

**IN THE ILLINOIS  
INDEPENDENT TAX TRIBUNAL  
COOK COUNTY, ILLINOIS**

JSS HOLDINGS, INC., JSS HOLDINGS  
LLC, and JSSI MANAGEMENT  
ENTERPRISES LLC,

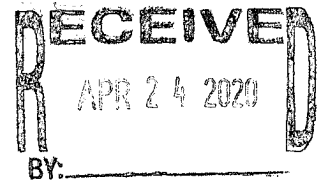
Petitioners,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

Case No.



**PETITION OF THE TAXPAYERS**

JSS Holdings Inc. (“JSSH Inc.”), JSS Holdings LLC (“Holdings LLC”), and JSSI Management Enterprises LLC (“Enterprises LLC”), collectively “the Taxpayers,” complain of the Illinois Department of Revenue (“IDOR” or “the Department”), pursuant to Section 1-50 of the Illinois Independent Tax Tribunal Act of 2012 [ 35 ILCS 1010/1-5, et seq.], as follows:

**Facts Common to All Counts**

**JSSH Inc.**

1. On February 6, 2020, JSSH Inc. filed an IL-1120X Illinois Amended Corporate Income Tax Return for the 2017 Illinois tax year.
2. On March 5, 2020, the Department issued to a “Notice of Claim Status” to JSSH Inc. that elsewhere bore a subheading of “Notice of Denial.” The bottom of the Notice of Claim Status referenced “Enclosures” which were “Form EAR-14 Protest Filing Form” and “Form IDR-867 Important Information Regarding your Protest Rights.” See Exhibit A1.

3. The Department enclosed a form EAR-14 Format For Filing a Protest for Income Tax bearing the caution “**Do not use** this form for hearing requests that are under the Independent Tax Tribunal jurisdiction.” See Exhibit A2.
4. The Department also enclosed with the Notice of Claim Status a document referenced as “Form IDR-867, Taxpayers Bill of Rights” in the Notice of Claim Status, which is captioned “**IMPORTANT INFORMATION REGARDING YOUR PROTEST RIGHTS**” and advised JSSH Inc. that “If the amount of tax at issue, exclusive of penalty 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 by the Tribunal (35 ILCS 1010/1-1 et sec.).” See Exhibit A3.
5. The Notice of Claim Status did not disclose the amount of the claim nor the amount of the claim purportedly denied by the Notice of Claim Status.

**Holdings LLC**

6. On February 6, 2020, Holdings LLC filed an IL-1065X Illinois Amended Partnership Replacement Income Tax Return for the 2017 tax year.
7. On March 5, 2020, the Department issued a “Notice of Claim Status” to Holdings LLC. See Exhibit B1. The Notice of Claim Status elsewhere bore a subheading titled “Notice of Status.” See Exhibit B1.
8. Unlike the Notice of Claim Status issued to JSSH Inc, which referenced two documents as enclosures (Forms EAR-14 and IDR-867), the bottom of the Notice of Claim Status issued to Holdings LLC referenced “Enclosures” of only “Form IDR-867, Taxpayer Bill of Rights.” See Exhibit B1.

9. Despite the inclusion of a reference to Form IDR-867, the Notice of Claim status issued to Holdings LLC did not disclose the amount of the claim purportedly filed by Holdings LLC or purportedly denied by the Department.

### **Enterprises LLC**

10. On February 6, 2020, Enterprises LLC filed an IL-1065X Illinois Amended Partnership Replacement Income Tax Return for the 2017 tax year.
11. On March 5, 2020, the Department issued a “Notice of Claim Status” to Enterprises LLC, that bore a subheading of “Notice of Denial.” The bottom of the Notice of Claim Status referenced “Enclosures” which were “Form EAR-14 Protest Filing Form” and “Form IDR-867 Important Information Regarding your Protest Rights.” See Exhibit C1.
12. The Department enclosed a form EAR-14 Format For Filing a Protest for Income Tax bearing the caution “**Do not use** this form for hearing requests that are under the Independent Tax Tribunal jurisdiction.” See Exhibit C2.
13. The Department also enclosed with the Notice of Claim Status a document referenced as “Form IDR-867, Taxpayers Bill of Rights” in the Notice of Claim Status, which is captioned “**IMPORTANT INFORMATION REGARDING YOUR PROTEST RIGHTS**” and advised Enterprises LLC that “If the amount of tax at issue, exclusive of penalty 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 by the Tribunal (35 ILCS 1010/1-1 et sec.)” See Exhibit C3.
14. The Notice of Claim Status did not disclose the amount of the claim nor the amount of the claim purportedly denied to Enterprises LLC by the Notice of Claim Status.

### **The Taxpayers' Bill of Rights Act**

15. The Taxpayers' Bill of Rights provides that among the "powers and duties" of the Department "to protect the rights of taxpayers" is the duty to "include on all tax notices an explanation of the tax liabilities and penalties." 20 ILCS 2520/4(b).

### **The Illinois Independent Tax Tribunal Act of 2012**

16. The Illinois Independent Tax Tribunal Act of 2012, as amended, provides that "[T]he Tax Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Illinois Income Tax[.]" (Emphasis added) The Act goes on to specify that "Jurisdiction of the Tax Tribunal is limited to . . . Notices of Claim Denial . . . where the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000[.]" 35 ILCS 1010/1-45(a).
17. The Illinois Income Tax Act ("IITA") provides that the Department may issue "a notice of refund, abatement or credit to the claimant or issue a notice of denial" and that "a denial of a claim for refund becomes final 60 days after the date of a issuance of a notice of such denial . . . except for such amounts denied as to which the claimant has filed a protest with the Department or a petition with the Illinois Independent Tax Tribunal, as provided by Section 910." 35 ILCS 5/909(e) and (f).
18. On March 20, 2020, an accounting firm retained to assist Taxpayers with their Illinois income tax filings sent a letter to the Department stating that the Taxpayers "do not agree with the determination and request this letter is considered a written protest against the denials." See Exhibit D.

19. On April 2, 2020, having received no Department response to the “written protest” filed by its accountants, Taxpayers’ outside counsel made inquiry of the Department regarding whether the Notices of Claim Status were intended by the Department to be treated as protestable notices or notice of non-processible returns, in light of the failure to issue a Notice of Claim Denial and of the receipt of protest instructions for claims below *and* above the \$15,000 jurisdictional ceiling for the Department and threshold for the Tax Tribunal. See Exhibit E.
20. On April 2, 2020, the Department advised that the Notices of Claim Status, bearing the sub-caption of Notice of Denial, and not specifying whether the amount denied was below or above \$15,000 but including explanations for protesting adjustments below and above \$15,000, are subject to the Tax Tribunal provisions that apply to Notice of Claim Denial that the Taxpayers must initiate an action in the Tax Tribunal within 60 days of the date of issue of the Notice of Claim Status. See Exhibit E.

## COUNT I

### **The Tax Tribunal Lacks Jurisdiction Over Notices of Claim Status**

21. Taxpayers incorporate and plead as though fully set forth herein paragraphs 1 through 20 of this Complaint.
22. The Taxpayers Bill of Rights provides that the Department has the duty “To furnish each taxpayer with a written statement of rights whenever such taxpayer receives a protestable notice, a bill, a claim denial or reduction regarding any tax.” 20 ILCS 2520/4 (a).
23. A “Notice of Claim Status” is not a protestable notice under the Independent Tax Tribunal Act of 2012 the Tax Tribunal because the Tax Tribunal only has jurisdiction over “determinations of the Department reflected on a . . . Notice of Claim Denial” and

its jurisdiction is “limited to . . . Notices of Claim denial . . . where the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000[.]”

24. A Notice of Claim status is not a protestable notice for purposes of the Tax Tribunal when it fails to disclose that the amount at issue in the Notice of Claim Status is, singly or in aggregate with other Notices of Claim Status, in excess of \$15,000.
25. Furnishing a taxpayer a statement of rights with a Notice of Claim Status that fails to disclose whether the amount at issue is, singly or in aggregate with other Notices of Claim Status, in excess of \$15,000 does not convert the Notice of Claim Status into a protestable Notice of Claim Denial to which the Tax Tribunal jurisdiction may attach under the Illinois Independent Tax Tribunal Act of 2012.
26. The Department failed to issue a single protestable Notice of Claim Denial to JSSH Inc., to Holdings LLC, and to Enterprises LLC.
27. In aggregate, the Department failed to issue protestable Notices of Claim Denial to JSSH Inc., Holdings LLC, and Enterprises LLC.
28. The Department’s informal email instruction to Taxpayers that Taxpayers should consider the Notices of Claim Status that fail to identify an amount at issue below or in excess of \$15,000 in each notice as subject to Tax Tribunal jurisdiction, despite also receiving from the Department Forms EAR-14 for administrative hearing protests where amounts at issue are below \$15,000, is legally ineffective to convert the Notices of Claim Status, whether singly or in aggregate, into protestable notices for purposes of the Taxpayers’ Bill of Rights and protestable Notices of Claim Denial for jurisdictional purposes under the Illinois Independent Tax Tribunal Act.

29. The Notices of Claim Status purporting to deny Taxpayers' refund claims are nothing more than letters seeking to perfect an adjustment made on amended returns, and are not a substantive determination of the merits supporting the adjustment that otherwise would be reflected in a Notice of Claim Denial subject to Tax Tribunal jurisdiction.
30. Taxpayers' file this action, and request this determination of the Tax Tribunal's jurisdiction, out of an abundance of caution based on the Department's instructions that Taxpayers must consider the Notices of Claim Status, notwithstanding their legal deficiencies, to be protestable Notices of Claim Denial in amounts in excess of \$15,000 that will become final if not contested by a petition to this Tribunal within 60 days of their date of issue.

## **COUNT II**

### **In the alternative, if the Tribunal has jurisdiction over this matter:**

31. Taxpayers incorporate and plead as though fully set forth herein paragraphs 1 through 20 of this Complaint.
32. The Notice of Claim Status issued to JSSH Inc. in regards to its Form IL-1120-X Amended Corporation Income Tax Return advised that: "We cannot make adjustments to your return because . . . Line 1, Federal taxable income, does not agree with the federal taxable income on your Schedule UB" and "Line 25, Business income or loss from . . . partnerships included on a Schedule UB . . . does not agree with the amount shown on the Schedule UB."
33. The Notice of Claims Status issued to JSSH Inc. further advised that: "If your unitary group includes one or more members who use different apportionment formulas to apportion business income, you are required to use the subgroup method[,]" and "[w]hen

using the subgroup method, you must complete a Subgroup Schedule for each subgroup that uses an apportionment formula other than ‘single sales.’”

34. The Notice of Claim Status instructed JSSH Inc. to “send a revised IL-1120-X and a Subgroup Schedule within 30 days of the date of this letter.”
35. The Notice of Claim Status to JSSH Inc. also instructed that “Your claim cannot be processed as filed, and you are not entitled to a refund.”
36. The Notice of Claim Status issued to Holdings LLC was identical to that of JSSH Inc. except that the return line items referenced were “Line 14” and “Line 37”, and the instruction was to “send a revised IL-1065-X” and subgroup schedule within 30 days.
37. The Notice of Claim Status issued to Enterprises LLC was identical to that of Holdings LLC, except that it also instructed that “Your claim cannot be processed as filed, and you are not entitled to a refund.”
38. Holdings LLC and Enterprises LLC were included in the Illinois unitary filing group of JSSH Inc.
39. Holdings LLC and JSSH Inc. are the members of Enterprises LLC.
40. Enterprises LLC’s federal taxable income or loss for Illinois purposes reported on Schedule UB is therefore also reported within Holdings LLC’s and JSSH Inc.’s federal taxable income or loss for Illinois purposes, in accordance with their respective ownership in the lower tier entity.
41. A revised Schedule UB, Step 2, Column D “Eliminations and Adjustments between members” filed by Taxpayers’ accountants on March 20, 2020, which reflects the Taxpayers’ federal taxable income as reported on the amended return as filed, and which causes Line 25 to agree with Schedule UB, Step 3, Line 25.



42. The revised Schedule UP reflects that Taxpayers each applied the same apportionment method.
43. The Notices of Claim Status erroneously reject adjustments made on the Taxpayers' Amended IL-1120-X and IL-1065-X returns.
44. Contrary to the Notices of Claim Status issued to JSSH Inc. and Enterprises LLC, purporting to determine that "you are not entitled to a refund" and to deny a claim on that basis without issuing a Notice of Claim Denial as required for Tax Tribunal jurisdiction to attach, each taxpayer is entitled to a refund.

#### **Relief Requested**

WHEREFORE, Taxpayers pray that the Tax Tribunal enter an order determining that:

- A. The Notice of Claim Status issued to each of the Taxpayers is not a Notice of Claim Denial and is therefore not a determination of a claim subject to Tax Tribunal jurisdiction; or, in the alternative,
- B. The purported Notice of Denial included in the Notice of Claim Status received by JSSH Inc. and Enterprises LLC are erroneous and Taxpayers are entitled to the refunds shown on their amended 2017 IL-1120-X and 2017 IL-1065-X returns.

Dated: April 21, 2020

Respectfully submitted,

*s/Michael J. Wynne*

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