

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

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|-------------------------------------|---|---------------|
| CSX TRANSPORTATION, INC. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 21 TT 125 |
| |) | |
| THE ILLINOIS DEPARTMENT OF REVENUE, |) | |
| |) | |
| Defendant. |) | |

PETITION

CSX Transportation, Inc. (“Petitioner”), by and through its attorneys, Eversheds Sutherland (US) LLP, complains of the Defendant, the Illinois Department of Revenue (“Department”), and alleges as follows:

PARTIES

1. Petitioner is a Virginia C corporation with its principal place of business in Jacksonville, Florida. It is located at 500 Water Street, C-115, Jacksonville, Florida 32202.
2. Petitioner is represented by Breen M. Schiller and Justin T. Brown of Eversheds Sutherland (US) LLP, located at 900 North Michigan Avenue, Suite 1000, Chicago, Illinois 60611-6521. Breen M. Schiller can be reached at 312-724-8521 or breenschiller@eversheds-sutherland.us and Justin T. Brown can be reached at 404-407-5001 or justinbrown@eversheds-sutherland.us.
3. Petitioner’s FEIN is 54-6000720.
4. Petitioner is the designated agent of a unitary group of corporations filing an Illinois combined corporate income tax return.
5. 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.

NOTICE

6. On September 17, 2021, the Department issued a Notice of Deficiency (“Notice”) to Petitioner in the amount of \$278,895.84 for the tax year ending December 2017 (“Year at Issue”). A true and accurate copy of the Notice is attached hereto as **Exhibit A**.

7. The adjustments made to the tax year ending December 2017 resulted in the Department’s assessment of \$214,603.00 in tax, \$31,838.00 in interest, and \$32,454.84 in penalties, for a total amount due of \$278,895.84.

8. The majority of the additional tax assessed for the Year at Issue is based on adjustments to the Taxpayer’s apportionment factor.

JURISDICTION

9. 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 (“Act”), 35 ILCS 5/201 et. seq.

10. The amount of additional Corporate Income and Replacement Taxes, interest and penalties for the tax year at issue exceeds \$15,000 thereby vesting jurisdiction in the Illinois Independent Tax Tribunal.

11. This 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 Department’s Notice.

BACKGROUND

12. The tax involved herein is the Illinois corporate income and replacement tax imposed under the Illinois Income Tax Act (the “Act”), 35 ILCS §5/201, et seq.

13. CSX Corporation (“CSX”) is a publicly held company that, during the Year at Issue, through its subsidiaries, engaged in four business segments: Rail, Intermodal, Domestic Container Shipping and International terminals.

14. Petitioner is a transportation company and wholly owned subsidiary of CSX.

15. Petitioner is a Class I railroad which, through its subsidiaries, operates one of the largest rail networks in the United States.

16. Petitioner provides rail freight transportation over a network of more than 22,000 “first main” track miles in twenty-three states, the District of Columbia and two Canadian provinces.

17. For the 2017 tax year, Petitioner’s Illinois unitary combined group return includes all unitary affiliates as required by 35 ILCS §5/1501(a)(27). Petitioner’s affiliates are required to apportion their income to Illinois using different apportionment formulas under 35 ILCS §5/304.

18. The Baltimore and Ohio Chicago Terminal Railroad Company (“BOCT”), incorporated under the laws of the State of Illinois in 1910, is a wholly owned subsidiary of Petitioner.

19. BOCT is a carrier represented by the National Railway Labor Conference.

20. BOCT is a carrier that provides switching services for freight in interstate commerce.

21. BOCT performs intermediate and terminal switching services for Petitioner and third-party eastern and western carriers as well as third-party non-carrier customers.

22. BOCT has customers in both Illinois and Indiana.

23. BOCT performs switching services for the Canadian National Railroad (“CN”) at CN’s Kirk Yard located in Indiana.

24. BOCT has a direct freight customer located in Indiana.
25. During the Year at Issue, the majority of BOCT's sales are intercompany sales with Petitioner.
26. Petitioner enters into contracts with third-party customers to ship freight by rail over and across interstate lines.
27. To the extent that switching services are required as part of the freight movement Petitioner will engage a switching entity, including BOCT, to perform those services.
28. Petitioner records a sale to its third-party interstate customer and to the extent that BOCT performs any switching services, Petitioner records intercompany expenses with BOCT based on BOCT's tariff agreement.
29. The cost for BOCT's provision of switching services to both Petitioner and third-parties are set by BOCT's tariff agreement.
30. All pricing is set by this tariff agreement and is not determined on a transaction-by-transaction basis.
31. BOCT's switching services performed on behalf of Petitioner become a part of Petitioner's costs of doing business and is provided as a single cost to Petitioner's customers.
32. Payments from Petitioner to BOCT are auto-generated by Petitioner's internal computer system, based on the BOCT tariff agreement.
33. Industry standards dictate that railroads never invoice one another for interline moves of any type. Thus, the lack of invoicing for these transactions is true for both intercompany transactions between BOCT and Petitioner as well as third-party transactions occurring between railroads.

34. BOCT records its intercompany sale with Petitioner and incurs the expense of the switching.

35. During the Year at Issue, BOCT incurred third-party switching expenses through third-party sales with common carriers, as well as third-party non-carrier customers.

36. During the Year at Issue, BOCT's revenue was earned from the switching of interstate freight car movements.

37. CSX Intermodal Terminals, Inc. ("CSXIT") is a standalone integrated intermodal company that links customers to railroads via trucks and terminals, providing coast-to-coast intermodal lift services.

38. During the Year at Issue, CSX filed a Federal Consolidated 1120 ("Federal Return") including all of its subsidiaries.

39. During the Year at Issue, for Illinois purposes CSX was required by statute to file a single unitary combined Illinois corporate income and replacement tax return. See 35 ILCS §5/1501(a)(27).

40. During the Year at Issue, Petitioner and its unitary companies filed a combined Illinois corporate income and replacement tax return.

41. One of the entities included in Petitioner's combined Illinois corporate income and replacement tax return in each of the Year at Issue was BOCT.

42. During the Year at Issue on its Federal Returns, CSX had intercompany eliminations under line 26 (other deductions) called intercompany service fees.

43. These eliminations were comprised of various intercompany transactions between members of its consolidated federal return and netted to zero at the federal level.

44. During the Year at Issue, for Illinois purposes intercompany transactions within the unitary combined group were properly eliminated by Petitioner.

CONTROVERSY

45. Petitioner timely filed its 2017 Illinois unitary corporate income and replacement tax return on October 12, 2018 via efile.

46. In June 2019 Petitioner was contacted by the Department in order to commence a review of Petitioner's Illinois corporate income and replacement tax return for the Year at Issue.

47. Petitioner did not hear from the Department again until February 2020 when the Department commenced its in-person field audit at Petitioner's offices in Jacksonville, Florida.

48. Upon audit, the Department adjusted Petitioner's Illinois sales factor.

49. Upon audit, the Department eliminated BOCT's total intercompany revenue with Petitioner from apportionable revenue and then added it back as one-hundred percent allocable revenue in the numerator and denominator of Petitioner's Illinois apportionment factor.

50. The adjustments to Petitioner's Illinois sales factor, along with other less material adjustments, resulted in the assessment of additional corporate income tax for the taxable year ending December 31, 2017 in the following amount: \$214,603.00 in tax, \$31,838.00 in interest, and \$32,454.84 in penalties, for a total amount due of \$278,895.84.

51. Due to the approaching expiration of the statute of limitations for the assessment of additional tax for the 2017 tax year, the auditor caused the Notice to be issued without any opportunity for the taxpayer to engage in discussions regarding the auditor's adjustments.

COUNT I

The Department Erroneously Applied the Rules for Determining the Apportionment Factor for Groups that Include Members who Apportion their Income Under Different Methodologies.

52. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 51, inclusive, hereinabove.

53. For tax years ending on or after December 31, 2017, a unitary combined group return may include members who apportion their business income under different subsections of IITA Section 304. 35 ILCS §5/1501(a)(27)(B); 86 Ill. Admin. Code 100.3600(b).

54. 86 Ill. Admin. Code 100.3600(b) establishes the methodology for calculating the apportionment factor for unitary combined group returns that include members who apportion their business income under different methodologies. This regulation provides:

For taxable years ending on or after December 31, 2017, the business income of a unitary business group that includes members who apportion their business income under different subsections of IITA Section 304 shall be apportioned using the average of the apportionment percentages of each subgroup of members using the same apportionment formula (computed as if that subgroup were a separate unitary business group) weighted by the everywhere sales of the members of each subgroup (as determined under Sections 100.3370 and 100.3380). The apportionment percentage of each member of the unitary business group is the apportionment percentage that member would compute if the subgroup of members using the same apportionment formula of that member were a separate unitary business group, multiplied by a fraction equal to the everywhere sales of that subgroup divided by the everywhere sales of the unitary business group.

86 Ill. Admin. Code 100.3600(b).

55. The Department has published Schedule SUB (“Subgroup Schedule”) to assist taxpayers filing unitary combined group returns that include members who apportion their income under different methodologies in calculating the apportionment factor.

56. The instructions to the Subgroup Schedule for the 2017 tax year provide each member is required to enter “the total gross receipts of such member as determined by applying

IDOR Regulations, Section 100.3370 and 100.3380.” These instructions mirror the rules set forth in 86 Ill. Admin. Code 100.3600(b).

57. 86 Ill. Admin. Code 100.3370 provides that “sales” means “all gross receipts of the person not allocated under IITA Sections 301, 302 and 303.” This regulation further provides that for purposes of the sales apportionment factor, “sales” means “all gross receipts derived by the person from transactions and activity in the regular course of his or her trade or business.” 86 Ill. Admin. Code 100.3370(a)(1).

58. 86 Ill. Admin. Code 100.3380 provides special rules that are not applicable in this controversy.

59. 86 Ill. Admin. Code 100.3450 provides industry-specific apportionment rules for transportation companies. Under these industry-specific rules, the sales factor denominator includes “all revenue derived from the movement or shipment of people, goods, mail, oil, gas, or any substance (other than by airline).” 86 Ill. Admin. Code 100.3450(a)(2)(A)(ii).

60. The Notice erroneously calculates Petitioner’s sales apportionment factor because it does not include all gross receipts of Petitioner’s transportation companies as required by 86 Ill. Admin. Code 100.3600(b) and the Subgroup Schedule.

61. Instead, the calculations used in the Notice include only the rail revenue included for purposes of the industry-specific rule provided under 86 Ill. Admin. Code 100.3450 and has not included items such as rental income, gross receipts from the sale of property, and other receipts properly includable under 86 Ill. Admin. Code 100.3370.

62. Thus, the methodology used in the Notice does not comply with Illinois law regarding apportionment of income of unitary combined groups that include members who apportion their business income using different methodologies.

WHEREFORE, Petitioner prays that this Tribunal enter an Order that:

- a) finds and declares that for the Year at Issue, Petitioner properly determined its sales apportionment factor pursuant to 86 Ill. Admin. Code 100.3600(b) and Schedule SUB;
- b) finds and declares that the Department erred in adjustment of the Petitioner's sales factor based on the Department's erroneous application of 86 Ill. Admin. Code 100.3600(b);
- c) finds and declares the Notice of Deficiency invalid;
- d) enters judgment in favor of Petitioner and orders Defendant to modify the Notice of Deficiency;
- e) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order of this Tribunal; and
- f) grants such further relief as the Court deems appropriate under the circumstances.

COUNT II

The Department's Inclusion of Receipts from Intercompany Transactions Unfairly Represents Petitioner's Illinois Activities

63. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 62, inclusive, hereinabove.

64. By Department regulation, income and deductions attributable to intercompany transactions between members of a unitary business group are eliminated from combined income when necessary to avoid distortion of either the numerator or denominator of the apportionment factor. 86 Ill. Admin. Code 100.5270(b)(1).

65. Distortion occurs when an apportionment methodology unfairly reflects a taxpayer's activities in a state.

66. Forcing a taxpayer to use a distortive apportionment methodology violates the U.S. Supreme Court's requirements for apportionment methodologies. *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983).

67. During the Year at Issue, BOCT and Petitioner were both part of the same unitary combined group return.

68. As members of the same unitary combined filing group, BOCT and Petitioner were required by Illinois law to eliminate intercompany transactions.

69. Upon audit, the Department incorrectly allocated one-hundred percent of BOCT's intercompany sales with Petitioner to the numerator and denominator of the Petitioner's apportionment factor as intrastate (non-apportionable) Illinois receipts.

70. The Department's adjustments were erroneous as BOCT's intercompany receipts with Petitioner are required by law to be eliminated from the Petitioner's Illinois combined return.

71. The Department's adjustment does not accurately reflect Petitioner's taxable activity within the State as it assigns one-hundred percent of BOCT's intercompany sales as one-hundred percent Illinois allocable revenue attributable to Petitioner; and therefore, results in distortion.

72. There is no Illinois authority that permits the Department to remove BOCT's intercompany receipts out of Petitioner's Illinois apportionable revenue, calculate the group's interstate apportionment percentage and then add BOCT's intercompany revenue back as intrastate revenues into both the numerator and denominator of Petitioner's Illinois sales factor. BOCT's

revenues are intercompany with Petitioner, and not directly tied to Petitioner's third-party revenues.

73. The Department cites to no Illinois authority for this adjustment.

74. Accordingly, the Department's adjustment was erroneous and not supported by law.

WHEREFORE, Petitioner prays that the Court enter an Order that:

- a) finds and declares that during Year at Issue, BOCT and Petitioner engaged in intercompany transactions;
- b) finds and declares that for the Year at Issue, the Department's failure to permit elimination of intercompany transactions within the unitary combined group return is not supported by law and should be disallowed;
- c) finds and declares the Notice of Deficiency invalid;
- d) enters judgment in favor of Petitioner and orders Defendant to modify the Notice of Deficiency;
- e) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order this Tribunal; and
- f) grants such further relief as the Court deems appropriate under the circumstances.

COUNT III

The Department's Bifurcation of Petitioner's Third-Party Interstate Invoices is Unsupported by Law and Does not Accurately Represent Petitioner's Activity in the State

75. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 74, inclusive, hereinabove.

76. Petitioner is in the business of providing interstate railway services across the Eastern United States.

77. Petitioner enters into contracts with third-party customers to ship freight by rail over and across interstate lines.

78. To the extent that switching services are required as part of the freight movement, Petitioner engages a switching entity, including BOCT, to perform those services.

79. Pursuant to Illinois law, switching services are defined as ancillary transportation services. 86 Ill. Admin. Code 100.9715(c).

80. Pursuant to Illinois law and as agreed by the Department in previous audit cycles, BOCT's switching services are transportation services and part of Petitioner's interstate transaction.

81. United State Supreme Court jurisprudence provides that instrumentalities of interstate commerce remain interstate in nature from the beginning of the transaction until they come to rest. *Michelin Tire Corp. v. W.L. Wages*, 423 U.S. 276 (1976).

82. During the Year at Issue, Section 304(d) of the Act set forth Illinois' special apportionment method for entities that furnish "transportation services." 35 ILCS §5/304(d).

83. During the Year at Issue, "business income derived from providing transportation services other than airline services shall be apportioned to this State by using a fraction, (a) the numerator of which shall be (i) all receipts from any movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline) that both originates and terminates in this State, plus (ii) that portion of the person's gross receipts from movements or shipments of people, goods, mail, oil, gas, or any other substance (other than by airline) that originates in one state or jurisdiction and terminates in another state or jurisdiction, that is determined by the ratio

that the miles traveled in this State bears to total miles everywhere and (b) the denominator of which shall be all revenue derived from the movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline).” 35 ILCS §5/304(d)(3).

84. Accordingly, during the Year at Issue Petitioner was required to apportion its interstate railway income pursuant to 35 ILCS §5/304(d)(3).

85. However, upon audit, instead of following 35 ILCS §5/304(d)(3) the Department attempted to bifurcate Petitioner’s single interstate third-party transaction invoices into two separate transactions: (1) an intrastate transaction (BOCT’s intercompany receipts with Petitioner; and (2) an interstate transaction (Petitioner’s receipts with third-party customers).

86. The Department’s attempted bifurcation results in an inaccurate measure of Petitioner’s apportionable Illinois receipts because the Department wrongly assumes that there is a dollar for dollar correlation between Petitioner’s third-party transaction and BOCT’s intercompany transaction with Petitioner.

87. This assumption is incorrect and produces erroneous results.

88. As a result of this incorrect assumption, the Department allocated one-hundred percent of BOCT’s intercompany switching receipts to Illinois as Petitioner’s and apportioned the remaining balance as Petitioner’s third-party receipts.

89. This adjustment resulted in BOCT’s total intercompany sales being included as one-hundred percent Illinois allocable revenue in Petitioner’s Illinois apportionment factor.

90. There is no Illinois authority, nor does the Department cite to any Illinois authority, that provides it the ability to bifurcate a single third-party interstate transaction into separate parts for apportionment purposes.

91. BOCT's switching services are interstate in nature and maintain their interstate character until the railway services activity ceases.

92. Accordingly, the Department erroneously allocated one-hundred percent of BOCT's intercompany sales with Petitioner to the numerator and denominator of Petitioner's Illinois apportionment factor when: (1) BOCT's revenues are interstate in nature; (2) the majority of BOCT's revenues with Petitioner are intercompany and are required to be eliminated from Petitioner's Illinois combined return; and results in the Department incorrectly re-characterizing BOCT's intercompany interstate revenue as intrastate revenue attributable to Petitioner.

WHEREFORE, Petitioner prays that this Tribunal enter an Order that:

- a) finds and declares that BOCT's switching services are interstate in nature;
- b) finds and declares that BOCT's switching services are part of Petitioner's interstate transactions with third-party customers;
- c) finds and declares that instrumentalities of interstate commerce maintain their interstate character until the transaction ends;
- d) finds and declares that the Department's bifurcation of Petitioner's single third-party interstate transaction into two separate intrastate and interstate transactions was improper;
- e) finds and declares that the Department's audit adjustment improperly allocated one-hundred percent of BOCT's intercompany switching receipts to Illinois attributable to Petitioner;
- f) finds and declares the Notice of Deficiency invalid;
- g) enters judgment in favor of Petitioner and orders Defendant to modify the Notice of Deficiency;

- h) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order this Tribunal; and
- i) grants such further relief as the Court deems appropriate under the circumstances.

COUNT IV

The Department's Apportionment of Purely Intrastate Revenue from States Other than Illinois is Unsupported by Law and Does not Accurately Represent Petitioner's Activity in the State.

93. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 92, inclusive, hereinabove.

94. Petitioner is in the business of providing both intrastate and interstate railway services across the Eastern United States.

95. Petitioner enters into contracts with third-party customers to ship freight by rail both within and over and across interstate lines.

96. During the Year at Issue, "business income derived from providing transportation services other than airline services shall be apportioned to this State by using a fraction, (a) the numerator of which shall be (i) all receipts from any movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline) that both originates and terminates in this State, plus (ii) that portion of the person's gross receipts from movements or shipments of people, goods, mail, oil, gas, or any other substance (other than by airline) that originates in one state or jurisdiction and terminates in another state or jurisdiction, that is determined by the ratio that the miles traveled in this State bears to total miles everywhere and (b) the denominator of

which shall be all revenue derived from the movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline).” 35 ILCS §5/304(d)(3).

97. Upon audit, the Department applied Petitioner’s mileage-based apportionment factor to both Petitioner’s movements and shipments that originate in one state and terminate in another state (interstate shipments) as well as to Petitioner’s purely intrastate shipments for intrastate shipments in states other than Illinois.

98. The Department sourced 100 percent of Illinois intrastate shipments to Illinois as provided in 35 ILCS §5/304(d)(3). However, the Department erroneously applied the mileage-based apportionment factor to non-Illinois intrastate shipments, contrary to 35 ILCS §5/304(d)(3).

99. As a result, the Department’s methodology results in the taxation of revenue that is entirely intrastate in nature and which is not subject to Illinois taxation. This methodology is contrary to 35 ILCS §5/304(d)(3) which requires that the mileage-based factor be applied only to interstate transactions.

WHEREFORE, Petitioner prays that this Tribunal enter an Order that:

- j) finds and declares that the Department’s audit adjustment improperly applied the mileage-based apportionment factor to intrastate transactions outside of Illinois;
- k) finds and declares the Notice of Deficiency invalid;
- l) enters judgment in favor of Petitioner and orders Defendant to modify the Notice of Deficiency;
- m) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of the proposed additional tax invalidated by the Order this Tribunal; and

n) grants such further relief as the Court deems appropriate under the circumstances.

COUNT V

**The Department's Notice is Without Effect Because the Department
Did Not Supply a Basis for the Deficiency in Regard
to its Adjustment to Petitioner's Sales Factor.**

100. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 120, inclusive, hereinabove.

101. In the "Explanation of Adjustments," the Department states that it, "adjusted your sales factor to include all business receipts on federal 1120, Lines 1 through 10, to the extent not expressly excluded from the sales factor." As support, the Department cites to 86 Ill. Admin. Code 100.3370(a)(1).

102. The Illinois Taxpayer Bill of Rights requires the Department to furnish taxpayers with an explanation of the tax liabilities and penalties associated with a tax notice. 20 ILCS 2520/4(b).

103. The Illinois Income Tax Act requires that the Department not only explain what adjustments are made on a Notice of Deficiency, it is required to provide the reasons therefor. 35 ILCS 5/904(c).

104. One of the primary issues in this case involve the adjustment to the numerator and denominator of Petitioner's Illinois sales factor.

105. The citations provided by the Department in its "Explanation of Audit Adjustments" for support for its adjustment are too broad to provide any clear explanation for the basis of the Department's adjustment.

106. 86 Ill. Admin. Code 100.3370(a)(1) sets forth the general sourcing definition of “sales” for purposes of inclusion in the sales factor. The Department’s citation to this subsection is insufficient to provide Petitioner with an explanation of the Department’s adjustment.

107. The Department provides no authority, nor does any exist, that provides it the ability to allocate one-hundred percent of BOCT’s intercompany switching receipts to Illinois attributed to Petitioner.

108. The Department failed to provide an accurate explanation of its adjustments that resulted in one-hundred percent allocation of BOCT’s intercompany receipts to Illinois attributed to Petitioner.

109. The Department did not comply with the Taxpayer Bill of Rights

110. The Department did not comply with 35 ILCS 5/904(c).

111. Without providing an explanation as to its adjustments, the Department has deprived the Petitioner of a meaningful opportunity to protest the adjustments.

112. The Department has failed to establish its prima facie case.

113. Because the Notice does not comply with the Taxpayer Bill of Rights and 35 ILCS 5/904(c), depriving Petitioner of a meaningful opportunity to challenge the assessment, the Notice of Deficiency is invalid and should not be afforded a presumption of correctness.

WHEREFORE, Petitioner prays that this Tribunal enter an Order that:

- a) finds and declares that the Notice of Deficiency does not comply with the Taxpayer Bill of Rights;
- b) finds and declares that the Notice of Deficiency did not comply with 35 ILCS 5/904(c);

- c) finds and declare the Notice of Deficiency is invalid and not presumptively correct;
- d) finds and declares that the Department failed to establish a prima facie case; and
- e) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT VI

The Department's Imposition of Penalties Should be Abated.

114. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 134, inclusive, hereinabove.

115. On its Notice, the Department assessed penalties against the Petitioner in the amount of \$32,190.00 for the taxable year ending December 31, 2017. See Exhibit A.

116. Illinois law provides that 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 §734-8.

117. The most important factor to be considered in a penalty abatement determination will be the extent to which a 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).

118. 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).

119. Petitioner filed all of its corporate income and replacement tax returns for the Year at Issue in a timely fashion.

120. Petitioner, relying on Illinois law and prior audit determinations, exercised ordinary business care and prudence in determining its liability for the Year at Issue.

121. Petitioner, relying on Illinois law and prior audit determinations, exercised ordinary business care and prudence when it sourced the income of its transportation companies to Illinois according to 35 ILCS §5/304(d), the special apportionment methodology for transportation service companies.

122. Petitioner, relying on Illinois law, exercised ordinary care and business prudence when it properly determined its sales apportionment factor pursuant to 86 Ill. Admin. Code 100.3600(b) and Schedule SUB.

123. Accordingly, the Department's assessed penalties should be waived for reasonable cause.

WHEREFORE, Petitioner prays that the Court enter an Order that:

- a) finds and declares the Department's assessment of penalties invalid;
- b) enters judgment in favor of Petitioner and against the Departments and orders the Department to abate the penalty imposed in its entirety;
- c) enjoins the Department from taking any action to assess, lien, levy, offset or in any other way prosecute and collect the amount of penalty invalidated by this Tribunal; and
- d) grants such further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,

CSX Transportation, Inc.
Petitioner

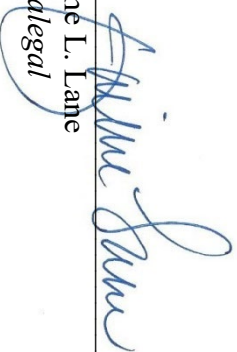
By: Breen M. Schiller
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she 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 700 Sixth Street, NW, Suite 700, Washington, DC 20001, before the hour of 5:00 p.m. on the 16th day of November, 2021.

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



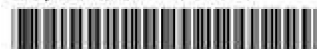
Jaime L. Lane
Paralegal

EXHIBIT A

Notice of Deficiency



September 17, 2021



Letter ID: CNXXXX5527938X88

Taxpayer ID: 54-6000720

Audit ID: A2060529664

Reporting period: December 2017

Total Deficiency: \$278,895.84

Balance due: \$278,895.84

#BWNKMGV
#CNXX XX55 2793 8X88#
CSX TRANSPORTATION INC

500 WATER ST # C115

JACKSONVILLE FL 32202-4423

We have audited your Form IL-1120, Corporation Income and Replacement Tax Return for the reporting period listed above. The members of the combined group are jointly and severally liable for the total balance due. Please see the attached Auditor's Report and Explanation of Audit Adjustment, for a complete computation of your deficiency and explanation of audit adjustments. **Illinois law requires that we notify you of this deficiency and your rights.**

If you agree to this deficiency, pay the total balance due as soon as possible to minimize penalty and interest assessed. You can now submit your payment through MyTax Illinois, our online account management program. Payments submitted through MyTax Illinois are secure and may help avoid delays associated with payments submitted by mail. You can also use MyTax Illinois to check your account balances, view your existing account, or create a new account at mytax.illinois.gov. If you do not pay electronically, make your check payable to the "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 the date 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 and administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to the 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 liability 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 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.

Note: If you are under bankruptcy protection, see the "Bankruptcy Information" section on the following page of this notice for additional information and instructions. If you have questions, call us at the telephone number shown below.

Sincerely,

David Harris
Director

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

217 524-2230

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy case number and the bankruptcy court. The bankruptcy automatic stay does not change the fact you are required to file tax returns. For those under the bankruptcy protection, this notice is not an attempt to collect tax debt. Illinois law requires issuance of this notice to advise you of an amount due or a missing return that must be filed.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.

The full text of the Taxpayers' Bill of Rights is contained in the Illinois Compiled Statutes, 20 ILCS 2520/1 et seq.