

ILLINOIS INDEPENDENT
TAX TRIBUNAL

PSAV INTERMEDIATE CORP & SUBS,)
)
Petitioner,)
)
v.)
)
ILLINOIS DEPARTMENT)
OF REVENUE,)
)
Respondent.)

Case No.

RECEIVED
SEP 15 2016
BY: 1677187

PETITION

Petitioner PSAV Intermediate Corp & Subs (“PSAV”), by and through its attorneys Thompson Coburn LLP, hereby petitions the Illinois Independent Tax Tribunal to review and reverse the Notice of Deficiency issued by the Illinois Department of Revenue (“Department”), for the reasons stated below:

PARTIES

1. PSAV is a Delaware corporation with its principal place of business located at 5100 River Road, Suite 300, Schiller Park, Illinois 60176, and its telephone number is 847-222-9800.
2. PSAV is represented by Thompson Coburn LLP and Matthew J. Landwehr, located at One US Bank Plaza, Suite 3500, St. Louis, Missouri 63101, and can be reached at 314-552-6541.
3. PSAV’s FEIN is 46-4573857.
4. PSAV’s Illinois Account ID is 07132-57888.

5. The Department is an agency of the Executive Department of the State of Illinois and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

THE NOTICE OF DEFICIENCY

6. On July 18, 2016, the Department issued a Notice of Deficiency (“Notice”) for the tax year ending December 31, 2014, assessing a total balance due of \$2,502,612.66. This amount was calculated based on a total income tax amount due of \$2,443,887.00, plus \$219,388.70 in late payment penalties, \$89,336.96 in interest, less \$250,000.00 in estimated payments made. The Notice is attached hereto as **Exhibit A**.

BACKGROUND

7. PSAV believes the Notice was issued as a result of PSAV’s failure to respond to a Return Correction Notice issued by the Department on June 2, 2016. That Return Correction Notice is attached hereto as **Exhibit B**. The Return Correction Notice states the Department was (1) disallowing PSAV’s unitary Net Loss Deduction (“NLD”) because PSAV claimed more loss than the Department’s records indicate are available, and (2) allocating 100% of the income reported to Illinois because the listed FEIN is claimed as a member in another unitary group. *See* Exhibit B. The Return Correction Notice asked PSAV to supply certain documentation to the Department within 30 days.

8. On January 24, 2014, AVSC Holding Corp. (“AVSC”), including its interest in its subsidiary operating entities, was acquired by PSAV.

9. Accordingly, pursuant to 86 IL ADC 100.5270(f), on October 15, 2015, AVSC filed a short-year combined return for the 2014 fiscal year from January 1, 2014 through January 24, 2014, to report income its subsidiaries generated during the portion of 2014 when AVSC controlled those subsidiaries (the “AVSC Return”).

10. Likewise, pursuant to 86 IL ADC 100.5270(f), on October 15, 2015, PSAV filed a short-year combined return for the 2014 fiscal year from January 25, 2014, through December 31, 2014, to report income those same subsidiaries generated during the portion of 2014 when PSAV was a member of the combined group and controlled those same subsidiaries (the “PSAV Return”).

11. Both the AVSC Return and the PSAV Return report for exactly the same members of the combined group, with one exception. The only difference is that the PSAV Return added PSAV Intermediate Corp. as the new controlling member of the combined group.

12. PSAV contacted the Department on Friday, September 2, 2016, to inquire about the Notice. In that conversation, the Department alerted PSAV to the Return Correction Notice dated June 2, 2016 (Exhibit B). Since that conversation, PSAV has determined that the Return Correction Notice was misplaced at the time it was sent because PSAV’s former Tax Director resigned effective June 9, 2016 (just one week after the Return Correction Notice was sent), and PSAV believes that the Return Correction Notice was inadvertently misplaced by PSAV during this transition.

13. Had PSAV not misplaced the Return Correction Notice, PSAV would have timely supplied the information requested which PSAV believes would have prevented the Department’s issuance of the Notice of Deficiency.

COUNT I

The Net Operating Loss Deductions Were Properly Carried Forward From The AVSC

Return to the PSAV Return

14. PSAV restates the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

15. The Department improperly disallowed net operating loss deductions incurred by the subsidiary entities in prior years and/or in the short year 2014 AVSC Return because these deductions were properly computed and allowable in accordance with 35 ILCS 5/207 and 86 IL ADC 100.2310.

COUNT II

PSAV Is Entitled To Apportion Its Income

16. PSAV restates the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

17. Regardless of the outcome of Count I, the Department improperly refused to allow PSAV and its subsidiaries to apportion their income among Illinois and other states.

18. PSAV had substantial nexus with and conducted business in Illinois and numerous other states and filed tax returns for the 2014 tax year in Illinois and numerous other states. For the PSAV Return, the combined unitary group's apportionment factor (or total sales) for Illinois was only 8.2368%, yet the Department imposed Illinois corporate income tax on 100% of PSAV's combined income subject to apportionment for the 2014 short period.

19. The Department's actions in disallowing PSAV's right to apportion its income created a gross distortion of PSAV's income subject to Illinois corporate income tax (e.g., from \$2,118,928 increased to \$25,725,125.00) and a gross distortion of its Illinois income tax liability

(e.g., from zero (due to net operating loss carryforwards) to \$2,752,612.66 (including a wrongfully imposed late payment penalty of \$219,388.70 and wrongfully imposed interest of \$89,336.96 (through July 18, 2016)). The Departments actions amounted to an unfair apportionment in clear violation of PSAV's right to apportion its multistate income under 35 ILCS 5/304, and in violation of PSAV's federal constitutional rights to apportion its multistate income under the Commerce Clause of the Constitution of the United States.

COUNT III

Penalties And Interest Must Be Abated For Reasonable Cause

20. PSAV restates the allegations contained in paragraphs 1 through 19 as if fully set forth herein.

21. Under 35 ILCS 5/1005(4) and 35 ILCS 735/3-8, no penalties or interest shall be imposed on a taxpayer if there was reasonable cause for a taxpayer's underpayment of taxes and the taxpayer acted in good faith.

22. As set forth in Count I and Count II, PSAV owes no additional tax for the 2014 tax year. Accordingly, the penalties and interest contained in the Notice should be abated.

WHEREFORE, Petitioner PSAV Intermediate Corp & Subs respectfully requests and demands judgment in its favor, and that the Department's Notice of Deficiency and assessment of income tax, penalties, and interest be vacated, reversed, and set aside in their entirety, and for such additional relief as the Tribunal deems proper.

Respectfully submitted,

THOMPSON COBURN LLP

By: 

Matthew J. Landwehr #6280426
One US Bank Plaza
St. Louis, MO 63101
Phone: (314) 552-6000
Fax: (314) 552-7000
mlandwehr@thompsoncoburn.com

Attorneys for PSAV Intermediate Corp & Subs

Dated: September 14, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Petition with Exhibits A and B was served via United States Mail, postage prepaid, on this the 14th day of September, 2016, on:

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
7th floor of the Thompson Center
Chicago, IL 60601



Notice of Deficiency

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



July 18, 2016



Letter ID: CNXXX2XXX1X94560

#BWNKMGV
#CNXX X2XX X1X9 4560#
PSAV INTERMEDIATE CORP & SUBS
ATTN: BENJAMIN ERWIN
5100 RIVER RD STE 300
SCHILLER PARK IL 60176-1058

Taxpayer ID: 46-4573857
Reporting period: December 2014
Total deficiency: \$2,752,612.66
Balance due: \$2,502,612.66



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.

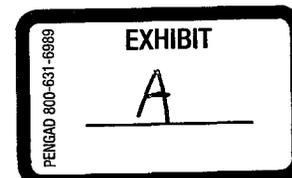
If you do not protest this notice or pay the balance due in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action.

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





Letter ID: CNXXX2XXX1X94560

Taxpayer ID: 46-4573857

Reporting Period: December 2014

STATEMENT

Computation of Deficiency**Tax year ending: December 2014****Corrected
Amount**

Base income(loss) allocable to IL	\$25,725,125.00
IL net loss deduction(NLD)	\$0.00
Net Income	\$25,725,125.00
Tax Due	\$2,443,887.00
Plus late-filing or nonfiling penalty	\$0.00
Plus late-payment penalty	\$219,388.70
Plus interest on tax through 07/18/2016	\$89,336.96
Total deficiency	*\$2,752,612.66

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

Computation of balance due**Reporting Period:12/31/2014**

Deficiency (this notice)	*\$2,752,612.66
Minus tax withheld per Form W-2	\$0.00
Minus additional tax withheld	\$0.00
Minus estimated tax payments	\$250,000.00
Remaining amount due or overpaid	
Current amount due (this notice)	\$2,502,612.66

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

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 that 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 to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.



Letter ID: CNXXX2XXX1X94560

Taxpayer ID: 46-4573857

Reporting Period: December 2014

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.735-3-3(b-20)(2)]

Interest

Interest in the amount of 89,336.96 has been computed through July 18, 2016.

Return Correction Notice

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



June 2, 2016

TDD 1 800 544-5304



Letter ID: CNXXXXX584834727

Account ID: 07132-57888

FEIN: 46-4573857

Reporting Period: December 2014

_____ #BWNKMGV
_____ #CNXX XXX5 8483 4727#
_____ PSAV INTERMEDIATE CORP & SUBS
_____ ATTN: BENJAMIN ERWIN
_____ 5100 RIVER RD STE 300
_____ SCHILLER PARK IL 60176-1058



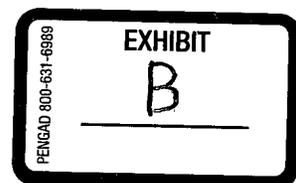
We have found problems with your return.

- We disallowed your unitary Illinois Net Loss Deduction (NLD) because you claimed more loss than our records indicate you have available. Please take the following actions, as applicable, to correct your return:
 - Verify that you are using your unitary Illinois NLD and not the Federal Net Operating Loss Deduction from your federal tax returns.
 - Send us a breakdown showing how you figured the amount of unitary Illinois NLD that you claimed.
 - If you have Illinois net loss due to adding a new member with an NLD to your unitary business group or due to a merger of one member with an NLD into another member, or you previously filed under a different FEIN, please provide us with the FEIN, the tax year the loss was earned, and the date of the acquisition or merger.
 - Provide any other documentation that would support your unitary Illinois NLD. This includes filing any returns claiming an Illinois loss that we may not have on file. If you earn a loss in a tax year, you must file that return in order to claim the loss in any subsequent tax year.
- We changed income allocable to Illinois to \$25,725,125.00 because the listed FEIN 46-4573857, is claimed as a member in another unitary group. Please send the dates when the member joined the group and/or if they have left the group on a corrected Schedule UB.

- ✓ ***If you have an amount due, send us your payment with the voucher on the enclosed Taxpayer Statement.***
- ✓ ***If a response or missing documentation is required, send it to us within 30 days with a copy of this notice.***

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19004
SPRINGFIELD IL 62794-9004

For questions, visit our web site or call one of the numbers above.



Account Notice

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



June 2, 2016

TDD 1 800 544-5304



Letter ID: CNXXX21X53X38244

Account ID: 07132-57888

FEIN: 46-4573857

Reporting Period: December 2014

#BWNKMGV
#CNXX X21X 53X3 8244#
PSAV INTERMEDIATE CORP & SUBS
ATTN: BENJAMIN ERWIN
5100 RIVER RD STE 300
SCHILLER PARK IL 60176-1058



Here is information about your December 2014 reporting period.

- You did not make full payment by the required due date.

As a result we have assessed the amounts shown below

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	2,443,887.00	(250,000.00)	2,193,887.00
Late-Payment Penalty	219,388.70	0.00	219,388.70
Interest	80,060.12	0.00	80,060.12
Totals	2,743,335.82	(250,000.00)	\$2,493,335.82

If you believe you do not owe an amount identified above or have any questions, please call one of the numbers above.

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 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.
- 2 Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or failed to pay the required amount by the payment due date.
- 3 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.
- 4 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.
- 5 Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 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.
- 7 Bad check penalty** - You owe this penalty if you send a remittance to the department that is not honored by your financial institution.
- 8 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.

9 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.

- 10 100 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.

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

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly 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. 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.

How is interest figured?

Interest is simple interest figured using a daily rate. We review the rate twice each year - on January 1 and July 1 - and adjust according to the "underpayment rate" or the "short-term federal rate" (3 percent less than the underpayment rate) established under IRC, Section 6621. Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties).

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 that 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, or by taking the issue to court.
- If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other department procedures, you may contact us. Our contact information is on the front of this notice.

Taxpayer Statement



June 2, 2016

TDD 1 800 544-5304



Letter ID: CNXXXX999X665129

#BWNKMGV
#CNXX XX99 9X66 5129#
PSAV INTERMEDIATE CORP & SUBS
ATTN: BENJAMIN ERWIN
5100 RIVER RD STE 300
SCHILLER PARK IL 60176-1058

Account ID: 07132-57888
FEIN: 46-4573857
Total amount due: \$2,493,335.82



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.

IL Business Income Tax

Account ID: 07132-57888

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Dec-2014	2,443,887.00	219,388.70	80,060.12	-	(250,000.00)	2,493,335.82

SOA

Retain this portion for your records.

P-002017

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

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX999X665129
PSAV INTERMEDIATE CORP & SUBS

Total amount due: \$2,493,335.82

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.

000 006 006257812002 731 123199 9 0000249333582