

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>JIMMY JOHN'S FRANCHISE, LLC,</b>	)	
<b>Taxpayer,</b>	)	
v.	)	<b>Case No. 14-TT-50</b>
	)	<b>Chief Judge James M. Conway</b>
<b>ILLINOIS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**NOTICE OF FILING**

To: Brian A. Smith  
FREEBORN & Peters LLP  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Email: bsmith@freeborn.com

**PLEASE TAKE NOTICE** that on April 29<sup>th</sup>, 2014, the undersigned filed with the Illinois Independent Tax Tribunal, 160 North LaSalle St., Room N506, Chicago, Illinois 60601, the

**ILLINOIS DEPARTMENT OF REVENUE'S ANSWER,**

a copy of which is attached hereto and served upon you.

LISA MADIGAN, Illinois Attorney General

By: /s/ Faith Dolgin  
Faith Dolgin, SPAAG  
100 W. Randolph St., 7<sup>th</sup> Floor  
Chicago, Illinois 60601  
312.814.3185

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that she served a copy of this Notice of Filing and the document therein mentioned on the parties set forth above by email on April 29, 2014.

/s/ Faith Dolgin  
Faith Dolgin

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), by and through its attorney, LISA MADIGAN, Illinois Attorney General, and for its Answer to the Taxpayer’s Petition respectfully pleads as follows:

1. The Petitioner is a limited liability company formed pursuant to the laws of the State of Illinois with legal residence at 2212 Fox Drive, Champaign, Illinois 61820. The Petitioner’s federal employer tax identification number is 36-3885839.

**ANSWER:** The Department denies that the Taxpayer is registered with the Department under the federal employer identification number referenced in Paragraph 1. The Department admits that Taxpayer is registered at the address referenced in Paragraph 1. The Department is without information sufficient to form a belief as to the remaining allegations contained in Paragraph 1.

2. The Notice of Tax Liability (a copy of which including so much of the statement and schedules accompanying the Notice as is material, is attached hereto and marked as Exhibit

A) was mailed to the Petitioner on July 17, 2013, and was issued by the Respondent Illinois Department of Revenue.

**ANSWER:** The Department admits that a Notice of Tax (NTL) was issued and mailed to Taxpayer by the Department on July 17, 2013 and that a copy of the NTL is attached to the Petition as Exhibit A. The remaining allegation as to the materiality of documentation is a legal conclusion, not a material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

3. The deficiencies as determined by the Respondent are in Aircraft use Tax and associated penalties relating to the purchase of a Challenger Lear Jet (the “Lear Aircraft”) on or about June 17, 2009. A deficiency was assessed in the amount of \$300,000.00 of aircraft use tax, \$120,000.00 of penalties, and \$65,770.56 of interest.

**ANSWER:** The Department denies the allegations contained in Paragraph 3. The Department further states that the liability proposed under the subject NTL is for unpaid use tax arising under Illinois’ Use Tax Act, *35 ILCS 105/1, et seq.*, plus related penalties and interest under the Uniform Penalty and Interest Act, *35 ILCS 735/1, et seq.*, and the Tax Delinquency Amnesty Act, *35 ILCS 745/1, et seq.*, imposed in connection with Taxpayer’s purchase of a 2007 Learjet 45 aircraft (N15UB), purchased and brought into Illinois on June 18, 2009. The Department admits that the liability asserted under the NTL is for use tax in the amount of \$300,000.00; penalties in the amount of \$ 120,000.00; and interest in the amount of \$65,770.56.

4. In disputing the attached Notice of Tax Liability, Petitioner brought an action before the Illinois Department of Revenue, Office of Administrative Hearings, Docket No. 13-ST-0074, disputing the assessed aircraft use tax deficiency and associated penalties and interest.

**ANSWER:** The Department admits allegations contained in Paragraph 4.

5. Pursuant to Petitioner's motion to remove the proceeding to the Tax Tribunal pursuant to 35 ILCS 1010/1-15, the Illinois Department of Revenue, Office of Administrative Hearings issued an Order dated January 29, 2014 granting Petitioner's election and transferring jurisdiction to the Tax Tribunal. A copy of this order is attached hereto as Exhibit B.

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

6. Pursuant to 35 ILCS 1010/1-45, the Tax Tribunal maintains jurisdiction over the present action, which involves determinations of the Department of Revenue set forth in a Notice of Tax Liability involving the Aircraft Use Tax that exceeds \$15,000, exclusive of penalties and interest.

**ANSWER:** The Department admits that this Tribunal has jurisdiction to review the liability proposed under the subject NTL. The Department denies, however, that the NTL asserts liability for aircraft use tax.

7. The determination of tax and penalties set forth in the said Notice of Deficiency is based upon the following errors by Respondent:

- a. Respondent erred in its determination that Petitioner failed to qualify for the rolling stock exemption from Aircraft use Tax under 35 ILCS 105/3-55 and assessing Aircraft Use Tax as set forth in the attached Notice of Tax Liability.
- b. Respondent erred in its applying the “regular and frequent” standard found in the rolling stock exemption to Illinois’ Aircraft Use Tax.
- c. In the face of limited guidance from the Department on what constitutes “regular and frequent,” Petitioner took all available prudent steps and good business care in making a determination that Aircraft Use Tax was not due and owing under the rolling stock exemption.
- d. Taxpayer’s taxable period relating to the Aircraft Use Tax ends on July 17, 2009, outside the amnesty period ending July 1, 2013, making the amnesty penalty inapplicable.

**ANSWER:** The Department denies that its determination of liability under the NTL is in error and, otherwise, denies all allegations contained in Paragraph 7, including all of the subparts. The Department further answers the subparagraphs of Paragraph 7 as follows:

- a. The Department denies the allegations made in subparagraph 7a.
- b. The Department denies the allegations made in subparagraph 7b.
- c. The Department denies that it provides “limited guidance” on what constitutes “regular and frequent” usage for purposes of the rolling stock exemption, 35 ILCS 105/3-55(c), and, therefore, denies the remaining allegations

contained in subparagraph 7c since they are premised on a fact which has been denied.

d. The Department denies the allegations made in subparagraph 7d.

WHEREFORE, the Illinois Department of Revenue prays that the Tribunal enter an order:

- a. denying each and every prayer for relief in Taxpayer's Petition;
- b. finding that the Notice of Tax Liability is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and
- d. granting such further relief as this Tribunal deems appropriate.

Respectfully Submitted,

LISA MADIGAN, Illinois Attorney General

By: /s/ Faith Dolgin  
Faith Dolgin  
Special Assistant Attorney General  
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**AFFIDAVIT OF DANNY PIPER  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS  
COUNTY OF SANGAMON

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, I, Danny Piper, being first duly sworn on oath, depose and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I audited Jimmy John’s Franchise, LLC in connection with its purchase of a 2007 Learjet 45 aircraft having the following indentifying numbers: SN2072 and N15UB.
4. I lack the personal knowledge required to either admit or deny the allegations contained in Paragraph 1 of Taxpayer’s Petition.
5. I am an adult resident of the State of Illinois and an truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Danny Piper  
Revenue Auditor III

4-16-14