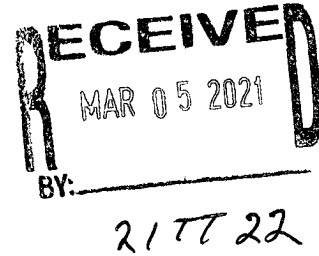


IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

----- X
U.S. BANCORP & SUBSIDIARIES,) No.
)
) Petitioner,)
)
) v.)
)
THE ILLINOIS DEPARTMENT OF REVENUE,)
)
) Defendant.)
----- X



PETITION

Petitioner, U.S. Bancorp & Subsidiaries (collectively, “Petitioner”), by and through its attorney, Andrew Schrag of Blank Rome LLP, complains of Defendant, the Illinois Department of Revenue (“Defendant”), and alleges as follows:

PARTIES

1. For the taxable period ended December 31, 2010 (the “Period at Issue”), U.S. Bancorp was the parent company of Petitioner and was a Delaware corporation with its principal business address at 800 Nicollet Mall, Minneapolis, Minnesota 55402, and which could be reached at (612) 303-4373.

2. Petitioner is represented by Andrew Schrag, Blank Rome LLP, 444 West Lake Street, Suite 1650, Chicago, IL 60606, telephone number (312) 776-2521, email address aschrag@blankrome.com.

3. Petitioner’s FEIN is 41-0255900.

4. Petitioner’s Illinois Account ID is 10213-43232.

5. Defendant is an agency of the Executive Department of the State Government and is responsible for administering and enforcing the revenue laws of the state of Illinois. 20 ILCS 5/5-15.

NOTICES AND FILINGS

6. Petitioner timely filed its corporate income tax return for the Period at Issue on October 13, 2011.

7. Petitioner timely filed an amended corporate income tax return and claim for refund for the Period at Issue on July 16, 2014 (the “Refund Claim”), seeking a refund of corporate income tax in the total amount of \$4,070,964. The Refund Claim removed from Petitioner’s income certain payments received from the Federal Deposit Insurance Corporation (“FDIC”) as described in greater detail below.

8. Defendant issued a Notice of Proposed Deficiency and Claim Denial,¹ dated July 31, 2018, denying the Refund Claim in full.

9. Petitioner timely filed a Form ICB-1 Request for Informal Conference Board Review on September 10, 2018.

10. Defendant issued a Notice of Claim Denial, dated December 28, 2020, denying Petitioner’s Refund Claim in full. A true and accurate copy of the Notice of Claim Denial is attached as Exhibit A.

JURISDICTION

11. Petitioner brings this action pursuant to the Illinois Independent Tribunal Act (“Tribunal Act”), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100, and the Illinois Income Tax Act, 35 ILCS 5/101 et seq.

¹ The Notice of Proposed Deficiency is not at issue. This matter involves only the denial of Petitioner’s Refund Claim.

12. 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 Notice of Claim Denial.

BACKGROUND

13. Petitioner is principally engaged in the business of financial services in the United States, including Illinois.

14. U.S. Bank National Association (“US Bank”) is a financial institution with commercial and retail bank operations and is a wholly-owned subsidiary of U.S. Bancorp.

15. U.S. Bank was included in Petitioner’s unitary business group for Illinois corporate income tax purposes for the Period at Issue.

16. Between 2008 and 2010, U.S. Bank acquired 11 financial institutions from the FDIC.

17. As part of each acquisition, U.S. Bank entered into Purchase and Assumption Agreements, which included Shared Loss Agreements (collectively, the “Agreements”), with the FDIC.

18. Under the terms of the Agreements, the FDIC agreed to pay U.S. Bank a percentage of the losses that U.S. Bank incurred as a result of the uncollectible loans of the 11 financial institutions that U.S. Bank purchased from the FDIC for a set period, generally five to ten years.

19. U.S. Bank received payments from the FDIC pursuant to the Agreements during the Period at Issue.

20. On its original return for the Period at Issue, Petitioner included the payments received from the FDIC in its net income subject to Illinois corporate income tax.

21. In the Refund Claim, Petitioner removed the payments received from the FDIC from its net income subject to Illinois corporate income tax.

COUNT I

Income Received by Petitioner from the FDIC Is Immune from Illinois Corporate Income Tax Under Federal Law

22. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 21, inclusive, above.

23. The Illinois corporate income tax is imposed on a taxpayer's net income. 35 ILCS 5/201(a).

24. Congress enacted a statute prohibiting the taxation by States of income received from the FDIC.

25. Specifically, the FDIC immunity statute, 12 U.S.C. Section 1825(a), provides:

General Rule. All notes, debentures, bonds, or other such obligations issued by the [FDIC] shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: Provided, That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto.

12. U.S.C. § 1825(a) (emphasis added).

26. Under the plain language of the statute, in order for income to be exempt from State taxation, there must be: (1) a note, debenture, bond or other such obligation; and (2) the note, debenture, bond or other such obligation must be issued by the FDIC. *Id.*

27. Here, Petitioner received amounts from the FDIC pursuant to the Agreements.

28. The Agreements are notes, bonds or other obligations issued by the FDIC.

29. Therefore, any amounts received from the FDIC pursuant to the Agreements are exempt from Illinois corporate income tax pursuant to 12. U.S.C. Section 1825(a).

30. Petitioner properly filed the Refund Claim to remove such amounts from its net income for Illinois corporate income tax purposes, and Defendant's denial of the Refund Claim is erroneous.

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

- (a) finds and declares that amounts received by Petitioner from the FDIC are immune from Illinois corporate income tax;
- (b) enters judgment in favor of Petitioner and against the Defendant, orders Defendant to withdraw the Notice of Denial, and orders Defendant to pay Petitioner's claim for refund requested in the Refund Claim; and
- (c) grants such further relief as the Tribunal deems appropriate under the circumstances.

February 24, 2021

U.S. BANCORP & SUBSIDIARIES

By: _____



Andrew Schrag
Blank Rome LLP
444 West Lake Street
Suite 1650
Chicago, IL 60606
Telephone number: (312) 776-2521
aschrag@blankrome.com

Exhibit A

Notice of Claim Denial



#BWNKMGV
#CNXX X196 5953 5444#
US BANCORP & SUBS
800 NICOLLET MALL BC MN H19U
MINNEAPOLIS MN 55402

December 28, 2020



Letter ID: CNXXX19659535444

Taxpayer ID: 41-0255900
Account ID: 10213-43232
Audit ID: A1673183232
Reporting period: December 31, 2010

We have audited your account for the claim for refund filed for the reporting period listed above. The proposed adjustment and net claim allowed are shown on the back page of this notice. Also, attached is the EDA-27-BI, Explanation of Adjustments, which details the reason. (35 ILCS 5/909(e)).

If you agree and your account is in balance, no action is required. You will receive a full refund if your account is overpaid and no other liabilities exist. If your account has a balance due, you will receive a bill.

If you do not agree, you may protest this notice by following the instructions listed below.

- If the amount of tax at issue, exclusive of penalty and interest is more than \$15,000, or if you are not claiming an overpayment of tax but the total penalties and interest are 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 that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, 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 our denial of claim (35 ILCS 5/910(a)), and if requested, grant you or your authorized representative an administrative hearing (35 ILCS 5/914). An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative hearing 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 denial will become final. A protest of this notice does not preserve your rights under any other notice.

If you do not protest this notice, the denial of your claim shall become final.

If a balance due is created on a subsequent tax year because of this denial, that amount will be shown on a Notice of Deficiency.

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) 524-0424

Statement

Date: December 28, 2020
Letter ID: CNXXX19659535444
Name: US BANCORP & SUBS
Taxpayer ID: 41-0255900
Account ID: 10213-43232
Audit ID: A1673183232
Reporting period: December 2010

Computation of claim denial

Reporting period ending:	12/31/2010
Claim receive date:	07/16/2014
Amount of original claim:	\$4,070,964.00
Amount of proposed adjustment:	(\$4,070,964.00)
Net claim allowed:	\$0.00

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.

Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX X161 4459 3764#
US BANCORP & SUBS
800 NICOLLET MALL BC MN H18U
MINNEAPOLIS MN 55402

December 28, 2020



Letter ID: CNXXX16144593764

Taxpayer ID: 41-0255900
Account ID: 10213-43232
Audit ID: A1673183232
Reporting period: December 2010

Explanation of adjustments for tax period ending 12/31/2010

We 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.
[86 IL Adm. Code 100.3370(a)(1)]

<u>Return Impact</u>	<u>Tax impact</u>
\$4,070,964.00	\$0.00