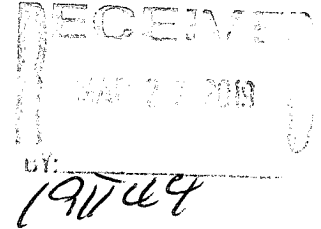


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

SCI ILLINOIS SERVICES, LLC,)
)
Petitioner,)
)
v.)
)
THE ILLINOIS DEPARTMENT OF REVENUE,)
)
Defendant.)

No.



PETITION

Petitioner, SCI Illinois Services, LLC (“Petitioner”), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner is an Illinois limited liability company. Petitioner’s mailing address for corporate income and replacement tax purposes is 1929 Allen Parkway, Houston, Texas 77019-2506.
2. Petitioner is represented by Marilyn A. Wethekam and Samantha K. Breslow of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3240 or mwetheka@hmblaw.com; and sbreslow@hmblaw.com or 312-606-3206, respectively.
3. Petitioner’s FEIN is 81-4832213.
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.

JURISDICTION

5. 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 and the Illinois Income Tax Act (“IITA”), 35 ILCS 5/101 et. seq.

6. The Tribunal has jurisdiction over this matter pursuant to Sections 1-15, 1-45, and 1-50 of the Tribunal Act because Petitioner filed this petition within 60 days of the Notice.

NOTICE

7. On February 11, 2019, the Department issued a Notice of Deficiency (“Notice”) to Petitioner for the tax year ending December 31, 2017 (“Year at Issue”) in the amount of \$20,009,056.72. The Notice is attached hereto as Exhibit A.

8. Unless otherwise stated, the allegations in this Petition relate to the Year at Issue.

BACKGROUND

9. Petitioner is North America’s largest provider of deathcare products and services.

10. Petitioner is a subsidiary and a member of the affiliated group, Service Corporation International and Subsidiaries (hereafter “SCI”).

11. During the Year at Issue SCI operated funeral service locations and cemeteries in the United States of America, Canada, and Puerto Rico.

12. Within the United States, SCI operated funeral service locations and cemeteries in the District of Columbia, and 45 states, including Illinois.

13. SCI formed the Petitioner pursuant to Section 368(a)(1)(A) of the Internal Revenue Code, wherein SCI was treated as the acquiring company.

14. On December 31, 2016, SCI Illinois Services, Inc., (hereinafter “SCIIL”) merged into Petitioner, resulting in Petitioner serving as the surviving company and SCIIL ceasing to exist.

15. SCIIL's FEIN is 36-6455952.
16. The operations of Petitioner continued in the same manner under the new organization structure.
17. For years prior to the Year at Issue, SCI filed a combined Form IL-1120 Corporate Income and Replacement Tax Return under SCIIL's name and FEIN.
18. During the Year at Issue, because Petitioner elected to be treated as a regarded entity, SCI filed a combined Form IL-1120 Corporate Income and Replacement Tax Return ("Combined Return") under Petitioner's name and FEIN.
19. The Combined Return included over 350 unitary affiliate corporations, including 16 corporations that conducted business in Illinois.
20. Petitioner's Illinois Schedule UB attached to the Combined Return included a presentation error.
21. Petitioner's Schedule UB for the Year at Issue incorrectly presented 8 of the 350 entities' Illinois Sales as exceeding Everywhere Sales due to the inclusion of \$1,760 of interest on U.S. Government obligations in Illinois Sales while excluding the amounts from Everywhere Sales.
22. On December 26, 2018 the Department issued a Return Correction Notice to Petitioner adjusting Petitioner's apportionment factor to 100 percent, disallowing the net loss deduction ("NLD") for the Year at Issue, and disallowing a prior year overpayment. The Return Correction Notice is attached hereto as Exhibit B.
23. In response to the Return Correction Notice, Petitioner filed an Illinois Amended Corporation Income and Replacement Tax Return, Form IL-1120-X ("Corrected Return") on

March 7, 2019 to correct the presentation of the Illinois Sales and the Sales Everywhere on the Schedule UB.

COUNT I

The Department Improperly Sourced Petitioner's Sales Entirely to Illinois

24. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 23, inclusive, hereinabove.

25. Petitioner's Schedule UB incorrectly presented certain members' net sales within Illinois as exceeding net sales everywhere.

26. This presentation error was caused by the inadvertent inclusion of United States government obligation interest in the numerator of Petitioner's apportionment factor, which was properly excluded from the denominator.

27. Rather than excluding the interest from Petitioner's net sales within Illinois, which would have lowered the unitary group's Illinois apportionment factor by 0.000058%, the Department increased its Illinois apportionment factor to 100%.

28. There is no basis for the Department's adjustment to Petitioner's Illinois apportionment factor.

29. The Department improperly sourced Petitioner's sales entirely to Illinois.

30. Petitioner's apportionment factor should be adjusted to reflect its Corrected Return.

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

(a) finds and declares that the Department improperly increased Petitioner's Illinois apportionment factor for the Year at Issue;

(b) enters judgment in favor of Petitioner and against the Defendant and orders Defendant to withdraw the Notice; and

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

COUNT II

Petitioner is Entitled to a Net Loss Deduction for the Year at Issue

31. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 30, inclusive, hereinabove.

32. Petitioner's Schedule UB/NLD Unitary Loss Deduction for the Year at Issue reported a NLD in the amount of \$5,223,745.

33. According to the Notice, the Department is disallowing Petitioner's NLD for the Year at Issue.

34. Pursuant to Section 405(a) of the IITA, any corporation that succeeds to the federal income attributes of another corporation under Section 381(a) of the Internal Revenue Code automatically succeeds to that corporation's IITA credit and net loss carryforwards. 35 ILCS 5/405(a); 86 Ill. Admin. Code § 100.4500(b).

35. Section 381(a) of the Internal Revenue Code includes a transaction described under subparagraphs (A), (C), (D), (F), or (G) of Section 368(a)(1)(A).

36. As the successor to SCIIL's federal income attributes under Section 368(a)(1)(A) of the Internal Revenue Code, Petitioner automatically succeeds to SCIIL's net loss carryforwards for Illinois tax purposes.

37. The Notice is improper and should be withdrawn because it fails to account for Petitioner's NLD for the Year at Issue.

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

- (a) finds and declares that the Petitioner has a right to succeed to SCIIL's NLD;

- (b) enters judgment in favor of Petitioner and against the Defendant and orders Defendant to apply the NLD and withdraw the Notice; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT III

Petitioner is Entitled to a Credit for a Prior Year Overpayment

38. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 37, inclusive, hereinabove.

39. In the tax year ending December 31, 2016, SCIIL's Illinois Corporation Income and Replacement Tax Return, Form IL-1120 reflected an overpayment of \$20,000 that it elected to credit forward to the subsequent year ("Prior Year Overpayment").

40. Petitioner reported the Prior Year Overpayment on its Combined Return for the Year at Issue.

41. Pursuant to Section 405(a) of the IITA, any corporation that succeeds to the federal income attributes of another corporation under Section 381(a) of the Internal Revenue Code automatically succeeds to that corporation's IITA credit and net loss carryforwards. 35 ILCS 5/405(a); 86 Ill. Admin. Code § 100.4500(b).

42. Section 381(a) of the Internal Revenue Code includes a transaction described under subparagraphs (A), (C), (D), (F), or (G) of Section 368(a)(1)(A).

43. As the successor to SCIIL's federal income attributes under Section 368(a)(1)(A) of the Internal Revenue Code, Petitioner automatically succeeds to SCIIL's credit carryforwards for Illinois tax purposes.

44. Petitioner is entitled to a credit in the Year at Issue for SCIL's Prior Year Overpayment.

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

- (a) finds and declares that the Petitioner has a right to succeed to SCIL's IITA credit carryforwards, including its Prior Year Overpayment;
- (b) enters judgment in favor of Petitioner and against the Defendant and orders Defendant to withdraw the Notice; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT IV

Penalties Should be Abated Based on Reasonable Cause.

45. Plaintiff realleges and reincorporates the allegations in paragraphs 1 through 44, inclusive and hereinabove.

46. On its Notice, the Department assessed a late payment penalty in the amount of \$1,754,842.10.

47. Illinois law provides that late payment penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

48. 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 § 700.400(b).

49. 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).

50. Plaintiff made a good faith effort in determining its income tax liability for the Year at Issue.

51. Plaintiff timely electronically filed its Combined Return for the Year at Issue without receiving notification of error.

52. Petitioner extensively tested its electronic filing using state accepted electronic filing software without receiving notification of the presentation error.

53. Petitioner promptly corrected any presentation error in the Schedule UB attached to its Combined Return.

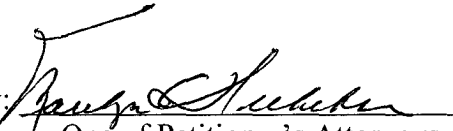
54. The Department's determination that Plaintiff owes a late payment penalty is not supported by fact or law.

WHEREFORE, Plaintiff prays that the Tribunal enter an Order that:

- (a) finds and declares that the late payment penalty should be abated based on reasonable cause;
- (b) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

SCI ILLINOIS SERVICES, LLC,
Petitioner

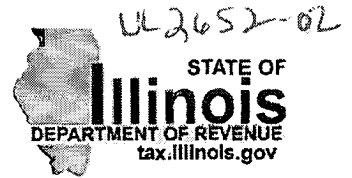
By: 
One of Petitioner's Attorneys

Marilyn A. Wethekam (mwethekam@hmblaw.com)
Samantha K. Breslow (sbreslow@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

EXHIBIT A

Notice of Deficiency

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



February 11, 2019



Letter ID: CNXXX11855884XX2

Taxpayer ID: 81-4832213

Reporting period: December 2017

Total deficiency: \$20,009,056.72

Balance due: \$20,009,056.72

8178
#BWNKMGV
#CNXX X118 5588 4XX2#
SCI ILLINOIS SERVICES, LLC
1929 ALLEN PKWY
HOUSTON TX 77019-2506

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,

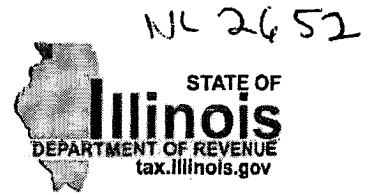
David Harris
Director of Revenue

BUSINESS PROCESSING DIVISION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19014
SPRINGFIELD IL 62794-9014
217 557-9676

LTR-393-NLS(R-07/13)

EXHIBIT B

Return Correction Notice



#BWNKMGV
#CNXX XX54 7158 6X81#
SCI ILLINOIS SERVICES, LLC
1929 ALLEN PKWY

HOUSTON TX 77019-2506

8178

JAN 08 2019

December 26, 2018



Letter ID: CNXXX5471586X81

Account ID: 13759-37632
FEIN: 81-4832213
Reporting period: December 2017

We have found problems with your Form IL-1120, Corporation Income and Replacement Tax Return.

- We changed the amount of total payments and credits you claimed on your return. Our records indicate that you have the following amounts available:

- Credit for previous year overpayment	\$0.00
- Estimated payments	\$0.00
- IL-505-B payments	\$0.00
- Pass-Through Withholding and/or Gambling Withholding Credit	\$0.00

The payments we have on file are listed below. If you disagree, please send us a copy of the front and back of each missing cancelled check or money order you issued or any electronic confirmation you received to make your payments.

NUMBER ON CHECK	DATE	AMOUNT
No payments have posted for this reporting period.		

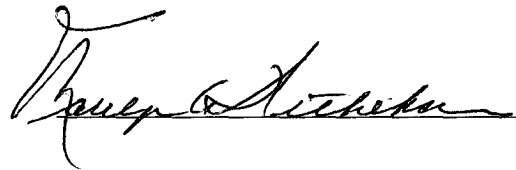
- We disallowed your unitary Illinois Net Loss Deduction (NLD) because you claimed more loss than our records indicate you have available. Please take the following actions, as applicable, to correct your return:
 - Verify that you are using your unitary Illinois NLD and not the Federal Net Operating 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 original or amended 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 calculated your income as if it was 100 percent allocable to Illinois because one or more of the members you listed on Schedule UB, Step 4 shows greater Illinois Sales than Everywhere Sales. Please send us a revised Schedule UB.

JAN 14 2019

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served by electronic mail and by enclosing the same in an envelope, properly addressed, first-class postage prepaid and deposited in the US Mail at 500 West Madison Street, Chicago, Illinois, 60661, before the hour of 5:00 p.m. on the 27th day of March, 2019.

James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

A handwritten signature in black ink, appearing to read "James R. Reynolds", written over a horizontal line.

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

SCI ILLINOIS SERVICES, LLC,)
)
 Petitioner,)
)
 v.)
)
 THE ILLINOIS DEPARTMENT OF REVENUE,)
)
 Defendant.)

No.

RECEIVED
MAR 27 2019
BY: _____
197 44

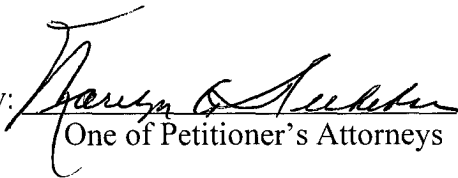
NOTICE OF FILING

To: James R. Reynolds
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
James.R.Reynolds@Illinos.gov

PLEASE TAKE NOTICE that on March 27, 2019, we filed with the Illinois Independent Tax Tribunal, 160 N. LaSalle Street, Room N506, Chicago, IL, SCI Illinois Services, LLC's **PETITION**, a copy of which accompanies this notice and is served on you herewith.

Respectfully submitted,

SCI ILLINOIS SERVICES, LLC
Petitioner,

By: 
One of Petitioner's Attorneys

Marilyn A. Wethekam (mwetheka@hmblaw.com)
Samantha K. Breslow (sbreslow@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200