STATE OF ILLINOIS
INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

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JIMMY JOHN'S FRANCHISE, LLC Petitioner, v. THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS, Respondent.	Case No.

PETITION

Petitioner Jimmy John's Franchise, LLC (the "Petitioner") hereby petitions for a redetermination of the deficiencies in tax and penalties set forth by the Illinois Department of Revenue in its Notice of Tax Liability (Department's Letter ID: CNXXX19654119368) dated July 17, 2013, and, as the basis for its case, alleges 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.

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.

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, all of which is in dispute.

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.

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.

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.

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 under 35 ILCS 105/3-55 to Petitioner unconstitutionally as applied to Petitioner.

c. Respondent erred in determining that Petitioner is liable for the penalty imposed by 35 ILCS 120/5 for failure to pay Aircraft Use Tax.

d. Respondent erred in determining that Petitioner is liable for the penalty imposed by 35 ILCS 120/5 despite Petitioner's reasonable cause for failure to pay tax.

e. Respondent erred in determining that Petitioner is liable for the amnesty penalty imposed under 35 ILCS 735/3-3.

8. The facts upon which the Petitioners rely as the basis of their case are as follows:

a. On or about June 17, 2009, Taxpayer purchased a Lear Aircraft for use in interstate commerce.

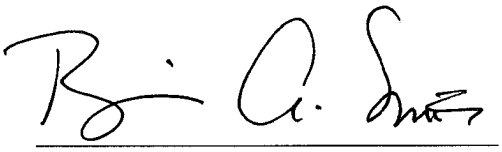
b. During the 2009, 2010, and 2011 taxable years, Petitioner used the Lear Aircraft on a regular and frequent basis in interstate commerce, qualifying the purchase for the rolling stock exemption to Illinois' Aircraft Use Tax.

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 of the amnesty period ending July 1, 2013, making the amnesty penalty

inapplicable to the Aircraft Use Tax liability assessed against Petitioner under 35 ILCS 735/3-3.

WHEREFORE, Petitioners pray that this Court may hear the case, determine that there is no deficiency in tax or penalty due from the Petitioners for the year 2009 and grant Petitioner such other further relief to which they may be entitled.



Brian A. Smith
Attorney for Petitioner

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Dated: 3/28/2014

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EXHIBIT A

Notice of Tax Liability

for Form EDA-95, Auditor-prepared Motor Vehicle Use Tax Report

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

#BWNKMGV
#CNXX X196 5411 9368#
JIMMY JOHNS FRANCHISE LLC
2212 FOX DR
CHAMPAIGN IL 61820-7532

July 17, 2013

Letter ID: CNXXX19654119368

Account ID: 15364-75136
Date brought into IL: Jun 17, 2009

MV: 025001294
ID: 2072

We have audited your account for the transaction listed above. Below is a summary of the balance.

	Liability	Payments/Credit	Unpaid Balance
Audit Tax	300,000.00	0.00	300,000.00
Amnesty Penalty	60,000.00	0.00	60,000.00
Audit Late Payment Penalty	60,000.00	0.00	60,000.00
Interest	32,885.28	0.00	32,885.28
Amnesty Interest	32,885.28	0.00	32,885.28
Assessment Total	$485,770.56	$0.00	**$485,770.56**

You may file a protest and request an administrative hearing within 60 days of the date of this notice, which is September 15, 2013. Your request must be in writing. Clearly indicate that you want to protest, and explain in detail why you do not agree with our actions. If you do not file a protest within the time allowed, you will give up your right to a hearing and this liability will become final. An administrative hearing is a formal legal proceeding conducted under the rules of evidence and presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.

If you have questions, please write us or call our Springfield office weekdays between 8:30 a.m. and 4:30 p.m. Our address and telephone number are below.

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

217 785-6579

EXHIBIT B

Illinois Department of Revenue
OFFICE OF ADMINISTRATIVE HEARINGS
Willard Ice Building
101 West Jefferson Street - Level 5SW
Springfield, Illinois 62702
(217) 782-6995

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **JIMMY JOHN'S FRANCHISE, LLC** **Taxpayer**	**Docket # 13-ST-0074** **Acct ID: 15364-75136** **Letter ID: CNXXX19654119368**

NOTICE OF DISPOSITION

TO: Brian A. Smith
Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606

Heidi Scott
Illinois Dept. of Revenue
101 W. Jefferson, 5th Floor
Springfield, Illinois 62702

YOU ARE HEREBY NOTIFIED that the attached Order of the Administrative Law Judge transferring the above captioned matter to the Illinois Independent Tax Tribunal has been approved by the Director of Revenue. By such Order, all proceedings before the Administrative Hearings Division of the Illinois Department of Revenue relative to this cause have been concluded.

Date: January 30, 2014

Brian A. Hamer, Director
Illinois Department of Revenue

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **JIMMY JOHN'S FRANCHISE, LLC** **Taxpayer**	Docket # 13-ST-0074 Acct ID: 15364-75136 Letter ID: CNXXX19654119368

ORDER

This matter coming on to be heard on the Taxpayer's "Motion to Transfer Case to Illinois Independent Tax Tribunal," (hereinafter "Tribunal"), filed on January 29, 2014, the Administrative Law Judge being fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. Taxpayer's Motion, making a statutory election to transfer jurisdiction over this case from the Department of Revenue to the Tribunal, is granted;

2. The Taxpayer's election to transfer jurisdiction to the Tribunal is irrevocable;

3. The administrative hearing record for this case will be transferred to the Tribunal;

4. Taxpayer will be required to perfect its protest before the Tribunal in accordance with 35 ILCS 1010/1-1 *et seq.*

WHEREFORE, for the reasons stated above, it is hereby ordered that all further proceedings in this matter are cancelled and the proceedings before the Administrative Hearings Division of the Illinois Department of Revenue are closed.

Date: January 29, 2014

Linda Olivero
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on the Illinois Department of Revenue by mailing the same on March 28, 2014 in a postage-paid wrapper addressed to: Illinois Department of Revenue, Office of Legal Services at 100 W. Randolph St., 7-900 (7th Floor of Thompson Center), Chicago, Illinois 60601.

Dated: March 28, 2014

Brian A. Smith
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