractions	\$253.00
Base income or net loss	\$1,778,319.00
Income allocable to Illinois	
Nonbusiness income or loss	\$0.00
Non-unitary partnership business income/loss	\$0.00
Business income or loss	\$1,778,319.00
Apportionment formula	
Total sales everywhere	\$16,223,554.00
Total Illinois sales	\$15,188,891.00
Apportionment factor	0.936225
Business income/loss apportionable to IL	\$1,664,907.00
Non-business income/loss allocable to IL	\$0.00
Non-unitary part bus income/loss apptn to IL	\$0.00
Base income or net loss allocable to IL	\$1,664,907.00
Net income	
Base income or net loss	\$1,664,907.00
Illinois net loss deduction (NLD)	\$0.00
Net income	\$1,664,907.00
Net replacement tax	
Replacement tax	\$24,974.00
Recapture of investment credits	\$0.00
Replacement tax before investment credits	\$24,974.00
Replacement tax investment credits	\$8,144.00
Total net replacement tax due	\$16,830.00
Minus tax previously assessed	-\$4,540.00

# Statement

Date: December 8, 2015  
Name: K R.KOMAREK INC  
Taxpayer ID: 36-2655027  
Letter ID: CNXXXX2358521768

## Computation of deficiency

Total tax deficiency	\$12,290.00
UPIA-5 late-payment penalty (Audit)	\$2,458.00
Plus interest on tax through December 8, 2015	\$714.16

Total deficiency \* \$15,462.16

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

## Computation of balance due

Balance due	* \$15,462.16
-------------	---------------



Illinois Department of Revenue  
OFFICE OF ADMINISTRATIVE HEARINGS  
Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

April 22, 2016

David Kupiec  
Kupiec & Martin LLC  
600 W. Van Buren, #202  
Chicago, IL 60607

Re: Late Discretionary Hearing Granted – Tribunal Jurisdiction  
KR Komarek Inc.  
(2) Notices of Deficiency Letter dated December 8, 2015  
Letter ID: CNXXX13X96664489  
CNXXXX2358521768

Dear Mr. Kupiec:

The Office of Administrative Hearings of the Illinois Department of Revenue received your request for a late discretionary hearing for Richard K. and Sheila Komarek regarding the above Notices. I believe that it is appropriate to grant your request for a late discretionary hearing.

The amount of liability at issue for this protest exceeds the statutory amount (\$15,000, exclusive of penalties and interest or \$15,000 for notices that involve only penalties and interest) for which the Department has jurisdiction for late discretionary hearings that are granted on or after January 1, 2014. For late discretionary hearings that are granted on or after January 1, 2014 and that exceed the statutory amount, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.*

The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing requirements and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that, when a late discretionary hearing is granted and the protest meets the statutory amount, the taxpayer shall file a petition with the Tax Tribunal within 60 days and shall attach a copy of the letter granting the late**

**discretionary hearing.** See Subsection (a)(5) of Section 5000.310 of the Tax Tribunal's rules. Please note that the Tax Tribunal has different requirements than the Department for filing protests, including the payment of filing fees and the filing of a petition in the form required by the Tax Tribunal.

I recommend that you review the information provided on the Tax Tribunal's website and contact them if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Charlton". The signature is written in a cursive style with a large initial "T".

Terry D. Charlton  
Chief Administrative Law Judge  
Illinois Department of Revenue

TDC:vs.

IN THE INDEPENDENT TAX TRIBUNAL

<b>K R Komarek, Inc.</b>	)	<b>Doc.</b>
<b>Petitioner</b>	)	
<b>Vs.</b>	)	
<b>THE ILLINOIS DEPARTMENT OF</b>	)	
<b>REVENUE</b>	)	
<b>Defendant</b>	)	

---

**NOTICE OF FILING**

TO:

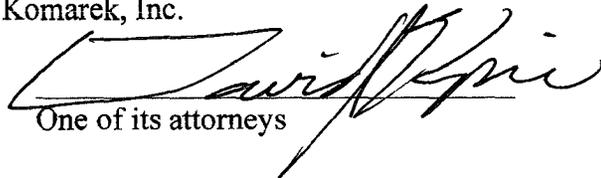
Illinois Department of Revenue  
100 W. Randolph St.  
SUITE 7-900  
Chicago, IL 60601

Please take note that on June 9, 2016, the undersigned representative for K R Komarek, Inc., filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle St. Room 506, Chicago, IL 60601 a Petition, a copy of which is attached and served on you.

Date: June 9, 2016

Respectfully Submitted,  
K R Komarek, Inc.

By:

  
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607

**CERTIFICATE OF SERVICE**

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record herein by causing the same to be delivered in person before the hour of 5:00p.m. on the 9th day of June, 2016.

Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601

By:   
One of its attorneys

David J. Kupiec  
Kupiec & Martin, LLC  
600 West Van Buren Street, Ste 202  
Chicago, Illinois 60607