

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

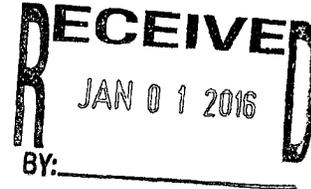
PEPPERIDGE FARM INCORPORATED

Petitioner,

v.

ILLINOIS DEPARTMENT OF REVENUE,

Respondent.



No. 14 TT 139

Chief Judge James Conway

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**PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

Petitioner, Pepperidge Farm Incorporated ("Petitioner"), by its attorneys, Horwood Marcus & Berk Chartered, hereby submits this Reply in Support of Its Motion to Compel Production of Documents ("Motion") and in opposition to the Department of Revenue's Response to the Motion.

In the Motion, Petitioner seeks two sets of documents that are both relevant and material to this case:

1. The Department's audit manual; and
2. The Informal Conference Board ("ICB") file relating to the Department's audit of Petitioner for the 2007-2008 tax years.

For the following reasons, the Department should be compelled to produce both documents.

I. The Audit Manual Must Be Produced Because It Is Relevant To The Present Litigation.

In its Response, the Department failed to offer any credible reason supporting its refusal to produce its audit manual.

Under Illinois Supreme Court Rule 201(b)(1), the Department is required to provide “full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts.”

Not only is the Department required to produce any document relevant to the present litigation, it must also produce any document that may lead to any relevant, admissible evidence. “The Illinois Supreme Court has indicated that a liberal position is to be taken on discovery of relevant and material evidentiary matter, and this includes not only what would be admissible at the trial but also that which might lead to what would be admissible at the trial.” *Polowick v. Meredith Const. Co.*, 29 Ill. App. 3d 1092, 1097 (2nd Dist. 1975) (internal citation omitted). This is an extremely broad discovery standard and courts apply this rule liberally to require disclosure. “Accordingly, great latitude is allowed in the scope of discovery, and the concept of relevance for discovery purposes is broader than the concept of relevance for purposes of the admission of evidence at trial.” *Leeson v. State Farm Mut. Auto. Ins. Co.*, 190 Ill. App. 3d 359, 365 (1st Dist. 1989) (citation omitted).

The Department’s audit manual is clearly relevant to this case. The Department itself has described the audit manual as “provid[ing] auditors a roadmap and guidance on conducting an audit,” (see Exhibit A at page 1), including “auditing techniques.” See Exhibit B at page 3.

Here, as a result of its audit that supposedly relied on the audit manual as a “roadmap and guidance,” the Department determined that Petitioner owed additional Illinois corporate income and replacement tax, penalties and interest for the 2007-2008 tax years in excess of \$5.5 million. In fact, while the Department’s Response attempts to downplay the audit manual as not providing “a factual basis” for the tax assessments in dispute, the Department expressly *admitted* in its prior interrogatory responses that the auditor’s work during the audit – including “[t]he Auditor’s Comments, detailing why Campbell Sales Corporation [sic] activities are beyond the scope of P.L. 86-272,” the “Nexus Questionnaire” used during the audit, and taxpayer documents obtained by the auditor – were, in fact, “factual bases” for the assessments. See Exhibit C at page 2. The Department should not be permitted to assess millions of dollars of tax, penalty and interest while at the same time refuse to disclose the auditing “roadmap and guidance” that underlie its assessments.

The audit manual is relevant for other reasons as well. The Department’s Notice of Deficiency is entitled to a presumption of correctness but only if the Department’s audit meets a minimum standard of reasonableness. *Elkay Mfg. Co. v. Sweet*, 202 Ill. App. 3d 466, 470 (1st Dist. 1990) (“Where a corrected return is challenged, the record must [] indicate that the Department’s method of preparing the corrected return meets some minimum standard of reasonableness”). If, as the Department acknowledges, the audit manual contains auditing techniques and other guidance for its auditors, then Petitioner is entitled to discover this information so that it can determine whether the appropriate techniques and other guidance were followed in Petitioner’s audit. If they were not followed, then the presumed correctness of the Department’s Notice of Deficiency, and even the legitimacy and validity of the entire audit, must be seriously questioned.

The Department's attempts to defend its withholding of the audit manual are each misplaced. First, contrary to the Department's assertion, the audit manual need not "contain facts specific to Petitioner" to have relevance to this dispute. Indeed, the nexus regulation, 86 Ill. Admin. Code § 100.9720, which the Department deemed to be "relevant to this matter," similarly (and unsurprisingly) contains no "facts specific to Petitioner." In any event, whether or not the audit manual contains "facts specific to Petitioner," the Department's audit of Petitioner itself certainly involved such facts. Therefore, information from the audit manual on how the auditors investigated and examined those facts (or were supposed to investigate and examine those facts) plainly would aid Petitioner in understanding and addressing the Department's assessments.

Second, the Department cannot sidestep its obligation to produce the audit manual by claiming that the manual is not "authoritative" and is "merely intended to aid in the internal administration of the Department." The test for discovery is not whether the information at issue is "authoritative," but merely whether it is relevant or may lead to relevant evidence. As shown above, the audit manual is unquestionably relevant to this dispute because the Department's tax assessment is grounded on an audit that used, or should have used, that manual as a "roadmap." CITE. Furthermore, to the extent that the Department intends to rely – whether explicitly or implicitly – on the audit process to defend the reasonableness of its tax assessment, Petitioner should be entitled to examine whether that process comported with the guidance set forth in the manual.¹

¹ The Department's citation to *Carlson v. United States (In re Carlson)*, 126 F.3d 915 (7th Cir. 1997), is misplaced. In *Carlson*, the taxpayer relied upon the federal Internal Revenue Manual in arguing that his failure to timely pay his tax liabilities should be excused for reasonable cause. While the Seventh Circuit noted that the Manual's guidance is not definitive, the court never suggested that the Manual was irrelevant to the dispute or that the taxpayer should be precluded

Finally, the Department's claim that disclosure of the audit manual is against public policy is much ado about nothing. If the Department is truly concerned that disclosure of the audit manual will enable other taxpayers to arrange their activities in an effort to mitigate their taxes, the Department simply needs to seek a protective order from this Court, which will alleviate the Department's concerns. Notwithstanding the Department's claim that disclosure of the audit manual would undermine its ability to enforce Illinois tax laws, the Department's Director has publicly announced that the Department will at some future date publish the audit manual. Thus, it is difficult to reconcile the Department's claims of tax Armageddon with its intent to make the audit manual available to all taxpayers. Moreover, such future disclosure of the audit manual on some date uncertain does not help Petitioner today. If the audit manual is eventually disclosed, Petitioner will be prejudiced if it does not receive a copy prior to the trial in this case.

For all of these reasons, the Department's audit manual is clearly relevant to the present litigation and should be produced *instanter*.

II. The Department's ICB File Must Be Produced Because It Is Relevant To The Present Litigation.

While the Department incorrectly argues that the audit manual is irrelevant to this matter, it makes little attempt to deny the relevance of the ICB file. In fact, the Department has acknowledged that the ICB's Action Decision sets forth "factual bases" allegedly supporting the disputed assessments here. See Exhibit C, Department's Response to Taxpayer's First Set of Interrogatories. Instead, the Department seeks to hide behind its own regulation (86 Ill. Adm.

from using it. Simply put, *Carlson* involved a merits issue, not a discovery issue. It provides no support for the Department's attempt to shield the audit manual from discovery here.

Code §215.120), to avoid disclosure of any ICB documents beyond the ICB's Action Decision, notwithstanding that these documents are material and relevant evidence in an independent court. The Court should reject the Department's unfounded position.

First, the ICB regulation at issue applies only to the ICB review process, and does not govern discovery issues in an independent court proceeding, whether it is this Tribunal or a circuit court. The ICB regulation provides that certain ICB records are not "subject to disclosure" in connection with the ICB's review process. But the question of whether the records are discoverable in litigation is governed by Illinois Supreme Court rules, statutory rules, and a court's own local rules. Thus, the question here is not whether the Department's regulation bars disclosure of the ICB file, but rather whether the Illinois Supreme Court rules, statutory rules or the Tribunal's rules bar such disclosure. Here, the Department has failed to identify any recognized statutory privilege that could conceivably shield the ICB files from production under the liberal rules of discovery. *See People ex. rel. Birkett v. City of Chicago*, 705 N.E.2d 48, 51 (Ill. 1998) ("[P]rivileges are strongly disfavored because they operate to exclude relevant evidence and thus work against the truth-seeking function of legal proceedings [T]his court has repeatedly concluded that the extension of an existing privilege or establishment of a new one is a matter best deferred to the legislature").

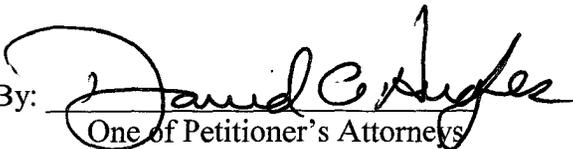
Second, the Department's claim that it cannot produce the ICB file because its Office of Legal Services neither possesses nor has access to it is disingenuous. The Department itself, not its Office of Legal Services, is the party to this case and is the party to whom Petitioner's document production requests were directed. The ICB is part of the Department. The fact that one section of the Department (Office of Legal Services) does not have the ICB file is no defense to its production. The ICB has it and can easily produce it.

Finally, producing the ICB file will not raise any confidentiality or attorney-client privilege concerns. Petitioner is asking for its own ICB file, not the ICB file of another taxpayer. Accordingly, there should be no concerns that disclosure of the file will violate the Department's duty to maintain taxpayer confidentiality. Further, the Department has not asserted that the ICB file contains privileged communications between in-house counsel and other Department personnel. Given the absence of confidentiality and privilege concerns, along with the other reasons expressed above, the Department should be compelled to produce Petitioner's ICB file instantler.

WHEREFORE, Petitioner respectfully requests that this Tribunal grant its Motion to Compel and order the Department to produce its audit manual and the ICB file relating to the audit of Petitioner for the 2007-2008 tax years.

Respectfully submitted,

PEPPERIDGE FARM INCORPORATED,
Petitioner

By: 
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmbllaw.com)
David A. Hughes (dhughes@hmbllaw.com)
David S. Ruskin (druskin@hmbllaw.com)
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(312) 606-3200

Exhibit A



Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., Mail Code 7-900
Chicago, IL 60601

October 29, 2015

BY E-MAIL (fmarcus@hmblaw.com)

Mr. Fred O. Marcus
Horwood Marcus & Berk
500 West Madison Street, Suite 3700
Chicago, Illinois 60661

Re: Pepperidge Farm, Inc. v. Illinois Department of Revenue
Docket No. 14-TT-139 and 15-TT-71 (Consolidated)

Dear Fred,

This letter is in response to your 201(k) letter, dated October 16, 2015, in which you indicated concerns regarding the Department's Objections and Responses to the Taxpayer's First Request for Production (specifically, Request Nos. 6 and 7). The Department's response herein is intended to supplement the Department's prior responses. The Department reserves its right to further supplement, as it deems necessary, any of its responses to Petitioner's discovery requests.

Request No. 6 - The Department's Audit Manual:

The Department objects to your request to produce the Audit Manual. As you correctly indicate, under Illinois Supreme Court Rule 201(b)(1), the parties are required to provide "full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts." The Audit Manual satisfies none of the above.

The Department objects to disclosure of the Audit Manual because the Audit Manual is neither relevant nor likely to lead to the discovery of relevant evidence. The Audit Manual does not provide a factual basis for any adjustment to Petitioner's tax liability. Authority for an adjustment is derived from Illinois statutory law, the Department's Regulations, and/or established case law. As such, authority for the Department's adjustments is not derived from the Audit Manual. At best, the Audit Manual provides auditors a roadmap and guidance in conducting an audit. Instead, the Department refers Petitioner to 86 Ill. Admin. Code §

100.9720, which is authoritative and provides extremely detailed guidance relevant to this matter.

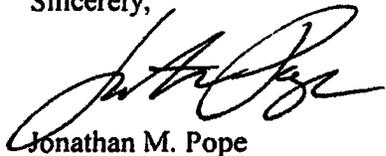
Furthermore, the Audit Manual does not contain any facts specific to the Petitioner or any other taxpayer. The primary issue in this matter is whether Petitioner can demonstrate that the Illinois and non-Illinois Sales' employees, or affiliates of Sales, properly limited their activities performed in Illinois such that those activities are protected by P.L. 86-272. The details of these activities performed in Illinois are critical and highly fact intensive. Production of the Audit Manual can neither lead to the discovery of evidence that will establish Petitioner's activities in Illinois during the tax years at issue nor illuminate how those activities are purportedly protected under P.L. 86-272.

Lastly, the Department also objects to the disclosure of the Audit Manual because requiring such disclosure is against public policy. Because the Department relies upon taxpayers' voluntary compliance with tax laws and regulations, requiring disclosure of the Audit Manual (either as a whole or in a piecemeal fashion), would enable taxpayers bent on pushing the boundaries of the law to tailor their conduct to avoid Illinois' tax laws and regulations. Requiring disclosure of the Audit Manual would undermine the Department's ability to enforce the Illinois tax code. As a result, the Department's ability to effectively enforce the tax law will be seriously impaired. Given that the Audit Manual is an investigation and law enforcement tool, at a minimum, the Audit Manual is confidential and triggers a qualified privilege against disclosure.

Request No. 7 – Informal Conference Board (ICB) documents:

The Department objects to disclosure of the ICB file, to whatever extent it exists. The Department's Office of Legal Services again represents that it neither possesses nor has access to the ICB file. The purpose of the ICB is to provide taxpayers an opportunity to resolve a tax dispute before an audit is finalized. This informal taxpayer tool is intended to help resolve disagreements at the earliest opportunity possible in the administrative process, and ICB jurisdiction is limited to making non-binding recommendations in reaching this goal. As such, the informal conference process is not subject to the requirements of the Illinois Administrative Procedure Act [5 ILCS 100] and any final action taken by the ICB is not subject to administrative review. *See* 86 Ill. Admin. Code § 215.120(a). To facilitate this informal process, any recommendations, notes, memoranda, and other records of the ICB are not subject to disclosure and do not become part of the audit file. *Id.*, at (e). To require otherwise would jeopardize the efficacy of this valuable and protected process. Therefore, the Department, including the ICB, is not required to produce the ICB file.

Sincerely,



Jonathan M. Pope
Special Assistant Attorney General
(312) 814-3185
Jonathan.pope@illinois.gov

Exhibit B

ILLINOIS INDEPENDENT TAX TRIBUNAL

Pepperidge Farm, Incorporated Petitioner,)	Docket No.: 14 TT 139
)	
)	
vs.)	
)	
Illinois Department of Revenue Respondent,)	Chief Judge James M. Conway
)	

**DEPARTMENT'S OBJECTIONS AND RESPONSES TO THE TAXPAYER'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Now comes the State of Illinois, Department of Revenue ("Department"), by its duly authorized representatives, Special Assistant Attorneys General, Rebecca L. Kulekowskis, Jonathan Pope and Ronald Forman, pursuant to Illinois Supreme Court Rule 214, and objects and responds to Pepperidge Farm, Incorporated's ("Taxpayer") Petitioner's First Request For Production of Documents as follows:

Production Request No. 1:

Any and all documents referred to or identified in the Department's Answer to the Petitioner's First Set of Interrogatories.

Response:

The documents responsive to this Production Request are included in the Department's audit file. The audit file is attached to this document.

Production Request No. 2:

Any and all documents that the Department may utilize in any hearing or court proceeding in this matter, including but not limited to in connection with the testimony of any witness, regardless of whether the Document will be offered into evidence as an exhibit.

Response:

The following documents may be utilized at hearing:

- 1) The Department's June 4, 2014 Notices of Deficiency
This document is in the Taxpayer's possession.
- 2) The Taxpayer's listing of its Illinois employees for Campbell Sales Company and related job descriptions
This document is contained in the Department's Audit File being produced in response to the First Request for Production of Documents.
- 3) The Taxpayer's Transfer Pricing Documentation Study
This document was produced to the Department by the Taxpayer in discovery.
- 4) The Acosta, Inc. Broker-Client Contract and related amendments
This document was produced to the Department by the Taxpayer in discovery.

Additional, documents may be utilized at hearing by the Department. A determination will be made at the end of discovery and the Department's response will be seasonably supplemented.

Production Request No. 3:

Any and all Documents relating to the Department's audit of Petitioner for the Years in Issue, including but not limited to the Department's audit file, audit work papers, and audit report.

Response:

See attached audit file. The audit file being presented in response to this production request is complete with two exceptions:

- 1) A transmittal sheet included in the Department's response was redacted to exclude internal coding; and
- 2) A copy of the *Wisconsin Dept. of Revenue v. Wrigley* case was included in the audit file but not tendered.

Production Request No. 4:

To the extent not covered by any of the above requests, any and all Documents and Authorities that were created, reviewed, relied upon or cited by the Department in connection with its audit of Petitioner for the Years in Issue.

Response:

The Department objects to Production Request No. 4 as being overly broad and unduly burdensome, notwithstanding this objection and without waiving the same, the Department responds: See attached audit file. To the extent a document was viewed by the Department's auditor and not retained by the auditor, such documents are not included in the Department's response to this production request.

Production Request No. 5:

To the extent not covered by any of the above requests, any and all Documents and Authorities relating to whether or not a company's activities in Illinois exceed the protections of Public Law 86-272.

Response:

The Department objects to Production Request No. 5 as being overly broad, unduly burdensome and vague, notwithstanding these objections and without waiving the same, see Department's response to Production Request 4.

Production Request No. 6:

A copy of Department's income tax audit manual.

Response:

The Department objects to Production Request No. 6 because the Department's Audit Manual is privileged and confidential, and therefore not subject to discovery. Further, the contents of the Department's audit manual do not constitute legal authority and is not the

basis for issuing the Department's June 4, 2014 Notices of Deficiency. The Department's Audit manual provides guidance to the Department's auditors on auditing techniques and is not a policy statement. The disclosure of the contents of the audit manual would potentially harm the ability of the Department to effectively audit taxpayers and enforce the State's income tax statutes and regulations.

Production Request No. 7:

To the extent not covered by any of the above requests, any and all documents relating to the Board's review of the Years in Issue for Petitioner, including but not limited to any Board files for Petitioner, member recommendations and internal correspondence or memoranda.

Response:

The Board's Action Decision is included in the Audit file being presented in response to Production Request No. 3. The Department's litigation attorneys are prohibited by statute from accessing any documents provided to the Board or any other documentation pertaining to the Board determination.

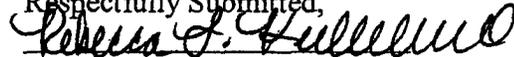
Production Request No. 8:

A copy of any and all reports (including drafts) prepared by any "controlled" or "expert" witness (as defined by the Illinois Supreme Court Rules) whom the Department may call to testify at any hearing or court proceeding in this matter.

Response:

At this point in the proceedings, a determination as to witnesses the Department will present has not been made. The Department's response to this production request will be seasonably updated.

Respectfully Submitted,



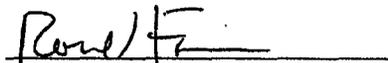
Rebecca Kulekowskis

Special Asst. Attorney General



Jonathan Pope

Special Asst. Attorney General



Ronald Forman

Special Asst. Attorney General

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statement set forth in **DEPARTMENT'S RESPONSES TO TAXPAYER'S FIRST SET OF INTERROGATORIES AND TAXPAYER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Illinois Department of Revenue

By:

A handwritten signature in cursive script, appearing to read "Laurie Evans", is written over a horizontal line.

Laurie Evans, Technical Review
Supervisor

Exhibit C

ILLINOIS INDEPENDENT TAX TRIBUNAL

Pepperidge Farm, Incorporated)	
Petitioner,)	Docket No.: 14 TT 139
)	
vs.)	
)	
Illinois Department of Revenue,)	Chief Judge James M. Conway
Respondent,)	Administrative Law Judge
)	

**DEPARTMENT'S RESPONSE TO
TAXPAYER'S FIRST SET OF INTERROGATORIES**

Now comes the State of Illinois, Department of Revenue ("Department"), by its duly authorized representatives, Special Assistant Attorneys General, Rebecca L. Kulekowskis, Jonathan Pope and Ronald Forman, pursuant to Illinois Supreme Court Rule 213, and responds to Pepperidge Farm, Incorporated's ("Taxpayer") Petitioner's First Set of Interrogatories. The Department states as follows:

RESPONSES

Interrogatory No. 1:

Identify the persons responding to and in any way contributing to each answer to Petitioner's First Set of Interrogatories and Petitioner's First Request for Production of Documents. For each such person, indicate the specific interrogatory and/or request for production to which that person contributed or responded and how that person contributed to the response.

Response No. 1:

The following Department personnel assisted in responding to Interrogatories 2-8 and Production Requests 1, 3, 4 and 5:

Mr. Sanjay Soni, Revenue Auditor III
Mr. Mark Bentivegna, Audit Supervisor
Mr. Frank Rossi, Revenue Auditor III
Ms. Laurie Evans, Technical Review Supervisor

Mr. Sanjay Soni and Mr. Mark Bentivegna were the audit personnel conducting the audit. Mr. Frank Rossi and Ms. Laurie Evans assisted in responding to the discovery requests.

Interrogatory No. 2:

Indicate whether the Department and the persons identified in the previous interrogatory have made a complete and diligent search of all documents and information in their possession or control in order to accurately respond to the discovery request.

Response No. 2:

The Department has fully responded to the Taxpayer's interrogatories based on a

review of the documents in the Department's control and possession.

Interrogatory No. 3:

Identify every factual basis supporting the Department's Notices of Deficiency dated June 4, 2014.

Response No. 3:

The Department objects to Interrogatory No. 3 as being overly broad, however not withstanding this objection and without waiving this objection, the Department responds: the factual bases supporting the Department's Notices of Deficiency dated June 4, 2014 include, but are not limited to, the activities conducted by Campbell Sales Corporation employees, as outlined in: 1) The Informal Conference Board Action Decision; 2) The Taxpayer's document listed Illinois employees of Campbell Sales Company and related job descriptions; 3) The Department's Nexus Questionnaire; and 4) The Auditor's Comments, detailing why Campbell Sales Corporation activities are beyond the scope of P.L. 86-272.

Interrogatory No. 4:

Identify every legal basis supporting the Department's Notices of Deficiency dated June 4, 2014.

Response No. 4:

The Department objects to Interrogatory No. 4 as being overly broad, however not withstanding this objection and without waiving this objection, the Department responds that the following legal authorities support the adjustments contained in the Department's June 4, 2014 Notices of Deficiency, include but are not limited to:

- 1) Public Law 86-272 (15 U.S.C. Sec. 381, et seq.)
- 2) Department Regulation 100.9720 (86 Ill. Admin. Code, Ch. 1, Sec. 100.9720)
- 3) The Department's June 4, 2014 Notices of Deficiency and attached Statement of Adjustments

Interrogatory No. 5:

Identify any and all persons who participated or contributed to the Department's determination or decision to issue the Notices of Deficiency and describe each person's participation.

Response No. 5:

The Department objects to Interrogatory No. 5 on the basis that the terms "participated or contributed to" are overly broad and undefined, however notwithstanding these objections and without waiving these objections, Mr. Sanjay Soni and Mr. Mark Bentivegna were responsible for the audit of the Taxpayer, and Ms. Jan Day of Audit

Review reviewed the audit before the Notices were issued.

Interrogatory No. 6:

If the Department determined that employees, agents or representatives of Campbell Sales Company exceeded the "solicitation of orders" within the meaning of Public Law 86-272 (15 U.S.C. Sec. 381, et seq.) in the state of Illinois during the Years in Issue, please identify such employees, agents or representatives of Campbell Sales Company.

Response No. 6:

See the listing of Illinois Employees of Campbell Sales Company and related job descriptions provided by the Taxpayer during the Taxpayer's audit. Additionally, the Taxpayer has not responded to the Department's Interrogatories 6-8 due to an ongoing investigation being conducted by the Taxpayer.

Interrogatory No. 7:

If the Department determined that employees, agents or representatives of Campbell Soup Company exceeded the "solicitation of orders" within the meaning of Public Law 86-272 (15 U.S.C. Sec. 381, et seq.) in the state of Illinois during the Years in Issue, please identify the activities in the state of Illinois that exceeded the "solicitation of orders" within the meaning of Public Law 86-272.

Response No. 7:

The Department's auditor was not able to make a complete determination as to the activities of Campbell Sales Company employees and agents conducted in Illinois because of the responses of the Taxpayer to the auditor's inquiries. For example, with respect to the Director of National Accounts (*see Employee Listing*), the Taxpayer's Tax Manager would not present contracts this employee was involved with to the Department's auditor. Without a review of these Customer contracts, the auditor was unable to fully determine the activities of Campbell Sales Company employees in Illinois.

Interrogatory No. 8:

Identify and explain any and all Authorities, guidelines or policies that the Department relies on to enforce and/or interpret Public Law 86-272 (15 U.S.C. Sec. 381, et seq.)

Response No. 8:

The Department objects to Interrogatory No. 8 as being overly broad and vague as to "any and all Authorities, guidelines or policies" and objects to "identify and explain" as being vague, however notwithstanding these objections and without waiving said objections, the Department's response includes, but is not limited to:

- 1) P.L. 86-272
- 2) Department Regulation 100.9720

3) Court Case- *Wisconsin Dept. of Revenue v. Wrigley*, 505 U.S. 214 (1992)

Interrogatory No. 9:

Identify each and every person whom you intend to call or may call as a witness at the hearing in this case. For each person, provide the following:

- a. State the name, title, address and telephone number of each such person;
- b. Whether such person is a "lay witness," independent witness," or "controlled expert witness," as those terms are defined in Illinois Supreme Court Rule 213(f);
- c. For each witness, identify the subjects on which the witness will testify;
- d. Identify the documents, visual aids, or exhibits that will be offered in connection with the testimony of each such witness;
- e. For each independent witness, describe the independent expert witness' opinions;
- f. For each controlled expert witness identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefore; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.

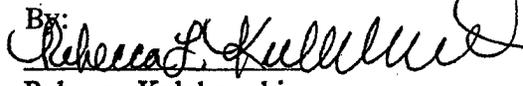
Response No. 9:

A determination as to any witnesses the Department may call at hearing in this case has not been made. The Department's response to this interrogatory will be seasonably supplemented when written discovery is completed and these determinations have been made by the Department.

Respectfully submitted

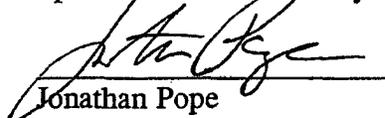
LISA A. MADIGAN
ATTORNEY GENERAL, STATE OF ILLINOIS

By:



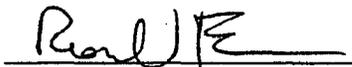
Rebecca Kulekowskis

Special Assistant Attorney General



Jonathan Pope

Special Assistant Attorney General



Ronald Forman

Special Assistant Attorney General

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he served a copy of the foregoing **PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PRODUCTION OF DOCUMENTS** on other counsel of record by enclosing the same in an envelope, properly addressed, and delivered by regular U.S. mail, before the hour of 5:00 p.m. on the 4th day of January, 2016, addressed as follows:

Ronald Forman
ronald.forman@illinois.gov
Illinois Department of Revenue
100 W Randolph Street
Level 7-900
Chicago, IL 60601

Rebecca L. Kulekowskis
rebecca.kulekowskis@illinois.gov
Illinois Department of Revenue
100 W Randolph Street
Level 7-900
Chicago, IL 60601

Jonathan M. Pope
jonathan.pope@illinois.gov
Illinois Department of Revenue
100 W Randolph Street
Level 7-900
Chicago, IL 60601

A handwritten signature in black ink that reads "David A. Hughes". The signature is written in a cursive style with a horizontal line underneath the name.