

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

GUESS? AND SUBSIDIARIES,)	
)	
v.)	14-TT-0001
)	
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

ANSWER

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to Taxpayer’s Petition respectfully pleads as follows:

PARTIES

1. Petitioner, Guess?, Inc. (“Guess?”), is a publicly-traded corporation duly organized and existing under the laws of the state of Delaware.

ANSWER: The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(A) (86 Ill. Adm. Code § 5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegations contained in Paragraph 1.

2. Guess? maintains its corporate headquarters at 1444 South Alameda Street, Los Angeles, California, 90021-2433.

ANSWER: The information contained in Paragraph 2 is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegations contained in Paragraph 2.

3. Petitioner’s telephone number is (213) 765-3100.

ANSWER: This information is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

4. Petitioner's tax identification number is 95-3679695.

ANSWER: The information contained in Paragraph 3 is required by Rule 310(a)(1)(C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the factual allegations contained in Paragraph 4.

5. Respondent, Illinois Department of Revenue (the "Department"), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois.

ANSWER: Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.) and Retailers' Occupation Tax Act, which are relevant to the legal claims raised in Taxpayer's petition. The term "revenue laws" is ambiguous and therefore the Department denies all other allegations contained in Paragraph 5.

JURISDICTION

6. On or about November 8, 2013, the Department issued a Notice of Deficiency to Guess? asserting additional tax due of \$126,833 for the tax year ending January 30, 2010 (the "2010 Notice"). A copy of the 2010 Notice is attached as Exhibit B.

ANSWER: A copy of the Notice is required by Rule 310(a)(1)(D) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits Department issued a Notice of Deficiency dated November 8, 2013, to Guess?, Inc. for the period ending January 30, 2010, in the amount of \$163,510.48, of which \$126,833.00 was a deficiency of tax. Department denies all other allegations contained in Paragraph 6.

7. This Tribunal has original jurisdiction over all Department determination reflected on Notices of Deficiency, among other notices, where the amount at issue exceeds \$15,000, exclusive of penalties and interest. 35 Ill. Comp. Stat. § 1010/1-45.

ANSWER: Paragraph 7 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect at all relevant times of the statute set forth or referred to in Paragraph 7 and states that such statute speaks for itself.

BACKGROUND

The Department asserts that Paragraphs 8 through 35 contain allegations of fact that are immaterial to a determination of the proper tax for tax year ending January 31, 2010. Paragraphs 8 through 35 do not indicate that the allegations pertain to tax year ending January 31, 2010. Rather, the use of the present verb tense suggests the allegations concern Taxpayer's current practice. Guess?'s current practices are irrelevant to a determination of 2010 tax.

8. Guess? is a world leader in contemporary fashion.

ANSWER: Paragraph 8 contains a statement of opinion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the allegations contained in Paragraph 8.

9. Guess? is the parent of an affiliated group of companies that design, manufacture, market, distribute and license contemporary, fashion-forward apparel and accessories for men, women and children.

ANSWER: Department admits Guess?, Inc. is the parent of various subsidiaries including Guess? Retail, Inc. and Guess?.com. Department denies all other allegations contained in Paragraph 9.

10. Guess?'s contemporary clothing lines include jeans, pants, skirts, dresses, blouses, shirts jackets and knitwear.

ANSWER: Department admits the factual allegations contained in Paragraph 10.

11. Guess? apparel is marketed under numerous brand names, including Guess?, Guess Jeans, Marciano, Guess Kids and G by Guess.

ANSWER: Department admits the factual allegations contained in Paragraph 11.

12. Guess?, itself and through various affiliates and subsidiaries, sells its products worldwide, including through wholesale, retail and online distribution channels.

ANSWER: Department admits the factual allegations contained in Paragraph 12.

13. Guess? makes sales of product to related and unrelated wholesale customers, who in turn sell Guess? products through various retail channels to end consumers.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 and therefore denies the allegations in Paragraph 13.

14. Guess?'s wholesale customers consist primarily of better department stores, such as Macy's and Bloomingdale's, select specialty retailers and upscale boutiques located throughout the United States, including some stores located in Illinois.

ANSWER: Department admits Guess?, Inc. makes sales to customers in Illinois. Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the

remaining allegations contained in Paragraph 14 and therefore denies the allegations in Paragraph 14.

15. Guess? does not maintain any office or other permanent place of business in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 15 and demands strict proof thereof.

16. Guess? does not have any Illinois employees.

ANSWER: Department denies the factual allegations contained in Paragraph 16 and demands strict proof thereof.

17. Guess? does not accept or reject customers' order in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 17 and demands strict proof thereof.

18. Guess? does not maintain any inventory in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 18 and demands strict proof thereof.

19. All of Guess?'s sales to Illinois wholesale customers are delivered via common carrier from warehouses located outside the state of Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 19 and demands strict proof thereof.

20. Guess? Retail, Inc. ("Guess? Retail"), is a wholly-owned subsidiary of Guess?.

ANSWER: Department admits the factual allegations contained in Paragraph 20.

21. Guess? Retail is responsible for retail operations, including stores directly operated by Guess Retail.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 and therefore denies the allegations in Paragraph 21.

22. Guess? makes wholesale sales of products to Guess? Retail.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 22 and therefore denies the allegations in Paragraph 22.

23. Guess? does not engage in retail activities in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 23 and demands strict proof thereof.

24. Guess? has engaged Guess? Retail to provide certain limited merchandising activities in connection with Guess?'s wholesale operations. A Copy of the Merchandiser Agreement is attached as Exhibit C.

ANSWER: Department admits Guess? engaged Guess? Retail to provide merchandising activities in connection with Guess?'s operations, but denies all other allegations contained in Paragraph 24. Department asserts that Exhibit C (Shop Development and Merchandising Agreement) speaks for itself.

25. Guess? Retail's merchandising activities include only activities protected by Federal Public Law 86-272 ("P.L. 86-272") and or by Illinois regulation, 86 Ill. Admin. Code § 100.9720.

ANSWER: Department denies the factual allegations contained in Paragraph 25 and demands strict proof thereof.

26. Guess? Retail does not accept or reject wholesale order from Illinois customers on behalf of Guess?.

ANSWER: Department denies the factual allegations contained in Paragraph 26 and demands strict proof thereof.

27. Guess?.com, Inc. (“Guess?.com”), is a wholly-owned subsidiary of Guess?.

ANSWER: Department admits the factual allegations contained in Paragraph 27.

28. Guess?.com is responsible for online retail operation through internet websites such as www.guess.com.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 28 and therefore denies the allegations in Paragraph 28.

29. Guess makes wholesale sales of products to Guess?.com.

ANSWER: Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29 and therefore denies the allegations in Paragraph 29.

30. Guess?.com does not maintain any office or other permanent place of business in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 30 and demands strict proof thereof.

31. Guess?.com websites are not hosted on servers located in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 31 and demands strict proof thereof.

32. Guess?.com does not have any Illinois employees.

ANSWER: Department denies the factual allegations contained in Paragraph 32 and demands strict proof thereof.

33. Guess?.com does not accept or reject customers' orders in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 33 and demands strict proof thereof.

34. Guess?.com does not maintain any inventory in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 34 and demands strict proof thereof.

35. All of Guess?.com's online sales shipped to Illinois customers are delivered via common carrier from warehouses located outside the state of Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 35 and demands strict proof thereof.

GUESS?'S ILLINOIS TAX FILINGS

36. Guess?, along with its unitary affiliates, timely filed an Illinois corporate income tax return and paid Illinois corporate income tax for its tax year ending January 30, 2010 (the "Tax Year at Issue").

ANSWER: Department admits Department received Guess?, Inc.'s Form IL-1120 and attachments, including Schedule UB, for the tax year ending January 31, 2010, on October 31, 2010. Department admits Guess?, Inc. paid the tax shown due on the return on or before October 31, 2010. Department asserts that whether said return was timely filed is a question of law. Department denies all other allegations contained in Paragraph 36 and demands strict proof thereof.

37. Illinois law provides that corporate taxpayers that are members of the same unitary business group are treated as one taxpayer for purposes of filing a corporate income tax return. 35 Ill. Comp. Stat. 5/502(e).

ANSWER: Paragraph 37 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 502 of the Illinois Income Tax Act (35 ILCS 5/502) referred to in Paragraph 37 and states that such law speaks for itself. Department denies all factual allegations contained in Paragraph 37.

38. A “unitary business group” means corporation related through common ownership that conduct business activities integral with, dependent upon and contributory to each other. 35 Ill. Comp. Stat. 1501(a)(27).

ANSWER: Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 1501 of the Illinois Income Tax Act (35 ILCS 5/1501) referred to in Paragraph 38 and states that such law speaks for itself. Department denies that Paragraph 38 contains a proper citation to Section 1501 of the Illinois Income Tax Act and denies all factual allegations contained in Paragraph 38.

39. As required by Illinois law, Guess? along with various unitary affiliates, including but not limited to Guess? Retail and Guess?.com, filed a unitary combined corporate income tax return for the Tax Year at Issue.

ANSWER: Department admits the factual allegations contained in Paragraph 39.

40. Under Illinois law, where affiliated corporations comprise a unitary business group, it is necessary to determine the group’s base income. The group’s base income, as adjusted for

statutorily-prescribed additions and subtractions, constitutes the group's tax base that is allocated(for non-business income) and apportioned (for business income) to Illinois.

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304) referred to in Paragraph 40 and states that the statute speaks for itself. Department denies all factual allegations contained in Paragraph 40 and demands strict proof thereof.

41. To determine the business income subject to tax in Illinois, the group's base income must be apportioned to the state.

ANSWER: Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies all factual allegations contained in Paragraph 41 and demands strict proof thereof.

42. With respect to apportioning business income, Illinois law provides for formulary apportionment by a single factor based on sales. 35 Ill. Comp. Stat. 5/304(h)(3).

ANSWER: Paragraph 42 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304) referred to in Paragraph 42 and states that the statute speaks for itself. Department denies all factual allegations contained in Paragraph 42 and demands strict proof thereof.

43. Illinois' single sales factor is a fraction. The numerator of the fraction is sales destined to Illinois, and the denominator of the fraction is the total sales everywhere of each member of the unitary business group. 35 Ill. Comp. Stat. 5/304(a)(3).

ANSWER: Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304) set forth or referred to in Paragraph 43 and states that the statute speaks for itself. Department denies all factual allegations contained in Paragraph 43 and demands strict proof thereof.

44. Although the sales factor denominator includes sales of all member of the Illinois unitary business group, the sales factor numerator only includes the Illinois sales of those unitary business group members who are themselves subject to Illinois' tax jurisdiction, often referred to as Illinois "nexus." 35 Ill. Comp. Stat. 5/502(e).

ANSWER: Paragraph 44 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of Section 502 of the Illinois Income Tax Act (35 ILCS 5/502) referred to in Paragraph 44 and states that the statute speaks for itself. Department denies all factual allegations contained in Paragraph 44 and demands strict proof thereof.

45. On the original Illinois corporate income tax return for the Tax Year at Issue, Guess? did not include any of its Illinois destination sales in the Illinois sales factor numerator because Guess? did not have the requisite nexus with the state of Illinois.

ANSWER: Department denies that Guess? did not have nexus with Illinois for the tax year ending January 30, 2010. Department admits Guess? did not include any of its Illinois destination sales in the Illinois sales factor numerator on its 2010 Illinois income tax return. Department denies all other factual allegations contained in Paragraph 45 and demands strict proof thereof.

46. On the original Illinois corporate income tax return for the Tax Year at Issue, Guess? did not include any of Guess?.com's Illinois destination sales in the Illinois sales factor numerator because Guess?.com did not have the requisite nexus with the state of Illinois.

ANSWER: Department denies that Guess?.com did not have nexus with Illinois for the tax year ending January 30, 2010. Department admits Guess?.com did not include any of its Illinois destination sales in the Illinois sales factor numerator on its 2010 Illinois income tax return. Department denies all other factual allegations contained in Paragraph 45 and demands strict proof thereof.

PROCEDURAL HISTORY

47. The Department conducted an income tax audit of the unitary combined returns filed by Guess? and its unitary affiliates for the period February 2009 through January 2011.

ANSWER: Department admits the factual allegations contained in Paragraph 47.

48. As a result of the audit, the Department determined that Guess? and Guess?.com had nexus with Illinois for the Tax Year at Issue and included the Illinois destination sales of Guess? and Guess?.com in the Illinois sales factor numerator of the unitary combined group.

ANSWER: Department admits the factual allegations contained in Paragraph 48.

49. The Department improperly concluded that the Illinois activities of Guess? Retail employee were sufficient to give Guess? Illinois nexus.

ANSWER: Paragraph 49 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits that Department determined that the Illinois activities of Guess? Retail were sufficient to establish Guess?'s nexus with Illinois. Department denies that its determination was improper. Department asserts that whether the Department's determination was improper is a question of

law. Department denies any other factual allegations contained in Paragraph 49 and demands strict proof thereof.

50. The Department improperly concluded that the Illinois activities of Guess? Retail employee were sufficient to give Guess?.com Illinois nexus.

ANSWER: Paragraph 50 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits that Department determined that the Illinois activities of Guess?.com were sufficient to establish Illinois nexus. Department denies that its determination was improper. Department asserts that whether the Department's determination was improper is a question of law. Department denies any other factual allegations contained in Paragraph 50 and demands strict proof thereof.

51. Including Illinois sale of Guess? and Guess?.com in the group's sales factor numerator increases the unitary combined group's Illinois sales factor and resulting income that is apportioned to and thus taxable by Illinois.

ANSWER: Department admits the factual allegations contained in Paragraph 51.

52. On or about November 8, 2013, the Department issued the 2010 Notice asserting additional tax due of \$126,833, plus penalties and interest, for the tax year ending January 30, 2010.

ANSWER: Department admits the factual allegations contained in Paragraph 51.

53. Guess? timely filed this Petition and properly invoked the jurisdiction of the Tax Tribunal.

ANSWER: Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 53 and demands strict proof thereof.

54. Guess? seeks abatement of the 2010 Notice for the reasons stated above.

ANSWER: This request for relief is required by Rule 310(a)(1)(G) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 54 and demands strict proof thereof.

COUNT I

55. Guess? hereby restates and realleges the allegation contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

56. The Commerce Clause of the United States Constitution requires a taxpayer's physical presence in a state in order for the state to exercise its jurisdiction to impose corporate income tax. U.S. Const. Art. I, § 8, cl. 3; *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

ANSWER: Paragraph 56 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the U.S. Constitution and case law referred to in Paragraph 56 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 56 and demands strict proof thereof.

57. Guess? did not own, lease, or maintain any real or tangible personal property in Illinois during the Tax Year at Issue.

ANSWER: Department denies the factual allegations contained in Paragraph 57 and demands strict proof thereof.

58. Guess? did not maintain any employees in Illinois during the Tax Year at Issue.

ANSWER: Department denies the factual allegations contained in Paragraph 58 and demands strict proof thereof.

59. Guess? did not maintain the requisite physical presence in Illinois to authorize the state to subject Guess? to corporate income tax.

ANSWER: Department denies the factual allegations contained in Paragraph 59 and demands strict proof thereof.

60. The Department's inclusion of Guess?'s Illinois sales in the combined group's sales factor numerator for the Tax Year at Issue violates the Commerce Clause of the United States Constitution.

ANSWER: Paragraph 60 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 60 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count I of the Petition;
- b. find that Guess? Inc. was physically present in Illinois through the acts of its agent, Guess? Retail;
- c. find that the inclusion of Guess? Inc.'s Illinois sales in the Illinois sales factor numerator did not violate the Commerce Clause of the U.S. Constitution;
- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT II

61. Guess? hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

62. P.L. 86-272, codified at 15 U.S.C. § 381, provides limitations on a state's ability to subject out of state corporations to the state's corporate income tax.

ANSWER: Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 15 U.S.C. § 381 and states that such statute speaks for itself. Department denies any factual allegations contained in Paragraph 62 and demands strict proof thereof.

63. More specifically, P.L. 86-272 prohibits a state from imposing its corporate income tax on an out of state corporation when the corporation's only in-state business activities are "the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and if approved, are filled by shipment or delivery from a point outside the state." 15 U.S.C. § 381(a)(1).

ANSWER: Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 15 U.S.C. § 381 and states that such statute speaks for itself. Department denies any factual allegations contained in Paragraph 63 and demands strict proof thereof.

64. The United States Supreme Court has interpreted the term “solicitation” in P.L. 86-272 to also include activities “that serve no independent business function apart from their connection to the soliciting of orders.” *Wis. Dep’t of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 228-229 (1992).

ANSWER: Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law quoted in Paragraph 64 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 64 and demands strict proof thereof.

65. Guess? has no Illinois employees.

ANSWER: Department denies the factual allegations contained in Paragraph 65 and demands strict proof thereof.

66. Guess? employees performed no activities in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 66 and demands strict proof thereof.

67. Guess? Retail employees provided certain limited merchandising activities in connection with Guess?’s wholesale customers in Illinois.

ANSWER: Department admits Guess? Retail provided merchandising activities in Illinois on behalf of Guess? in connection with Guess?’s Illinois operations, but denies all other allegations contained in Paragraph 67.

68. During the Tax Year at Issue, any Illinois merchandising activities performed by Guess? Retail employees did not exceed the protection of P.L. 86-272.

ANSWER: Paragraph 68 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 68 and demands strict proof thereof.

69. The Illinois merchandising activities performed by Guess? Retail employees are protected by P.L. 86-272.

ANSWER: Paragraph 69 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 69 and demands strict proof thereof.

70. The Illinois activities performed by Guess? Retail do not serve to give Guess? Illinois nexus.

ANSWER: Paragraph 70 contains a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 70 and demands strict proof thereof.

71. The Department's inclusion of Guess?'s Illinois sales in the combined group's Illinois sales factor numerator violates both Illinois and Federal law.

ANSWER: Paragraph 71 contains a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 71 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count II of the Petition;
- b. find that Guess? Inc.'s activities in Illinois are not protected by Public Law 86-272 or 86 Ill. Adm. Code § 100.9720;

- c. find that the inclusion of Guess? Inc.'s Illinois sales in the Illinois sales factor numerator was proper;
- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT III

72. Guess? hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

73. Performing activities in a particular state that exceed P.L. 86-272 protection does not jeopardize a corporation's immunity from corporate income tax under P.L. 86-272 when those unprotected activities are de minimis. *Wis. Dep't of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 228-229 (1992).

ANSWER: Paragraph 73 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law quoted in Paragraph 73 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 73 and demands strict proof thereof.

74. A de minimis activity for P.L. 86-272 purposes establishes only a trivial additional connection with the state that seeks to impose its tax. *Id.*

ANSWER: Paragraph 74 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law referred to in Paragraph 74 and states that the case law speaks for itself. Department denies any factual allegations contained in Paragraph 74 and demands strict proof thereof.

75. Even if Illinois activities performed by Guess? Retail employees on behalf of Guess? exceeded P.L. 86-272 protection, those activities were de minimis and do not serve to give Guess? Illinois nexus.

ANSWER: Paragraph 75 contains a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 75 and demands strict proof thereof.

76. The Department's inclusion of Guess?'s Illinois sales in the combined group's Illinois sales factor numerator violates both Illinois and Federal Law.

ANSWER: Paragraph 76 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 76 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count III of the Petition;
- b. find that Guess? Inc.'s activities in Illinois were not de minimis and are not protected by Public Law 86-272 or 86 Ill. Adm. Code § 100.9720;
- c. find that the inclusion of Guess? Inc.'s Illinois sales in the Illinois sales factor numerator was proper;

- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT IV

77. Guess? hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

78. The Commerce Clause of the United States Constitution requires a taxpayer's physical presence in a state in order for the state to exercise its jurisdiction to impose corporate income tax. U.S. Const. Art. I, § 8, cl. 3; *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

ANSWER: Paragraph 78 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the U.S. Constitution and case law referred to in Paragraph 78 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 78 and demands strict proof thereof.

79. Guess?.com did not own, lease or maintain any real or tangible personal property in Illinois during the Tax Year at Issue.

ANSWER: Department denies the factual allegations contained in Paragraph 79 and demands strict proof thereof.

80. Guess?.com did not own, lease or maintain any real or tangible personal property in Illinois during the Tax Year at Issue.

ANSWER: Department denies the factual allegations contained in Paragraph 80 and demands strict proof thereof.

81. Guess?.com did not maintain the requisite physical presence in Illinois to authorize the state to subject Guess?.com to corporate income tax.

ANSWER: Department denies the factual allegations contained in Paragraph 81 and demands strict proof thereof.

82. The Department's inclusion of Guess?.com's Illinois sales in the combined group's sales factor numerator for the Tax Year at Issue violates the Commerce Clause of the United States Constitution.

ANSWER: Paragraph 82 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations contained in Paragraph 82 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count IV of the Petition;
- b. find that Guess?.com Inc.'s was physically present in Illinois through the acts of its agent, Guess? Retail;
- c. find that the inclusion of Guess?.com Inc.'s Illinois sales in the Illinois sales factor numerator was proper;
- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT V

83. Guess? hereby restates and realleges the allegations contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

84. Federal Public Law 86-272 (“P.L. 86-272”), codified at 15 U.S.C. § 381, provides limitations on a state’s ability to subject out-of-state corporations to the state’s corporate income tax.

ANSWER: Paragraph 84 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of P.L. 86-272 and 15 U.S.C. § 381 referred to in Paragraph 84 and states that such law speaks for itself.

85. More specifically, P.L. 86-272 prohibits a state from imposing its corporate income tax on an out-of-state corporation when the corporation’s only in-state business activities are “the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which order are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the state.” 15 U.S.C. § 381(a)(1).

ANSWER: Paragraph 85 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of P.L. 86-272 and 15 U.S.C. § 381 referred to in Paragraph 85 and states that such law speaks for itself.

86. The United States Supreme Court has interpreted the term “solicitation” in P.L. 86-272 to also include activities “that serve no independent business function apart from their connection

to the soliciting of orders.” *Wis. Dep’t of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 228-229 (1992).

ANSWER: Paragraph 86 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law referred to in Paragraph 86 and states that such law speaks for itself.

87. Guess?.com has no Illinois employees.

ANSWER: Department denies the factual allegations contained in Paragraph 87 and demands strict proof thereof.

88. Guess?.com employees performed no activities in Illinois.

ANSWER: Department denies the factual allegations contained in Paragraph 88 and demands strict proof thereof.

89. To the extent Guess? Retail provided any services for Guess?.com in Illinois, such activities did not exceed the protection of P.L. 86-272.

ANSWER: Department denies the factual allegations contained in Paragraph 89 and demands strict proof thereof.

90. The Department’s inclusion of Guess?.com’s Illinois sales in the combined group’s Illinois sales factor numerator violates both Illinois and Federal Law.

ANSWER: Department denies the factual allegations contained in Paragraph 90 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count V of the Petition;

- b. find that Guess?.com Inc.'s activities in Illinois are not protected by Public Law 86-272 or 86 Ill. Adm. Code § 100.9720;
- c. find that the inclusion of Guess?.com Inc.'s Illinois sales in the Illinois sales factor numerator was proper;
- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT VI

91. Guess? hereby restates and realleges the allegation contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

92. Performing activities in a particular state that exceed P.L. 86-272 protection does not jeopardize a corporation's immunity from corporate income tax under P.L. 86-272 when those unprotected activities are de minimis. *Wis. Dep't of Revenue v. William Wrigley, Jr. Co.*, 505 U.S. 214, 228-229 (1992).

ANSWER: Paragraph 92 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law referred to in Paragraph 92 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 92 and demands strict proof thereof.

93. A de minimis activity for P.L. 86-272 purposes establishes only a trivial additional connection with the state that seeks to impose its tax. *Id.*

ANSWER: Paragraph 93 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the case law referred to in Paragraph 93 and states that such law speaks for itself. Department denies any factual allegations contained in Paragraph 93 and demands strict proof thereof.

94. To the extent Illinois activities performed by Guess? Retail employees on behalf of Guess?.com exceeded P.L. 86-272 protection, those activities were de minimis and do not serve to give Guess?.com Illinois nexus.

ANSWER: Department denies the factual allegations contained in Paragraph 94 and demands strict proof thereof.

95. The Department's inclusion of Guess?.com's Illinois sales in the combined group's Illinois sales factor numerator violates both Illinois and Federal law.

ANSWER: Paragraph 95 contains a legal conclusion and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 95 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count VI of the Petition;
- b. find that Guess?.com Inc.'s activities in Illinois were not de minimis and are not protected by Public Law 86-272 or 86 Ill. Adm. Code § 100.9720;
- c. find that the inclusion of Guess?.com Inc.'s Illinois sales in the Illinois sales factor numerator was proper;

- d. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- e. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and
- f. grant any further relief this Tribunal deems just and appropriate.

COUNT VII

96. Guess? hereby restates and realleges the allegation contained in paragraphs 1 through 54 as if fully set forth herein.

ANSWER: Department incorporates and repeats its answers to paragraphs 1 through 54 as if fully set forth herein.

97. Any penalties assessed must be abated for reasonable cause.

ANSWER: Paragraph 97 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the Uniform Penalty and Interest Act (35 ILCS 735/3-1 et seq.) referred to in Paragraph 97 and states that such statute speaks for itself.

98. The Department has assessed late payment penalties in the 2010 Notice.

ANSWER: Department admits the factual allegations contained in Paragraph 98.

99. Under Illinois law, no penalties shall be imposed on a taxpayer if his failure to pay tax was due to reasonable cause. 35 Ill. Comp. Stat. 735/3-8.

ANSWER: Paragraph 99 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the Uniform Penalty and Interest Act (35 ILCS 735/3-1 et seq.) referred to in Paragraph 99 and states that such statute speaks for itself. Department denies any factual allegations in Paragraph 99.

100. Under Illinois regulations, “the most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400(b).

ANSWER: Paragraph 100 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the portion of the regulation referred to in Paragraph 100 and states that such regulation speaks for itself.

101. A taxpayer is consider to have made a good faith effort to determine and file and pay his tax liability if “he exercised ordinary business care and prudent in doing do.” 86 Ill. Admin. Code § 700.400(c).

ANSWER: Paragraph 101 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the portion of the regulation referred to in Paragraph 101 and states that such regulation speaks for itself.

102. The taxpayer’s filing history is also considered in determining whether the taxpayer acted in good faith. 86 Ill. Admin. Code § 700.400(d).

ANSWER: Paragraph 102 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of the portion of the regulation referred to in Paragraph 102 and states that such regulation speaks for itself.

103. Guess? made a good faith effort to determine its proper tax liability and to file and pay its proper liability in a timely fashion.

ANSWER: Department denies the factual allegations contained in Paragraph 103 and demands strict proof thereof.

104. Guess? exercised ordinary business care and prudence in determining its proper tax liability and filing and paying its proper liability in a timely fashion.

ANSWER: Department denies the factual allegations contained in Paragraph 104 and demands strict proof thereof.

105. Guess? has a history of timely filing Illinois corporate income tax returns and paying Illinois corporate income tax in a timely manner.

ANSWER: Department denies the factual allegations contained in Paragraph 105 and demands strict proof thereof.

106. The late payment penalties imposed by the Department must be abated for reasonable cause.

ANSWER: Paragraph 106 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies the factual allegations contained in Paragraph 106 and demands strict proof thereof.

WHEREFORE, the Department respectfully requests this Tribunal

- a. deny each prayer for relief in Count VII of the Petition;
- b. find that Guess? Inc. did not make a good faith effort or exercise ordinary business care and prudence to determine and file its proper tax in a timely manner pursuant to 86 Ill. Adm. Code § 700.400;
- c. find that the Notice of Deficiency correctly reflects Taxpayer's 2010 Illinois income tax assessment, including penalties and interest;
- d. Order judgment in favor of the Department and against the Taxpayer/Petitioner; and

e. grant any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____
Jennifer Kieffer
Special Assistant Attorney General
ARDC No. 06303703

Ronald Forman
Jennifer Kieffer
Special Assistant Attorneys General
Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601

Telephone: (312) 814-9500
(312) 814-1533
Facsimile: (312) 814-4344
Email: Ronald.Forman@Illinois.gov
Jennifer.Kieffer@Illinois.gov

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

GUESS? AND SUBSIDIARIES,)	
)	
v.)	14-TT-0001
)	14-TT-0002
STATE OF ILLINOIS)	
DEPARTMENT OF REVENUE)	

AFFIDAVIT OF ALFREDO FAVELA
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

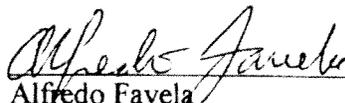
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Alfredo Favela, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I audited Guess?, Inc. for the tax years ending January 2010 and January 2011.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 13, 14, 21, 22, 28 and 29.
5. I am an adult resident of the State of California and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify that the statements set forth in this Affidavit are true and correct to the best of my knowledge and belief.



Alfredo Favela
Revenue Auditor III
Illinois Department of Revenue

Subscribed and sworn to this _____ day
of _____, 2014.

Notary Public
My Commission: See Attached
(Stamp)

DATED: January 29, 2014

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me

on this 29 day of January, 2011

by (1) Alfredo Favela
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) _____
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Paige Cooney
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Affidavit of Alfredo Favela

Document Date: 01/29/11 Number of Pages: 1

Signer(s) Other Than Named Above: NA

RIGHT THUMBPRINT OF SIGNER #1 Top of thumb here	RIGHT THUMBPRINT OF SIGNER #2 Top of thumb here
---	---