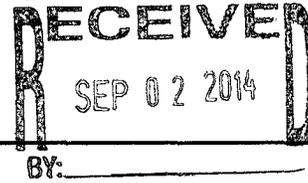


ILLINOIS INDEPENDENT  
TAX TRIBUNAL



---

CF INDUSTRIES HOLDINGS, INC.  
Petitioner,

v.

ILLINOIS DEPARTMENT  
OF REVENUE.  
  
Respondent.

---

---

**PETITION**

The Petitioner, CF Industries Holdings, Inc., (also "Taxpayer") hereby petitions the Illinois Independent Tax Tribunal to review and reverse and /or modify the Notice of Deficiency("Notice") issued by the Department of Revenue("Department") for the reasons stated below:

**INTRODUCTION**

1. The Notice was issued by the Department on January 16, 2014 assessing \$111,387 in income tax, \$7,777 in interest, and \$104,812 in underpayment and late payment of tax penalties. The Notice was for the period January 1, 2010 through December 31, 2010 ("Period"). A copy of the Notice is attached to this Petition. Petitioner has paid the tax and interest and is appealing the imposition of the penalties.
2. Petitioner is a corporation with its principal place of business in Deerfield, Illinois.
3. It is located at 4 Parkway North, Suite 400 and its telephone number is 847-405-2400. The Taxpayer File Number is 64483242.

**BACKGROUND AND RELEVANT FACTS**

4. Petitioner filed its return for the calendar year ending December 31, 2010 on October 14, 2011.
5. Petitioner received the Notice at issue on January 21, 2014.

6. On February 28, 2014, Petitioner filed a Protest for Income Tax with the Illinois Department of Revenue (“Protest”) using the Form EAR-14 format. Commensurate with the filing of the Protest, the Petitioner made a payment to the Illinois Department of Revenue for \$119,164 to cover the additional tax shown in the Notice of \$111,387 plus accrued interest of \$7,777.
7. By letter dated July 2, 2014, (copy attached), Petitioner was informed by the Office of Administrative Hearings of the Illinois Department of Revenue that the Protest was being dismissed due to lack of jurisdiction and that the proper forum for filing was the Tax Tribunal. The Petition is accordingly being filing herein within the 60 days provided in the letter in support of Taxpayer’s request for abatement of the penalties. Taxpayer’s exercise of ordinary business care and prudence in making its 2010 estimated tax payments and extension payment is supported by the following facts:
  8. On April 5, 2010, the Taxpayer acquired the global group of companies owned by Terra Industries, Inc. (“Terra”). Through this acquisition, the Taxpayer acquired 5 large nitrogen fertilizer plants located in Oklahoma, Iowa, Mississippi and Canada and a number of fertilizer distribution facilities located principally along the Corn Belt. The Terra acquisition was initially a hostile acquisition which involved four separate public companies and consideration and negotiation of several alternative acquisition structures. Consequently, the Taxpayer was not permitted to conduct any pre-acquisition due diligence on Terra. This lack of pre-acquisition information complicated and prolonged the integration of Terra’s tax and accounting systems with those of the Taxpayer, and required the Taxpayer to engage in significant post-acquisition due diligence on Terra. These post-acquisition activities also included relocating Terra’s tax and accounting operations from Sioux City, Iowa to the Taxpayer’s headquarters in Deerfield, Illinois.
  9. From a tax perspective, the integration efforts involved the assimilation of over 40 separate companies into the Taxpayer’s corporate structure and necessitated over 150 new income tax filings. Further, as the Taxpayer and Terra operated on entirely different financial and accounting software systems (the Taxpayer utilized PeopleSoft and the Taxpayer utilized SAP), the integration and processing of all the data was very complex. For example, in connection with the acquisition, the Taxpayer undertook an in-depth review of Terra’s internal financial systems and processes, for which the Taxpayer engaged independent third party advisors and incurred significant fees of upwards of \$6 million.
  10. The Taxpayer’s financial review and integration process ultimately resulted in the amendment of various tax returns filed by Terra and its global subsidiaries back to 1999, and the adoption of a new enterprise software system to manage the tax and accounting systems of the integrated business. All told, the Taxpayer incurred upwards of \$60 million in advisory and licensing fees for purposes of upgrading its financial systems to handle the enormous task of managing the newly combined business. Due to the scope of the integration process, and near complete overhaul of the Taxpayer’s tax and accounting systems, preparation of all of the Taxpayer’s 2010 tax filings, including its Illinois filings, were delayed until September 2011 or after to ensure that the reported information was correct.
  11. In addition to the issues arising from the integration of the Taxpayer’s and Terra’s tax and accounting systems, from an operational standpoint the Taxpayer encountered complications arising from the integration of Terra’s distribution and sales channels with those utilized by the

Taxpayer. Prior to its acquisition by the Taxpayer, Terra sold the same products as the Taxpayer into the U.S. market through at least four major overlapping channels. Because many of Terra's customers were also customers of the Taxpayer, the existence of multiple sales channels and invoices presented a problem for purposes of conducting and accounting for the combined business effectively.

12. Due to the scope of the integration process and the complications related to the different financial and accounting software systems, Terra's and the Taxpayer's tax and accounting systems were not fully integrated in time to capture the impact of the change by March 15, 2011. In fact, it was not possible for the Taxpayer to quantify the impact of this change and accurately calculate (or estimate) its 2010 Illinois income tax until after September 2011. At such time, in connection with the completion of its federal tax filings, the Taxpayer promptly filed the Return and remitted the additional Illinois income tax that it determined to be owed.
13. The additional tax (and interest) that taxpayer paid with the filing of the Protest results from an adjustment made in 2012 by the State to the overpayment credit being applied on the Return from Terra. Terra's final return covered the period 1/01/2010-4/05/2010 and shows an overpayment of \$401,096 which is to be credited to the following year's tax. Terra's post acquisition period results for the period 4/06/2010-12/31/2010 were included in Taxpayer's 2010 calendar year Return. The Taxpayer had multiple discussions with the Department on the mechanics of how to get the Terra overpayment credit from the period ended 4/05/2010 applied to Taxpayer's Return. At some point, the Department determined that portions of the \$401,096 overpayment were to be applied to other Terra periods and indicated that \$235,000 would be carried over into Taxpayer's 2010 calendar year Return. Consequently, the Taxpayer prepared its 2010 Return including this overpayment credit and paid the balance shown on the Return after considering this credit. However in a November 20, 2012 notice from the Department (copy is attached), the Taxpayer was advised that none of this overpayment credit would be available and it is this change that created the additional tax that the taxpayer paid with the Protest along with the related interest.

#### **APPLICABLE LAW**

14. 86 Illinois Administrative Code Section 500.400 describes what constitutes reasonable cause in order to have penalties abated. Subsection (b) therein provides that 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". Subsection (c) states that "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". Further under Subsection (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".

## ERROR 1

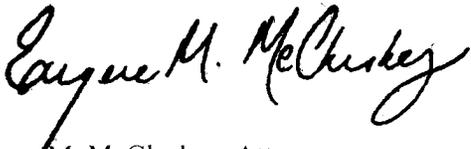
15. The Department of Revenue erred in imposing the underpayment of tax and late payment of tax penalties because the Taxpayer acted in good faith in seeking to fully comply with Illinois income tax law, it timely filed the Return, and took all reasonable measures to assure that its initial estimate of the tax due thereon was accurate and paid on or before March 15, 2011.

## CONCLUSION AND RELIEF SOUGHT

16. Here, the Taxpayer acquired in the middle of the year another large company almost equal to it in size in a hostile transaction which meant that it had not been able to undertake any pre-acquisition due diligence. The other company was complex, used a different financial and accounting system and had a different operating structure. The Taxpayer spent in excess of \$60m in integration costs and it was not until the 3<sup>rd</sup> quarter of 2011 that it was able to accurately compute its 2010 Illinois tax liability. At such time, it paid any additional tax not covered by the estimated tax payments made during the year. And the tax still owed that it paid with the Protest results from a change to the overpayment credit coming over from the acquired company which was not known until 2012. Taxpayer more than exercised ordinary business care and prudence in its 2010 Illinois filings. Further, the Taxpayer has a long and exemplary record of tax compliance in its home state of Illinois.
17. Due to the complexities associated with the reporting of taxable income and the computation of tax due on facts such as those of the Taxpayer, errors occurred. The resulting errors were made entirely in good faith and were generally outside of the control of the Taxpayer. Thus, the Petitioner is respectfully requesting that the penalties being asserted of \$104,812 (\$55,602 in underpayment of tax and \$49,210 in late payment of tax) be abated in their entirety.

WHEREAS, Petitioner requests that the portion of the "Notice" that relates to the penalties be modified or canceled for the reasons contained herein.

CF INDUSTRIES HOLDINGS INC.

By: 

Eugene M. McCluskey, Attorney  
Representing Petitioner and its  
Vice President of Tax  
4 Parkway North, Suite 400  
Deerfield, IL 60015  
847-405-2518  
emclluskey@cfindustries.com  
ARDC Number :

# Notice of Deficiency

for Form IL-1120, Corporation Income and Replacement Tax Return



CF INDUSTRIES, INC.  
CORPORATE TAX

January 16, 2014



Letter ID: CNXXX19147549122

\_\_\_\_\_ #BWNKMGV  
#CNXX X191 4754 9122#  
CF INDUSTRIES HLDGS INC  
4 PARKWAY N STE 400  
\_\_\_\_\_ DEERFIELD IL 60015-2542

Date Received

1/21/14

Taxpayer ID: 20-2697511  
Reporting period: December 2010  
Total deficiency: \$5,033,576.35  
Balance due: \$223,975.35



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.

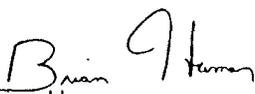
If you do not agree, you may contest this notice by following the instructions listed below.

- 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 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,

  
Brian Hamer  
Director of Revenue

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



Letter ID: CNXXX19147549122

Taxpayer ID: 20-2697511

Reporting Period: December 2010

**STATEMENT**

**Reason for deficiency**

We did not receive the information we requested regarding your Schedule NLD, Net Loss Deduction, or Schedule UB/NLD, Unitary Net Loss Deduction. We have adjusted your account accordingly.

**Penalties**

We are imposing a late-payment penalty because you did not pay the total tax you owe by the original due date of the return, even if you had an extension of time to file. This penalty is based on the amount required to be shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days after the due date.

[35 ILCS 735-13-3(b-20)(2)]

We are imposing a late-payment penalty for underpayment of estimated tax because you did not make your required estimated tax payments or pay the required amount of estimated tax payment by the payment due date. This penalty is based on the amount shown due on your return, minus any timely payments and timely credits. This penalty is figured at increasing rates based on the number of days your payment is late. The penalty rates are

- 2 percent of any amount that is paid no later than 30 days after the due date;
- 10 percent of any amount that is paid later than 30 days but no later than 90 days after the due date.

[35 ILCS 735/3-3(b-20)(1)]

**Interest**

Interest in the amount of 7,776.65 has been computed through January 16, 2014.



Letter ID: CNXXX19147549122  
 Taxpayer ID: 20-2697511  
 Reporting Period: December 2010

**STATEMENT**

**Computation of Deficiency**

**Tax year ending: December 2010**

	<b>Corrected Amount</b>
Base income(loss) allocable to IL	\$69,134,909.00
IL net loss deduction(NLD)	\$1,724,121.00
Net Income	\$67,410,788.00
Tax Due	\$4,920,988.00
Plus late-filing or nonfiling penalty	\$0.00
Plus late-payment penalty	\$104,811.70
Plus interest on tax through 01/16/2014	\$7,776.65
Total deficiency	*\$5,033,576.35

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

**Computation of balance due**

**Reporting Period: 12/31/2010**

Deficiency (this notice)	*\$5,033,576.35
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$4,809,601.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$223,975.35

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



INDUSTRIAL  
CORPORATE TAX

Date Received 7/7/14

**Illinois Department of Revenue  
OFFICE OF ADMINISTRATIVE HEARINGS**

Willard Ice Building  
101 West Jefferson Street – Level 5SW  
Springfield, IL 62702  
(217)782-6995

July 2, 2014

Eugene M. McCluskey  
Vice-President of Tax  
CF Industries Holdings, Inc.  
4 Parkway North, Suite 400  
Deerfield, IL 60015

Re: **PROTEST DISMISSAL DUE TO LACK OF JURISDICTION**

CF Industries Holdings, Inc.

Taxpayer ID: 20-2697511

Notice of Deficiency (NOD), Reporting Period: December 2010

Letter ID: CNXXX19147549122, dated January 16, 2014

Dear Mr. McCluskey:

The Office of Administrative Hearings of the Illinois Department of Revenue received your protest and request for an administrative hearing for the above NOD. The mailing date of your protest and request for hearing indicate that the protest was sent within the 60-day protest period for requesting an administrative hearing stated on the above Notice. However, the amount of liability at issue for the 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 protests filed on or after January 1, 2014. For protests that exceed the statutory amount and are filed on or after January 1, 2014, jurisdiction is vested solely in the Illinois Independent Tax Tribunal (Tax Tribunal). See 35 ILCS 1010/1-1 *et seq.* **Because the Department does not have jurisdiction over this protest, the Department is respectfully dismissing your protest and request for administrative hearing.**

Because of these recent changes in Illinois law, the Department and the Tax Tribunal recognize that there may be instances, such as this, when a protest and request for an administrative hearing may be filed in the wrong jurisdiction. The Tax Tribunal's website ([www.illinois.gov/taxtribunal](http://www.illinois.gov/taxtribunal)) contains rules that include guidance on filing in the wrong jurisdiction and contact information for the Tax Tribunal. **The Tax Tribunal's rules provide that a timely protest that is dismissed by the Department for lack of**

**jurisdiction may be filed with the Tax Tribunal within 60 days of the notice of such dismissal.** See Subsection (a)(3) 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,



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

TDC

# Notice of Overpayment Adjustment



November 29, 2012



Letter ID: L0191605152

Account ID: 02039-39328

FEIN: 52-1145429

Reporting Period: April 2010

TERRA INDUSTRIES INC  
ATTN: CF INDUSTRIES INC - LIZ STEVENS  
4 PARKWAY N STE 400  
DEERFIELD IL 60015-2542



We changed the amount of overpayment that you requested be applied to your next year's Illinois estimated tax because your return was filed after the extended due date of your return. The election may only be made on a timely filed return, so no amount may be credited to your next year's tax liability. If you are making estimated payments for next year and you expect to claim credit from this return as part of your estimated payment, you may be underpaid.

Please review the Account Status Section.

Penalties for any late payment of estimated taxes that might result because we applied this overpayment to another liability, may be avoided by following the instructions below.

If the final estimated payment installment date for next year's estimated taxes has not passed, you must pay back the amount we applied to another liability

- within 30 days of the date of this notice, or
- before the next estimated tax installment due date, whichever is later.

If the final estimated payment installment date for next year's estimated taxes has passed, you must pay back the amount we applied to another liability

- by the original due date of your return, without regard to any extended due date, or
- within 30 days of the date of this notice, whichever is later.

If you disagree with the amount identified or have any questions about the application of your Illinois tax overpayment, call the phone number provided in the Account Status Section.

**Note:** If you are currently under the protection of the Federal Bankruptcy Court, please contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy "automatic stay" does not relieve your obligation to file tax returns.

→ Reg-1 Required

### Account Status Section

Total overpayment from: Form IL-1120, Corporation Income and Replacement Tax Return \$175,940.48

Amount offset to the following: Phone number

Total offset amount: \$0.00

Previous amount of credit carryforward: \$0.00

Remaining overpayment: \$175,940.48

Amount applied to 04/11 estimated payments 1 800 732-8866 \$0.00

Refund amount \$175,940.48

Note: You will not receive a refund check if your refund amount is less than \$1.