

**IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL
STATE OF ILLINOIS**

EVONIK CORPORATION,

Petitioner,

v.

No. 21 TT _____

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

PETITION

NOW COMES the petitioner, Evonik Corporation f/k/a Evonik Degussa Corporation (“Petitioner”) (Taxpayer ID 63-0673043), by and through its attorneys, Reed Smith LLP, and brings this petition (this “Petition”) against the respondent, the Illinois Department of Revenue (the “Department”), pursuant to the Illinois Independent Tax Tribunal Act of 2012 (35 ILCS 1010/1-1 *et seq.*), in protest of the Department’s February 19, 2021 Notices of Deficiency, stating as follows:

INTRODUCTION

1. This Petition arises out of the Department’s audit (Audit ID: A2664448) and issuance of two Notices of Deficiency, both dated February 19, 2021 (hereinafter, individually “NOD” and collectively “NODs”) for Corporation Income and Replacement Tax for the audit period beginning January 1, 2010 and ending December 31, 2011 (the “Audit Period”). The NOD for Petitioner’s tax year ending December 31, 2010, is in the amount of \$189,222.78, inclusive of tax, penalties and interest. The NOD for the tax year ending December 31, 2011, is

in the amount of \$208,311.81, inclusive of tax, penalties and interest. Copies of the NODs are attached hereto as Exhibit A.

2. As set forth in its NODs, the Department has asserted under its Explanation of Adjustments that the Petitioner should have: (1) added back to its base income interest paid to a foreign affiliate; (2) added back to its base income intangible expenses (*i.e.*, royalties) paid to a foreign affiliate; and (3) included in the numerator of Petitioner's sales factor merchandise shipped to foreign countries. The Department also assessed late filing and late payment penalties. *See* Exhibit A.

3. By this Petition, Petitioner asks the Tax Tribunal to, among other things, find and declare that Petitioner is not required to add back to its base income expenses subtracted for interest and royalties paid to its foreign affiliate, or include merchandise shipped to foreign countries in Petitioner's sales factor numerator for the tax years at issue within the Audit Period.

PARTIES

4. Petitioner is incorporated in Alabama, and its principal place of business is 299 Jefferson Road, Parsippany, New Jersey 07054-2827. The telephone number for Petitioner is (973) 929-8000.

5. The Department is an agency of the Executive Branch of the State of Illinois government and is charged with administering and enforcing many of the revenue laws of the State of Illinois, including the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 *et seq.*

6. Petitioner is represented by David P. Dorner of Reed Smith LLP, located at 10 S. Wacker Drive, 40th Floor, Chicago, Illinois 60606, who can be reached at (312) 207-2402 or ddorner@reedsmith.com.

JURISDICTION

7. The Tax Tribunal has jurisdiction pursuant to 35 ILCS 1010/1-45(a) because the NODs arise from the IITA and the amounts at issue exceed \$15,000, exclusive of penalties and interest; Petitioner has remitted the \$500 filing fee and a timely-filed petition protesting the NODs; and Petitioner is represented by counsel authorized to practice law in the State of Illinois.

FACTUAL ALLEGATIONS

8. Petitioner is in the business of, *inter alia*, manufacturing specialty chemicals.

9. Petitioner is wholly-owned by Evonik International Holdings BV, which is wholly owned by Evonik Operations GMBH, which is wholly owned by Evonik Industries AG.

10. During the Audit Period, Petitioner manufactured and distributed products from a number of states within the United States.

Interest Expense Paid to Foreign Affiliate

11. For the tax year ending December 31, 2010, Petitioner filed an Illinois Corporation Income and Replacement Tax Return, reporting an interest expense subtraction in the amount of \$2,163,925, for interest paid to Evonik Degussa GmbH (“Evonik Germany”), a German company.

12. The Department added back Petitioner’s interest expense subtraction of \$2,163,925 for 2010, creating additional Illinois tax for Petitioner in the amount of \$4,033 for this tax year.

13. For the tax year ending December 31, 2011, Petitioner filed an Illinois Corporation Income and Replacement Tax Return, reporting an interest expense subtraction in the amount of \$1,840,273, for interest paid to Evonik Germany.

14. The Department added back Petitioner’s interest expense of \$1,840,273 for 2011, creating additional Illinois tax for Petitioner in the amount of \$4,310 for this tax year.

15. Evonik Germany would be a unitary filer with Petitioner for Illinois income tax purposes, but for having 80% or more of its business activity outside the United States.

16. Pursuant to the German Corporate Income Tax Act, the German Income Tax Act, and the German Commercial Code (collectively, Germany's tax laws), a German company is required to include all of the interest income received from affiliates, including foreign affiliates, in its taxable income.

17. Evonik Germany complied with Germany's tax laws, and was subject to and paid German corporate income tax on the interest payments it received from Petitioner in 2010 and 2011.

18. The Department disallowed the interest expense subtractions because the Department alleges Petitioner did not produce sufficient documentation to show that Evonik Germany paid income tax on Petitioner's interest payments for 2010 and 2011.

Royalty Expense Paid to Foreign Affiliate

19. For the tax year ending December 31, 2010, Petitioner filed an Illinois Corporation Income and Replacement Tax Return, reporting a royalty expense subtraction in the amount of \$25,779,712, for royalties paid to Evonik Germany.

20. The Department added back Petitioner's royalty expense subtraction of \$25,779,712 for 2010, creating an additional \$48,052 in Illinois income tax for Petitioner for this year.

21. For the tax year ending December 31, 2011, Petitioner filed an Illinois Corporation Income and Replacement Tax Return, reporting a royalty expense subtraction in the amount of \$27,884,313, for royalties paid to Evonik Germany.

22. The Department added back to Petitioner's base income its royalty expense subtraction of \$27,884,313 for 2011, creating an additional \$65,311 in Illinois tax for Petitioner for this year.

23. Pursuant to Germany's tax laws, a German corporation is required to include all of the royalty income received from affiliates, including foreign affiliates, in its taxable income.

24. Evonik Germany complied with Germany's tax laws, and was subject to and paid German corporate income tax on the royalty payments it received from Petitioner in 2010 and 2011.

25. The Department disallowed the royalty expense deduction because the Department alleges Petitioner did not produce sufficient documentation to show that Evonik Germany paid income tax on the royalty payments it received from Petitioner in 2010 and 2011.

Petitioner's Foreign Sales

26. The Department included Petitioner's foreign sales in the amount of \$7,353,513 in the numerator of its sales factor for 2010, which created additional Illinois income tax for Petitioner in the amount of \$70,784 for this year. The Department in its NOD for the 2010 tax year does not identify the foreign jurisdiction(s) in which it is throwing back sales to Illinois.

27. The Department included Petitioner's foreign sales in the amount of \$7,100,717 in the numerator of its sales factor for 2011, which created additional Illinois income tax for Petitioner in the amount of \$68,811 for this year. The Department in its NOD for the 2011 tax year does not identify the foreign jurisdiction(s) in which it is throwing back sales to Illinois.

28. Based on information and belief, the Department included Petitioner's foreign sales in the numerator of its sales factor, because the Department alleges (i) the merchandise shipped to a foreign country originated from Illinois, (ii) Petitioner was not taxable in the

countries in which Petitioner shipped its merchandise, and (iii) these foreign sales were not intercompany sales for resale.

29. During the Audit Period, Petitioner made sales to customers in foreign countries including, Germany, Canada and other foreign jurisdictions, and on more than a *de minimis* basis engaged in wide-ranging activities that exceeded the solicitation of sales orders in those countries.

30. During the Audit Period, Petitioner made sales to customers located in foreign countries, which sales did not originate from an office, store, warehouse, factory or other place of storage in Illinois.

31. During the Audit Period, Petitioner paid net income tax to foreign jurisdictions in which Petitioner shipped merchandise from the United States.

32. During the Audit Period, Petitioner made intercompany sales for resale to affiliates located in foreign countries who would be members of the same unitary business group with Petitioner but for the fact that the customer is a person with 80% or more of total business activity outside of the United States.

33. For the tax years ending December 31, 2010 and December 31, 2011, Petitioner did not include foreign sales in the numerator of its sales factor, if the merchandise did not ship from Illinois.

34. For the tax years ending December 31, 2010 and December 31, 2011, Petitioner did not include foreign sales in the numerator of Petitioner's sales factor, if Petitioner was taxable in the customers' foreign country.

35. For the tax years ending December 31, 2010 and December 31, 2011, Petitioner did not include foreign sales in the numerator of its sales factor, if the purchaser would be in the

same unitary business group with Petitioner but for the fact that the purchaser is a person with 80% or more of total business activity outside of the United States and the property was purchased for resale.

ILLINOIS INCOME TAX ACT

36. In the case of a corporation, base income means an amount equal to the corporation's taxable income for the taxable year as modified by certain addition and subtraction modifications. 35 ILCS 5/203(b)(1).

IITA Interest Addback Provisions

37. Pursuant to 35 ILCS 5/203(b)(2)(E-12), a taxpayer is to addback interest deducted in computing base income for:

interest paid, accrued, or incurred, directly or indirectly, (i) for taxable years ending on or after December 31, 2004, to a foreign person who would be a member of the same unitary business group but for the fact the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity.

38. The interest addback provision does not apply to "an item of interest paid, accrued, or incurred, directly or indirectly, to a person who is subject in a foreign country or state . . . to a tax on or measured by net income with respect to such interest." 35 ILCS 5/203(b)(2)(E-12)(i).

39. Illinois' addback for interest paid to a foreign person also does not apply to (i) interest accrued or paid if it relates to a contract or agreement entered into at arm's-length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance; or (ii) an item of interest accrued or paid to a person if the taxpayer establishes by clear and convincing evidence that the adjustments are unreasonable. 35 ILCS 5/203(b)(2)(E-12)(iii)-(iv).

ITTA Royalty Addback Provisions

40. Pursuant to 35 ILCS 5/203(b)(2)(E-13), a taxpayer is to addback royalty payments deducted in computing base income for royalties:

that were paid, accrued, or incurred, directly or indirectly, (i) for taxable years ending on or after December 31, 2004, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity.

41. The addback provision for royalties paid to a foreign person does not apply to “any item of intangible expenses or costs paid, accrued, or incurred, directly or indirectly, from a transaction with a person who is subject in a foreign country or state . . . to a tax on or measured by net income with respect to such item.” 35 ILCS 5/203(b)(2)(E-13)(i).

42. Illinois’ addback provision for royalties paid to a foreign person also does not apply to royalties accrued or paid “from a transaction with a person if the taxpayer establishes by clear and convincing evidence, that the adjustments are unreasonable. . . .” 35 ILCS 5/203(b)(2)(E-13)(iii).

IITA Foreign Throwback Provisions

43. The IITA imposes income tax on corporations “on the privilege of earning or receiving income in” Illinois. 35 ILCS 5/201(a) and (c). The IITA permits a taxpayer that does business in more than one state to apportion its business income to Illinois using a single-factor apportionment formula. 35 ILCS 5/304(h)(3).

44. The single factor, referred to as the “sales factor,” is a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year. 35 ILCS 5/304(a)(3)(A).

45. Sales of tangible personal property are considered to be in Illinois (and thus in the sales factor numerator) if:

The property is delivered or shipped to a purchaser, other than the United States government, within [Illinois] regardless of the f.o.b. point or other conditions of the sale; or

The property is shipped from an office, store, warehouse, factory or other place of storage in [Illinois] and . . . the person is not taxable in the state of the purchaser . . . Sales of tangible personal property are not in [Illinois] if the seller and purchaser would be members of the same unitary business group but for the fact that either the seller or purchaser is a person with 80% or more of total business activity outside of the United States and the property is purchased for resale.

35 ILCS 5/304(a)(3)(B)(ii).

46. While the IITA normally provides that a sale of tangible personal property is excluded from the sales factor numerator if the property sold is delivered to a purchaser in a state other than Illinois, the IITA requires a sale of tangible personal property to be included in the numerator if the sale originated in Illinois and the taxpayer is not taxable in the purchaser's state or country. This is commonly referred to as the "throwback rule."

47. Under the IITA, a taxpayer is taxable in another state or foreign country if either (i) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (ii) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. 35 ILCS 5/303(f).

48. Pursuant to Regulation § 100.3200(a)(1), a taxpayer is taxable in another state if either:

A) in that state he or she is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax [35 ILCS 5/303(f)(1)]; or

B) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not subject the taxpayer to such a tax [35 ILCS 5/303(f)(2)].

49. Regulation § 100.3200(a)(2) further provides:

A taxpayer is subject to one of the specified taxes in subsection (a)(1)(A) in a particular state only if he or she is subject to the tax by reason of income-producing activities in that state . . . Further, a taxpayer claiming to be taxable in another state under the test set forth in subsection (a)(1)(A) must establish not only that under the laws of that state he or she is subject to one of the specified taxes, but that he or she, in fact, pays the tax. If a taxpayer is subject to one of the taxes specified in subsection (a)(1)(A) but does not, in fact, pay the tax, the taxpayer may not claim to be taxable in the state imposing the tax under the test set forth in subsection (a)(1)(A) or (a)(1)(B). (See *Dover Corp. v. Dept. of Revenue*, 271 Ill. App. 3d 700 (1995).) On the other hand, if a taxpayer is not subject in a given state to any of the taxes specified in subsection (a)(1)(A) but the taxpayer establishes that his or her activities in that state are such as to give the state jurisdiction to subject him or her to a net income tax, then, under the test set forth in this subsection (a)(2), the taxpayer is taxable in that state, notwithstanding the fact that that state has not enacted legislation subjecting him or her to the tax.

50. Illinois courts have acknowledged that the test for whether a person is “taxable” is satisfied “when the destination State has not enacted a tax on income and the taxpayer’s activities exceed solicitation of sales, thereby giving the State jurisdiction to tax if it so chooses.” *Dover*, 271 Ill. App. 3d at 706. A person is also “taxable” if the state or foreign country has enacted a tax, but nonetheless exempts the person from taxation. Ill. Admin. Code tit. 86, § 100.3200(A)(2)(D).

51. Whether a foreign country or political subdivision thereof “has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or a political subdivision of a U.S. state.” *Id.* at § 100.3200(C).

Based on the foregoing, Petitioner asserts the following errors related to the NODs:

ERROR I
(THE INTEREST EXPENSE IS DEDUCTIBLE)

52. Petitioner realleges and reincorporates paragraphs 1 through 51 of this Petition herein.

53. Under the IITA, a corporation is to add back to its base income interest paid to a person who would be a member of the same unitary business group but for the fact the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. 35 ILCS 5/203(b)(2)(E-12).

54. However, the interest payment is not required to be added back to a corporation's base income if the payee pays income tax on the interest income in another country, or when the disallowance of the deduction would be unreasonable. 35 ILCS 5/203(b)(2)(E-12)(i); (iv).

55. Petitioner paid interest to Evonik Germany in 2010 and 2011, each year of the Audit Period.

56. Evonik Germany would be in a unitary business group with Petitioner but for the fact that 80% of its business activity is outside the United States.

57. Evonik Germany paid corporate income tax in Germany on the interest income it received from Petitioner during the Audit Period.

58. Petitioner is not required to add back to its base income the interest expense it subtracted for 2010 or 2011, and disallowance of the deductions are unreasonable.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that the interest expense is not subject to addback for 2010 or 2011;
- (c) declare there is no tax deficiency for the Audit Period;
- (d) direct the Department to withdraw the NODs; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR II
(THE ROYALTY EXPENSE IS DEDUCTIBLE)

59. Petitioner realleges and reincorporates paragraphs 1 through 58 of this Petition herein.

60. Under the IITA, a corporation is to add back to its base income royalties paid to a person who would be a member of the same unitary business group but for the fact the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. 35 ILCS 5/203(b)(2)(E-13).

61. However, the royalty expense is not required to be added back to a corporation's base income if the payee pays income tax on the royalty income in another country, or when the disallowance of the deduction would be unreasonable. 35 ILCS 5/203(b)(2)(E-13)(i); (iii).

62. Petitioner paid royalties to Evonik Germany in 2010 and 2011.

63. Evonik Germany would be in a unitary business group with Petitioner but for the fact that 80% of its business activity is outside the United States.

64. Evonik Germany paid corporate income tax in Germany on the royalty income it received from Petitioner during the Audit Period.

65. Petitioner is not required to add back to its base income the royalty expense for 2010 or 2011, and disallowance of the deductions are unreasonable.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that the royalty expense should not be added back to Petitioner's base income for 2010 or 2011;
- (c) declare there is no tax deficiency for the Audit Period;
- (d) direct the Department to withdraw the NODs; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR III

(PETITIONER IS NOT REQUIRED TO THROW BACK SALES TO ILLINOIS BECAUSE
THE SALES DID NOT ORIGINATE FROM ILLINOIS)

66. Petitioner realleges and reincorporates paragraphs 1 through 65 of this Petition herein.

67. For purposes of Illinois' throwback rule, sales of tangible personal property are considered to be in Illinois if the property is shipped from an office, store, warehouse, factory or other place of storage in Illinois. 35 ILCS 5/304(a)(3)(B)(ii).

68. Based on information and belief, the foreign sales the Department is including in Petitioner's sales factor numerator for 2010 and 2011, did not ship from Illinois.

69. Under 35 ILCS 5/304(a)(3)(B)(ii), Petitioner is not required to throw back the foreign sales to Illinois as adjusted by the Department, because such sales did not ship from Illinois to customers located in foreign countries.

70. As a result, in computing its Illinois corporate income and replacement tax, Petitioner properly included its sales to customers in each of the foreign countries in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that Petitioner properly included its sales to customers in each of the foreign jurisdictions and political subdivisions in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator;
- (c) find and declare there is no tax deficiency for the 2010 and 2011 tax years in question;
- (d) direct the Department to withdraw its NODs; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR IV

(PETITIONER IS NOT REQUIRED TO THROW BACK SALES TO ILLINOIS BECAUSE
PETITIONER PAID INCOME TAX IN THE FOREIGN JURISDICTION)

71. Petitioner realleges and reincorporates paragraphs 1 through 70 of this Petition herein.

72. Because Petitioner's activities in each of the foreign countries during the Audit Period exceeded the solicitation of sales under Public Law 86-272, such foreign countries would have jurisdiction to subject Petitioner to their net income taxes, if they were states within the U.S.

73. On information and belief, Petitioner paid income tax in each of the foreign jurisdictions in which the Department is throwing back sales to Petitioner's sales factor numerator for 2010 and 2011.

74. Within the meaning of 35 ILCS 5/303(f), Petitioner was taxable in each such foreign jurisdiction during the Audit Period.

75. Petitioner is not required to throw back sales shipped to customers in foreign countries in which Petitioner paid net income tax.

76. As a result, in computing its Illinois corporate income and replacement tax, Petitioner properly included its sales to customers in each of the foreign countries in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that Petitioner properly included its sales to customers in each of the foreign jurisdictions and political subdivisions in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator;

- (c) find and declare there is no tax deficiency for the 2010 and 2011 tax years in question;
- (d) direct the Department to withdraw its NODs; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR IV

(THE FOREIGN SALES ARE NOT “ILLINOIS SALES” UNDER 35 ILCS 5/304(a)(3)(B)(ii))

77. Petitioner realleges and reincorporates paragraphs 1 through 76 of this Petition herein.

78. Under 35 ILCS 5/304(a)(3)(B)(ii),

Sales of tangible personal property are not in this State [of Illinois] if the seller and purchaser would be members of the same unitary business group but for the fact that either the seller or purchaser is a person with 80% or more of total business activity outside of the United States and the property is purchased for resale.

79. Petitioner made intercompany sales for resale to foreign affiliates that would be in the same unitary business group with Petitioner but for the fact that the foreign affiliates have 80% or more of their total business activities outside the United States.

80. As a result, in computing its Illinois corporate income tax, Petitioner properly included its sales to customers in each of the foreign countries in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) find and declare that Petitioner properly included its sales to customers in each of the foreign jurisdictions and political subdivisions in which it conducted business during the Audit Period in its sales factor denominator, but not its sales factor numerator;
- (c) find and declare there is no tax deficiency for the 2010 and 2011 tax years in question;
- (d) direct the Department to withdraw its NODs; and
- (e) grant Petitioner any further relief the Tax Tribunal deems appropriate.

ERROR V

(PENALTIES SHOULD BE ABATED FOR REASONABLE CAUSE)

81. Petitioner realleges and reincorporates paragraphs 1 through 80 of this Petition herein.

82. The Department has assessed Petitioner with late payment and late filing penalties on the Illinois income tax allegedly owed to the State of Illinois.

83. Petitioner does not owe any Illinois income tax to the State of Illinois as alleged by the Department per its NODs, and therefore no penalties may be assessed by the Department and no penalties are due to the State of Illinois. However, if any tax is due, any penalties assessed on such tax should be abated for reasonable cause. 35 ILCS 735/3-8.

84. Petitioner has relied in good faith on its understanding of Illinois law with respect to the reporting of its interest and royalty expenses as reported to the State of Illinois.

85. Petitioner has relied in good faith on its understanding of Illinois law with respect to the inclusion of its sales to foreign jurisdictions in its sales factor denominator, but not its numerator.

86. A taxpayer's good-faith reliance on an interpretation of Illinois statutory or regulatory law or a court decision can provide a basis for the abatement of penalties for reasonable cause. Ill. Admin. Code tit. 86, § 700.400(e)(8).

87. Petitioner has presented viable defenses based on Illinois law that Petitioner filed and reported its Illinois income and replacement taxes for the Audit Period correctly.

88. Accordingly, Petitioner has exercised ordinary care and prudence and has a good faith legal basis for filing its 2010 and 2011 tax return as originally filed.

WHEREFORE, Petitioner prays that the Tax Tribunal, as applicable,

- (a) enter judgment in favor of Petitioner;
- (b) declare that Petitioner is not liable for any Illinois penalties as alleged by the Department in its NODs;
- (c) cancel or modify the Department's NODs in their entirety; and
- (d) grant Petitioner any further relief the Tax Tribunal deems appropriate.

Respectfully submitted,

EVONIK CORPORATION,
Petitioner

A handwritten signature in blue ink, appearing to be "D. Dorner", written over a horizontal line.

By: _____
One of Petitioner's Attorneys

David P. Dorner
REED SMITH LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606
(312) 207-2402
ddorner@reedsmith.com

April 15, 2021

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Petition was filed with the Illinois Independent Tax Tribunal via U.S. mail and email at ITT.TaxTribunal@illinois.gov; the Petition with the \$500 filing fee was sent via U.S. mail to the Tax Tribunal at 160 N. LaSalle Street, Room N506, Chicago, Illinois 60601; and one copy of the Petition was served by U.S. mail on the Illinois Department of Revenue, Office of Legal Services, 100 W. Randolph St., 7-900, Chicago, Illinois 60601, this 15th day of April, 2021.

A handwritten signature in blue ink, appearing to be 'D. P.', is written above a horizontal line.

Counsel for Petitioner

EXHIBIT A

Notice of Deficiency

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

3/4/21



#BWNKMGV
#CNXX X176 3592 84X5#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXX176359284X5

Taxpayer ID: 63-0673043

Audit ID: A2664448

Reporting period: December 2010

Total Deficiency: \$189,222.78

Balance due: \$189,222.78

We have audited your account 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, pay the total balance due as soon as possible to minimize penalty and interest assessed. 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

Notice of Deficiency

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



#BWNKMGV
#CNXX X176 3592 84X5#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXX176359284X5

Taxpayer ID: 63-0673043

Audit ID: A2664448

Reporting period: December 2010

Total Deficiency: \$189,222.78

Balance due: \$189,222.78

Statement

Date: February 19, 2021
Name: EVONIK CORP
Taxpayer ID: 63-0673043
Letter ID: CNXXX176359284X5

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-2010

Income or loss

Federal taxable income
Net operating loss deduction
Illinois bonus depreciation addition
Related party expenses additions
Other additions

Base income or loss

Foreign dividends subtraction
Illinois bonus depreciation subtraction
Total subtractions

Base income or net loss

Income allocable to Illinois

Non-business income or loss
Non-unitary partnership bus. income or loss
Business income or loss
Apportionment formula
 Total sales everywhere
 Total Illinois sales
Apportionment factor
Business income/loss apportionable to IL
Nonbusiness income/loss allocable to IL
Non-unitary part. business income app. to IL
Base income or net loss allocable to IL

Net income

Base income or net loss
IL net loss deduction (NLD)
Income after NLD
Net income

Net replacement tax

Replacement tax
Recapture of investment credits
Replacement tax before credits
Replacement tax investment credits
Net replacement tax

Net income tax

Income tax

Redacted

Statement

Date: February 19, 2021
Name: EVONIK CORP
Taxpayer ID: 63-0673043
Letter ID: CNXXX176359284X5

Computation of deficiency

Recapture of investment credits
Income tax before credits
Income tax investment credits
Net income tax
Refund or balance due
Net replacement tax
Net income tax

Total net income and replacement tax due
Minus tax previously assessed

Total tax deficiency
Plus late-filing penalty
UPIA-5 late-payment penalty (Audit)
Plus interest on tax through February 19, 2021

Total deficiency

If you intend to pay under protest, you must pay this total deficiency amount.

Reporting period: 31-Dec-2010

Redacted

Computation of balance due

Balance due

Reporting period: 31-Dec-2010

* \$189,222.78

Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX XX97 X517 8963#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXXX97X5178963

Taxpayer ID: 63-0673043
Account ID: 03772-99968
Audit ID: A2664448
Reporting period: December 2010

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

We adjusted your addition modifications to reflect the addback of interest paid to an affiliated company and required to be added back on Schedule 80/20.
[Ref: 35 ILCS 5/203(b)(2)(E-12)]

Return Impact

\$2,163,925.00

Tax impact

\$4,033.00

We adjusted your addition modifications to reflect the addback of intangible expense paid to an affiliated company and required to be added back on Schedule 80/20.
[Ref: 35 ILCS 5/203(b)(2)(E-13)]

\$25,779,712.00

\$48,052.00

We adjusted your sales factor by including in the numerator sales of merchandise shipped from Illinois locations to a foreign country where you are not taxable.
[35 ILCS 5/304 & 86 IL Adm. Code 100.3200]

\$7,353,513.00

\$70,784.00

Interest on tax and penalty, if applicable, has been computed as allowed by Illinois law. [35 ILCS 735/3-2]

We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date (including any extensions). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty cannot exceed \$250.
[35 ILCS 735/3-3(a-10)]

We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on Form IL-870, Waiver of Restrictions, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]

Notice of Deficiency

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



#BWNKMGV
#CNXX X112 6669 4482#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXX11266694482

Taxpayer ID: 63-0673043

Audit ID: A2664448

Reporting period: December 2011

Total Deficiency: \$208,311.81

Balance due: \$208,311.81

We have audited your account 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, pay the total balance due as soon as possible to minimize penalty and interest assessed. 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

Notice of Deficiency

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



#BWNKMGV
#CNXX X112 6669 4482#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXX11266694482

Taxpayer ID: 63-0673043

Audit ID: A2664448

Reporting period: December 2011

Total Deficiency: \$208,311.81

Balance due: \$208,311.81

Statement

Date: February 19, 2021
Name: EVONIK CORP
Taxpayer ID: 63-0673043
Letter ID: CNXXX11266694482

The attached EDA-27, Explanation of Adjustments, details your audit adjustments.

Computation of deficiency

Reporting period: 31-Dec-2011

Income or loss

- Federal taxable income
- Net operating loss deduction
- Income tax and replacement tax deduction
- Related party expenses additions
- Other additions

Base income or loss

- Illinois bonus depreciation subtraction
- Total subtractions
- Base income or net loss

Income allocable to Illinois

- Non-business income or loss
- Non-unitary partnership bus. income or loss
- Business income or loss
- Apportionment formula
 - Total sales everywhere
 - Total Illinois sales
- Apportionment factor
- Business income/loss apportionable to IL
- Nonbusiness income/loss allocable to IL
- Non-unitary part. business income app. to IL
- Base income or net loss allocable to IL

Net income

- Base income or net loss
- IL net loss deduction (NLD)
- Net income

Net replacement tax

- Replacement tax
- Recapture of investment credits
- Replacement tax before credits
- Replacement tax investment credits
- Net replacement tax

Net income tax

- Income tax
- Recapture of investment credits
- Income tax before credits

Redacted

Statement

Date: February 19, 2021
Name: EVONIK CORP
Taxpayer ID: 63-0673043
Letter ID: CNXXX11266694482

Computation of deficiency

Income tax investment credits
Net income tax
Refund or balance due
Net replacement tax
Net income tax

Total net income and replacement tax due
Minus tax previously assessed

Total tax deficiency
Plus late-filing penalty
UPIA-5 late-payment penalty (Audit)
Plus interest on tax through February 19, 2021

Total deficiency

If you intend to pay under protest, you must pay this total deficiency amount.

Reporting period: 31-Dec-2011

Redacted

Computation of balance due

Balance due

Reporting period: 31-Dec-2011

* \$208,311.81

Explanation of Audit Adjustments

Income Tax



#BWNKMGV
#CNXX XX85 X625 2886#
EVONIK CORP
EVONIK CORPORATION FKA EVONIK DEGUSSA CORPORA
ATTN: KENNETH BITTNER
299 JEFFERSON RD
PARSIPPANY NJ 07054-2827

February 19, 2021



Letter ID: CNXXXX85X6252886

Taxpayer ID: 63-0673043
Account ID: 03772-99968
Audit ID: A2664448
Reporting period: December 2011

Explanation of adjustments for tax period ending 12/31/2011

We adjusted your addition modifications to reflect the addback of interest paid to an affiliated company and required to be added back on Schedule 80/20.
[Ref: 35 ILCS 5/203(b)(2)(E-12)]

Return Impact

\$1,840,273.00

Tax impact

\$4,310.00

We adjusted your addition modifications to reflect the addback of intangible expense paid to an affiliated company and required to be added back on Schedule 80/20.
[Ref: 35 ILCS 5/203(b)(2)(E-13)]

\$27,884,313.00

\$65,311.00

We adjusted your sales factor by including in the numerator sales of merchandise shipped from Illinois locations to a foreign country where you are not taxable.
[35 ILCS 5/304 & 86 IL Adm. Code 100.3200]

\$7,100,717.00

\$68,811.00

Interest on tax and penalty, if applicable, has been computed as allowed by Illinois law. [35 ILCS 735/3-2]

We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date (including any extensions). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty cannot exceed \$250.
[35 ILCS 735/3-3(a-10)]

We are imposing a penalty because you did not pay the amount required to be shown due on your return by the due date for payment. Once an audit has been initiated, the late payment penalty is assessed at 15 percent of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on Form IL-870, Waiver of Restrictions, has resulted in this penalty increasing to 20 percent. [35 ILCS 735/3-3(b-20)(2)]