IN THE ILLINOIS INDENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

FF & F INVESTMENTS,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 15 IT 38
	)	
ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

RECEIVED

PETITION

FF & F Investments ("Petitioner"), by and through its attorneys, The Law Office of James E. Dickett, Ltd., complains of the Defendant, the Illinois Department of Revenue ("Department"), and alleges as follows:

PARTIES

1. Petitioner was an Illinois business located at 840 25th Avenue, Bellwood, Illinois, 60104, and can be reached at 708-784-3200.

2. Petitioner is represented by The Law Office of James E. Dickett Ltd. attorney James E. Dickett, located at 600 Hillgrove Avenue, Suite 1, Western Springs, Illinois, 60558 and can be reached at 708-784-3200 or jdickett@aol.com.

3. Petitioner's Taxpayer (Account) ID is 3927-0882.

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

NOTICE

5. On December 17, 2014, Petitioner received a Notice of Tax Liability letter ("Notice") from the Department for a sales/use tax audit for the tax periods of January 1, 2011 to November 30, 2011. The Notice reflect $210,027 in tax due, plus late penalties and interest. The Notice is attached hereto as Exhibit 1.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

7. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this Petition within 60 days of the Notice.

BACKGROUND

8. Petitioner was engaged in the multistate business of selling and leasing wood and metal forms to concrete contractors, but the business ceased operations in 2010.

9. Defendants audited Petitioner's books and records for the tax periods January 1, 2011 to November 30, 2011.

10. The audit liability contained in the Notice is based on a projection whereby the Department prorated Petitioner's prior audit results to the tax periods at issue herein. The Department did not examine any books and records for the audit at issue herein.

COUNT I

Defendant's audit methodology overstates Petitioner's liability.

11. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 10, inclusive, hereinabove.

12. On audit, the Department calculated the audit liability by prorating Petitioner's prior audit results, but the Department's calculations do not account for the fact that the business was closed during the tax periods at issue nor do they account for the out-of-state customers that are tax-exempt.

13. By applying such projections during the audit period, the Department inflated Petitioner's audit liability because the Petitioner was closed during the audit period.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) enters judgment in favor or Petitioner and against the Defendant and cancels the Notice;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount due on the Notice;

(c) grants such further relief as the Tribunal deems appropriate.

COUNT II

All penalties should be abated based on reasonable cause.

14. Petitioner realleges and incorporates by reference the allegation made in paragraphs 1 through 13, inclusive, hereinabove.

15. In its Notice, the Department assessed late penalties based on the audit liability.

16. Illinois law provides that late penalties do not apply if a taxpayer shows that its failure to pay tax was due to reasonable cause. 35 ILCS 735/3-8.

17. 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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code 00.400(b).

18. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code 700.400(b).

19. Petitioner exercised ordinary business care and prudence when it reasonably determined its sales and use tax liability during the audit period to be zero because it was closed.

WHEREFORE, Petitioner prays that the Tribunal enter an order that:

(a) finds and declares that all penalties should be fully abated based on reasonable cause;

(b) enjoins the Department from taking any action to assess, lien, levy, offset, or any other way prosecute and collect the amount of penalties due on the Notice; and

(c) grants such further relief as the Tribunal deems appropriate.

Thank you for considering this Petition.

Respectfully submitted,

FF & F Investments,
Petitioner

By: _____
One of Petitioner's Attorneys

Date: 2/12/15

James E. Dickett
600 Hillgrove Avenue, Suite 1
Western Springs, IL 60558
708-784-3200

Notice of Tax Liability

for Form EDA-105-R, ROT Audit Report

Exhibit 1

STATE OF Illinois DEPARTMENT OF REVENUE tax.illinois.gov

#BWNKMGV
#CNXX XX14 65X7 28X2#
FF & F INVESTMENTS
840 25TH AVE
BELLWOOD IL 60104-2201

December 17, 2014

Letter ID: CNXXXX1465X728X2

Account ID: 3927-0882

We have audited your account for the reporting periods January 01, 2011, through November 30, 2011. As a result we have assessed the amounts shown below.

	Liability	Payments/Credit	Unpaid Balance
Tax	210,027.00	0.00	210,027.00
Late Payment Penalty Increase	42,005.00	0.00	42,005.00
Late Filing Penalty Increase	2,750.00	0.00	2,750.00
Interest	15,951.42	0.00	15,951.42
Assessment Total	$270,733.42	$0.00	**$270,733.42**

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

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

- **If the amount of this tax liability, exclusive of penalty and interest, is more than $15,000, *or* if no tax liability 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue,** and request an administrative hearing within 60 days of the date of this notice, which is **February 17, 2015**. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at **tax.illinois.gov**). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. 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. A protest of this notice does not preserve your rights under any other notice.
- **Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue,** 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 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 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 to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

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