

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>CF INDUSTRIES HOLDINGS, INC.</b>	)	
<i>Petitioner</i>	)	
	)	<b>14-TT-168</b>
	)	
<b>STATE OF ILLINOIS</b>	)	<b>Chief Judge James M. Conway</b>
<b>DEPARTMENT OF REVENUE</b>	)	
<i>Respondent</i>	)	

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**ANSWER**

NOW COMES THE Department of Revenue of the State of Illinois (“Department”) through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its answer to Taxpayer’s Petition respectfully pleads as follows:

**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.

**ANSWER:** Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is a corporation with its principal place of business in Deerfield, Illinois.

**ANSWER:** Department admits the factual allegations contained in Paragraph 2.

3. It is located at 4 Parkway North, Suite 400 and its telephone number is 847-405-2400. The Taxpayer File Number is 64483242.

**ANSWER:** The information contained in Paragraph 3 is required by Illinois Independent Tax Tribunal Regulations (“Rule”) 310(a)(A) (86 Ill. Admin. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegation contained in paragraph 3.

## BACKGROUND AND RELEVANT FACTS

4. Petitioner filed its return for the calendar year ending December 31, 2010 on October 14, 2011.

**ANSWER:** Department admits the factual allegations contained in Paragraph 4.

5. Petitioner received the Notice at issue on January 21, 2014.

**ANSWER:** Department admits the factual allegations contained in Paragraph 5.

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 the \$119,164 to cover the additional tax shown on the Notice of \$111,387 plus accrued interest of \$7,777.

**ANSWER:** Department admits the factual allegations contained in Paragraph 6.

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 Petitioner is accordingly being filed 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:

**ANSWER:** Department admits the factual allegations contained in Paragraph 7, except that Department denies the allegations made in the last sentence regarding the exercise of “ordinary business care.”

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 operation from Sioux City, Iowa to the Taxpayer’s headquarters in Deerfield, Illinois.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, and demands strict proof thereof.

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 Taxpayer engaged independent third party advisors and incurred significant fees of upwards of \$6 million.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9, and demands strict proof thereof.

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.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10, and demands strict proof thereof.

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.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11, and demands strict proof thereof.

12. Due to the scope of the integration process and the complications related to the different financial and accounting software systems, Terra's and Taxpayer's tax and accounting systems were not fully integrate 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.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12, and demands strict proof thereof.

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 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 taxpayer paid with the Protest along with the related interest.

**ANSWER:** Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13, and demands strict proof thereof.

## 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 property 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”.

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 14 and demands strict proof thereof.

## 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 estimated of the tax due thereon was accurate and paid on or before March 15, 2011.

**ANSWER:** Paragraph 15 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 15 and demands strict proof thereof.

## 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 spend 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.

**ANSWER:** Paragraph 16 contains one or more legal conclusions, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 16 and demands strict proof thereof.

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.

**ANSWER:** Paragraph 17 contains one or more legal conclusions, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 17 and demands strict proof thereof.

**WHEREFORE**, the Department respectfully requests this Tribunal

- a. Deny Petitioner's prayer for relief;
- b. Find that the Notice of Deficiency correctly reflects Petitioner's 2010 Illinois income tax assessment, including penalties and interest;
- c. Order judgment in favor of the Department and against the Taxpayer/Petitioner;  
and
- d. Grant any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

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<i>Respondent</i>	)	

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**CERTIFICATE OF SERVICE**

Ralph Bassett certifies that he is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that he is authorized to make this certificate; that on October 6, 2014, before the hour of 5:00 p.m. he serviced a true and exact copy of the foregoing instrument entitled **ANSWER and AFFIDAVIT OF MICHAEL DIXON** on the above Taxpayer/Petitioner by sending same as an attachment to an electronic mail message addressed to the following individual at his designated email address:

Eugene M. McCluskey, Esq.

Email: [emcccluskey@cfindustries.com](mailto:emcccluskey@cfindustries.com)

s/ Ralph Bassett

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