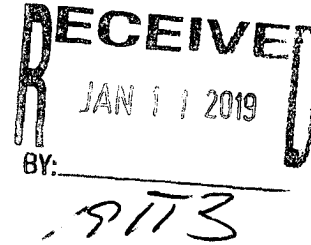


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

FORUM EXTENDED CARE SERVICES)
II INC.,)
)
Petitioner,)
)
)
v.)
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
Respondent.)

No.



PETITION

Petitioner, Forum Extended Care Services II Inc. (“Petitioner”), by and through its attorneys, Gensburg Calandriello & Kanter, P.C., for its Petition before the Illinois Independent Tax Tribunal (the “Tribunal”) hereby complains of the Respondent, the Illinois Department of Revenue (the “Department”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois corporation located at 4201 W. Victoria Street, Chicago, Illinois 60646 and can be reached at 847-673-8727.
2. Petitioner is represented by attorneys Anthony Calandriello, Lane M. Gensburg and Anne J. Kim of Gensburg Calandriello & Kanter, P.C., located at 200 West Adams Street, Suite 2425, Chicago, Illinois 60606. Anthony Calandriello can be reached at 312-263-2200 or tcalandriello@gcklegal.com. Lane M. Gensburg can be reached at 312-263-2200 or lgensburg@gcklegal.com. Anne J. Kim can be reached at 312-263-2200 or akim@gcklegal.com.
3. Petitioner’s Illinois Business Tax number is 4162-0860.
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. See 20 ILCS 5/5-15.

NOTICES

Retailers Occupation Tax

5. On November 13, 2018, the Department issued a Notice of Tax Liability (the “NTL”) to Petitioner asserting a total Retailers’ Occupation/Use Tax & E911 Surcharge (“ROT”) liability of \$747,587.13, covering the period January 2011 through March 2015 (the “period at issue”). The total liability consists of \$541,158 in tax due, \$108,232 in late payment penalties and \$98,197.13 in interest. A copy of the NTL is attached hereto as **Exhibit A**.

JURISDICTION

6. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act (the “Tribunal Act”), 35 ILCS 1010/1-1 *et seq.*

7. The Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the issuance of the NTL.

BACKGROUND

8. At all relevant times hereto, Petitioner operated a long-term care pharmacy located in Chicago, Illinois. Petitioner supplies prescription drugs, non-prescription drugs, wound care and nutritional and diabetic supplies primarily to assisted living, nursing home and hospice facilities. The Department audited Petitioner’s books and records for the period at issue.

9. The ROT audit liability stated in the NTL is based on purported tax due on the cost of goods purchased and then sold by Petitioner or used by Petitioner in its business. The Department imposed late payment penalties on Petitioner’s purported tax liability.

COUNT I

The Department's Audit Methodology Overstates Petitioner's ROT Liability

10. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 9 above as and for this paragraph 10.

11. The Department's calculation of tax due was overstated.

12. The Department failed to account for tax-exempt sales.

13. The Department erred in treating Petitioner's non-taxable sales for resale as taxable sales.

14. The Department erred in treating Petitioner's sales to the government through government-contracted managed care providers as taxable sales. The Department applied Administrative Code Section 130.2080(a), providing that on or after January 1, 2015, only sales directly invoiced to and paid by a government entity will be treated as tax-exempt sales to the government, to treat Petitioner's sales to government-contracted managed care providers as taxable sales. The Department erred in applying the regulation to Petitioner's sales prior to January 1, 2015.

15. Petitioner reserves the right to raise additional arguments as may be supported by the applicable facts and law.

WHEREFORE, Petitioner prays that the Tribunal:

(a) Enters judgment in favor of Petitioner and against the Department and cancels the NTL;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount due stated in the NTL; and

(c) Grants Petitioner such other and further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All Failure to Pay Penalties should be Abated for Reasonable Cause

16. Petitioner realleges and incorporates by reference the allegations made in paragraphs 1 through 15 as and for this paragraph 16.

17. Illinois law provides that failure to file and pay penalties do not apply if a taxpayer shows that his failure to file or pay tax at the required time was due to reasonable cause. See 35 ILCS 735/3-8.

18. The most important factor to be considered in making a determination to abate a late filing or payment penalty is the extent to which the taxpayer makes a good faith effort to determine its proper tax liability and to file and pay its proper tax liability in a timely fashion. See 86 Ill. Admin. Code 700.400(b).

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

20. Petitioner's failure to timely pay its ROT liabilities during the period at issue was due to reasonable cause warranting abatement of the late payment penalties.

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

(a) Finds and declares that all late payment penalties should be abated for reasonable cause;

(b) Enjoins the Department from taking any action to assess, lien, levy, offset, or in any other way prosecute and collect the amount of the failure to pay penalties stated in the NTL; and

(c) Grants such other and further relief as the Tribunal deems appropriate under the circumstances.

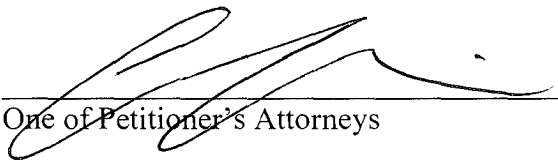
Respectfully submitted,

FORUM EXTENDED CARE SERVICES II
INC.,

Petitioner

Anthony Calandriello, Esq.
Lane M. Gensburg, Esq.
Anne J. Kim, Esq.
Gensburg Calandriello & Kanter, P.C.
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lgensburg@gcklegal.com
akim@gcklegal.com
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By:


One of Petitioner's Attorneys

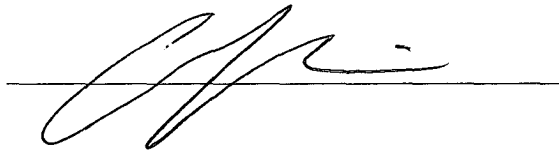
IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

FORUM EXTENDED CARE SERVICES)	
II INC.,)	
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Petitioner,)	
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)	No.
v.)	
)	
)	
ILLINOIS DEPARTMENT OF REVENUE,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

TO: Illinois Department of Revenue
Office of Legal Services
100 W. Randolph Street, 7-900
Chicago, IL 60601

I, Anne Kim, an attorney, certify that I caused a copy of the attached Petition before the Illinois Independent Tax Tribunal to be served upon the Illinois Department of Revenue at the address set forth above, by hand delivery before the hour of 5:00 p.m. on January 11, 2019.



Anthony Calandriello, Esq.
Lane M. Gensburg, Esq.
Anne J. Kim, Esq.
Gensburg Calandriello & Kanter, P.C.
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tcalandriello@gcklegal.com
lgensburg@gcklegal.com
akim@gcklegal.com

Notice of Tax Liability



#BWNKMGV
#CNXX X132 7177 84X2#
FORUM EXTENDED CARE SERVICES II INC.
4201 W VICTORIA ST
CHICAGO IL 60646-6700

November 13, 2018



Letter ID: CNXXX132717784X2

Account ID: 4162-0860
Reporting period: March 31, 2015

We have audited your Sales/Use Tax & E911 Surcharge account for the reporting periods January 01, 2011, through March 31, 2015, and the liability has been processed on Form EDA-105-R, ROT and E911 Surcharge Audit Report. As a result, we have assessed the amounts shown below.

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 protest this notice within specific time periods. See the "Protest Rights" section on the following page of this notice for additional information and instructions.

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.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following pages of this notice for additional information and instructions.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	541,158.00	0.00	541,158.00
Late Payment Penalty Increase	108,232.00	0.00	108,232.00
Interest	98,197.13	0.00	98,197.13
Assessment Total	\$747,587.13	\$0.00	\$747,587.13

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.

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

217 785-6579

Taxpayer Statement



November 13, 2018 TDD 1 800 544-5304



Letter ID: CNXXXX988X515681

Account ID: 4162-0860

Total amount due: \$747,587.21

#BWNKMGV
#CNXX XX98 8X51 5681#
FORUM EXTENDED CARE SERVICES II INC.
4201 W VICTORIA ST
CHICAGO IL 60646-6700

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.

Sales/Use Tax & E911 Surcharge

Account ID: 4162-0860

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
31-Mar-2015	545,795.00	108,232.00	98,197.13	-	(4,636.92)	747,587.21

• \$747,587.13 of this amount is subject to protest.

SOA

Retain this portion for your records.
Fold and detach on perforation. Return bottom portion with your payment.

P-000523

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



Letter ID: CNXXXX988X515681
FORUM EXTENDED CARE SERVICES II INC.

Total amount due: \$747,587.21

Write the amount you are paying below.

\$ _____

Write your Account ID on your check.

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

\$747,587.13 is subject to protest.
Do not pay any Income Tax liability that you intend to protest.

000 006 012602120401 731 123199 4 0000074758721