IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

PEPPERIDGE FARM INCORPORATED	)	
	)	
Petitioner,	)	
	)	
v.	)	No.
	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Defendant.	)	

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PETITION

Petitioner, Pepperidge Farm Incorporated ("Petitioner"), by and through its attorneys, Horwood Marcus & Berk Chartered, complains of the Defendant, the Illinois Department of Revenue ("Department"), and alleges as follows:

PARTIES

1. For the tax years ending July 31, 2007 and July 31, 2008 ("Years in Issue"), Petitioner was a Connecticut corporation whose principal business address was 595 Westport Ave., Norwalk, CT, 06851.

2. Petitioner is represented by Fred O. Marcus, David A. Hughes and Christopher T. Lutz of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3210 or fmarcus@hmblaw.com; 312-606-3212 or dhughes@hmblaw.com; and 312-606-3222 or clutz@hmblaw.com, respectively.

3. Petitioner's FEIN is 06-0613103.

4. Petitioner is an indirect, wholly-owned subsidiary of Campbell Soup Company.

5. Petitioner is engaged in the manufacture and wholesale distribution of a wide-variety of bakery goods, biscuits, and frozen food products on a nationwide basis.

6. Petitioner is the designated agent for a unitary group of affiliates that files Illinois corporate income and replacement tax returns on a combined basis.

7. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

NOTICES

8. On June 4, 2014, the Department issued two Notices of Deficiency ("Notices") for tax, penalties, and interest totaling $5,574,386.16 for the Years in Issue. The Notices are attached hereto as Exhibits A and B, respectively. Unless otherwise stated, the following paragraphs relate to the Years in Issue.

JURISDICTION

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

10. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

BACKGROUND

11. Petitioner and its unitary affiliates timely filed combined Illinois corporate income and replacement tax returns for the Years in Issue.

12. One of Petitioner's unitary affiliates that was included in the combined income tax returns for the Years in Issue was Campbell Sales Company ("Sales").

13. Sales is the selling corporation for Campbell Soup Company's lines of consumer soup, sauce, and beverage products in the United States.

14. Sales is incorporated under the laws of New Jersey and maintains its principal place of business in Camden, New Jersey.

15. On its returns for the Years in Issue, Petitioner excluded Sales' Illinois gross receipts from the numerator of its combined sales factor because Sales was not subject to Illinois income tax in accordance with P.L. 86-272 (15 U.S.C. Sec. 381 et seq.).

16. The Department audited Petitioner for the Years in Issue and issued the Notices on June 4, 2014.

17. The Department determined that Sales is subject to Illinois' taxing jurisdiction and therefore included Sales' Illinois receipts in the numerator of Petitioner's combined Illinois sales factor, thereby resulting in the tax deficiency in issue.

COUNT I

Public Law 86-272 Precludes the Department from Including Sales' Illinois Receipts in the Numerator of Petitioner's Illinois Sales Factor

18. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 17, inclusive, hereinabove.

19. P.L. 86-272 provides that an out-of-state seller of tangible personal property is not subject to a state's net income tax if the seller's only connection with the state is the solicitation of orders, which are sent outside the state for acceptance or rejection and, if accepted, are filled by shipment or delivery from a point outside the state.

20. Sales purchases product from an affiliate at an arm's length price and then resells the product to third party retailers and wholesalers throughout the country, including Illinois.

21. Sales does not maintain an office, warehouse, storage facility, sample room or any other place of business in Illinois.

22. Sales does not own, maintain, or lease any real, tangible, or personal property located in Illinois.

23. Sales employees carry inventory samples, supplies and other equipment in Illinois which they use in their solicitation activities.

24. Sales employees do not resolve customer complaints and nor do they do any investigating of complaints in Illinois.

25. Sales employees send all complaints and disputes to its home office in New Jersey.

26. Sales employees do not replace damaged items in customers' displays or inventory in Illinois.

27. Sales employees do not receive purchase orders from customers in Illinois.

28. Purchase orders are sent outside Illinois for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside Illinois.

29. Sales employees do not accept returned merchandise in Illinois.

30. Sales employees do not make repairs or provide maintenance service to the property sold in Illinois.

31. Sales employees do not collect current or delinquent accounts in Illinois.

32. Sales employees do not investigate customers' credit worthiness in Illinois.

33. Sales employees do not repossess property in Illinois.

34. Sales employees do not secure deposits on sales in Illinois.

35. Sales employees do not replace damaged items in customers' displays or inventory in Illinois.

36. Sales' presence in Illinois during the Years in Issue was limited to employees who worked out of their Illinois homes and whose activity was limited to the solicitation of orders of tangible personal property and activities ancillary to solicitation under P.L. 86-272 and the ruling in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992).

37. Sales is exempt from net income tax under P.L. 86-272 and its Illinois receipts therefore may not be included in the numerator of Petitioner's combined Illinois sales factor.

38. The Department's modification to Petitioner's Illinois sales factor and resulting Illinois apportioned income were in error.

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

(a) finds and declares that Sales is not subject to the income tax jurisdiction of Illinois;

(b) finds and declares that Sales' Illinois receipts may not be included in the numerator of Petitioner's combined Illinois sales factor;

(c) enters judgment in favor of Petitioner and against the Defendants and orders Defendants to withdraw the Notices; and

(d) grants such further relief as the Tribunal deems appropriate under the circumstances.

COUNT II

All penalties should be abated based on reasonable cause

39. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 38, inclusive, hereinabove.

40. For the Years in Issue, the Department assessed penalties in an amount totaling $1,239,988.80.

41. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

42. 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 its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

43. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

44. Petitioner, relying on P.L. 86-272, the ruling in *Wisconsin Department of Revenue v. Wrigley*, 505 U.S. 214 (1992), and Department regulations reasonably concluded that Sales was exempt from Illinois income tax and that its Illinois receipts should therefore be excluded from Petitioner's combined Illinois sales factor.

45. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

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

(a) finds and declares that all penalties should be fully abated based on reasonable cause; and

(b) grants such further relief as the Tribunal deems appropriate under the circumstances.

Respectfully submitted,

PEPPERIDGE FARM, INC.
Petitioner

By: _____
One of Petitioner's Attorneys

Fred O. Marcus (fmarcus@hmblaw.com)
David A. Hughes (dhughes@hmblaw.com)
Christopher T. Lutz (clutz@hmblaw.com)
Horwood Marcus & Berk Chartered
500 W. Madison Street, Suite 3700
Chicago, IL 60661
(312) 606-3200

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing **Petition** are true, accurate and correct.

By: _____

Name: Ken Choi

Its: AVP — Tax

Subscribed and Sworn to before me
this 23rd day of July, 2014.

_____
Notary Public

PAMELA A MEYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires November 30, 2017

2191041/3/8917.056

Notice of Deficiency

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

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

June 4, 2014

Letter ID: CNXXXX6156X59841

#BWNKMGV
#CNXX XX61 56X5 9841#
PEPPERIDGE FARM INC
1 CAMPBELL PLACE MAIL STOP #37
CAMDEN NJ 08101

Taxpayer ID:	06-0613103
Audit ID:	A465253376
Reporting period:	July 2007
Total Deficiency:	$2,263,803.40
Balance due:	$2,263,803.40

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 "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 this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to 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 deficiency 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 balance due 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.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer

Brian Hamer
Director

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

(217) 785-4472

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX6156X59841

Reasons for deficiency

We have changed your apportionment factor to reflect the proper method of apportionment required by Illinois law. [35 ILCS 5/304(a)]
We have corrected your investment credit to reflect the proper computation using the combined filing method. [35ILCS 5/1501(a)(27) & 502(e)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of $577,503.40 has been computed through June 4, 2014.

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX6156X59841

Computation of deficiency	Reporting Period: 31-Jul-2007
Income or loss	
Federal taxable income	$1,007,762,733.00
Net operating loss deduction	$0.00
Income tax and replacement tax deduction	$995,912.00
Income or loss	$1,008,758,645.00
Base income or loss	
Foreign dividends subtraction	$244,814,982.00
Illinois bonus depreciation subtraction	$20,641,269.00
Total subtractions	$265,456,251.00
Base income or net loss	$743,302,394.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	-$6,488,722.00
Business income or loss	$749,791,116.00
Apportionment formula	
Sales Factor	
Total everywhere	$6,996,844,172.00
Within Illinois	$394,152,970.00
Apportionment factor	0.056333
Business income/loss apportionable to IL	$42,237,983.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	$0.00
Base income or net loss allocable to IL	$42,237,983.00
Net income	
Base income or net loss	$42,237,983.00
Approved Net Loss Carry Forward	$0.00
Approved Net Loss Carry Back	$0.00
IL net loss deduction (NLD) Varified	$0.00
Standard exemption	$0.00
Net income	$42,237,983.00
Net replacement tax	
Replacement tax addback after apportionment	$0.00
Replacement tax	$1,055,950.00
Recapture of investment credits	$0.00

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX6156X59841

Replacement tax before credits	$1,055,950.00
Replacement tax investment credits	$19,808.00
Net replacement tax	$1,036,142.00
Net income tax	
Income tax	$2,027,423.00
Recapture of investment credits	$0.00
Income tax before credits	$2,027,423.00
Income tax investment credits	$0.00
Credit for replacement tax paid	$0.00
Carryforward of credit for repl. tax paid	$0.00
Net income tax	$2,027,423.00
Total tax due	
Net replacement tax	$1,036,142.00
Net income tax	$2,027,423.00
Total net income and replacement tax due	$3,063,565.00
Minus tax previously assessed	-$1,859,065.00
Total tax deficiency	$1,204,500.00
UPIA-5 late-payment penalty (Audit)	$481,800.00
Plus interest on tax through June 4, 2014	$577,503.40
Total deficiency	* $2,263,803.40

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

Balance due	* $2,263,803.40

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

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

Notice of Deficiency

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

STATE OF Illinois
DEPARTMENT OF REVENUE
tax.illinois.gov

June 4, 2014

Letter ID: CNXXXX7876367X42

#BWNKMGV
#CNXX XX78 7636 7X42#
PEPPERIDGE FARM INC
1 CAMPBELL PLACE MAIL STOP #37
CAMDEN NJ 08101

Taxpayer ID:	06-0613103
Reporting period:	July 2008
Total Deficiency:	$3,310,582.76
Balance due:	$3,310,582.76

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 "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 this notice. If you file a protest on time, we must reconsider the proposed deficiency, and if requested, grant you or your authorized representative an administrative hearing. An administrative hearing is a formal legal proceeding conducted pursuant to 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 deficiency 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 balance due 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.

If you have questions, call us at the telephone number shown below.

Sincerely,

Brian Hamer
Director

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

(217) 785-4472

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX7876367X42

Reasons for deficiency

We adjusted your subtraction modification to reflect the correct amount of Illinois depreciation related to the bonus depreciation addback, reversal of the bonus depreciation during the last year of depreciation and/or the reversal of the bonus depreciation on asset disposals. [35 ILCS 5/203(b)(2)(T), (c)(2)(R), (d)(2)(O)]
We have changed your apportionment factor to reflect the proper method of apportionment required by Illinois law. [35 ILCS 5/304(a)]

We have corrected your investment credit to reflect the proper computation using the combined filing method. [35ILCS 5/1501(a)(27) & 502(e)]

If this liability qualified for amnesty, and you did not pay that liability during the amnesty period held October 1, 2010, through November 8, 2010, your penalty and interest amounts may be doubled. [86 Ill. Admin. Code 520/101(b)]

Penalties

We are imposing an additional late-payment penalty because you did not pay the amount shown due on the Form IL-870, Waiver of Restrictions, within 30 days after the "Date of Issuance" shown on the form. Once an audit has been initiated, the additional late payment penalty is assessed at 15% of the late payment. Failure to pay the amount due or invoke protest rights within 30 days from the "Date of Issuance" on the Form IL-870, results in this penalty increasing to 20%. [35 ILCS 735-/3-3(b-20)(2)] (for liabilities due on or after 1/1/2005)

Interest

Interest on tax in the amount of $656,921.96 has been computed through June 4, 2014.

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX7876367X42

Computation of deficiency	Reporting Period: 31-Jul-2008
Income or loss	
Federal taxable income	$1,223,204,225.00
Net operating loss deduction	$0.00
Income tax and replacement tax deduction	$1,455,998.00
Other additions	$0.00
Income or loss	$1,224,660,223.00
Base income or loss	
Foreign dividends subtraction	$154,274,813.00
Illinois bonus depreciation subtraction	$9,688,514.00
Total subtractions	$163,963,327.00
Base income or net loss	$1,060,696,896.00
Income allocable to Illinois	
Non-business income or loss	$0.00
Non-unitary partnership bus. income or loss	-$9,221,174.00
Business income or loss	$1,069,918,070.00
Apportionment formula	
Total sales everywhere	$7,259,804,296.00
Total Illinois sales	$337,377,840.00
Apportionment factor	0.046472
Business income/loss apportionable to IL	$49,721,233.00
Nonbusiness income/loss allocable to IL	$0.00
Non-unitary part. business income app. to IL	$0.00
Base income or net loss allocable to IL	$49,721,233.00
Net income	
Base income or net loss	$49,721,233.00
IL net loss deduction (NLD)	$0.00
Net income	$49,721,233.00
Net replacement tax	
Replacement tax	$1,243,031.00
Recapture of investment credits	$0.00
Replacement tax before credits	$1,243,031.00
Replacement tax investment credits	$6,590.00
Net replacement tax	$1,236,441.00
Net income tax	
Income tax	$2,386,619.00
Recapture of investment credits	$0.00

Statement

Date: June 4, 2014
Name: PEPPERIDGE FARM INC
Taxpayer ID: 06-0613103
Letter ID: CNXXXX7876367X42

Income tax before credits	$2,386,619.00
Income tax investment credits	$0.00
Net income tax	$2,386,619.00
Refund or balance due	
Net replacement tax	$1,236,441.00
Net income tax	$2,386,619.00
Total net income and replacement tax due	$3,623,060.00
Minus tax previously assessed	-$1,727,588.00
Total tax deficiency	$1,895,472.00
UPIA-5 late-payment penalty (Audit)	$758,188.80
Plus interest on tax through June 4, 2014	$656,921.96
Total deficiency	* $3,310,582.76

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

Balance due	* $3,310,582.76

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

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

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that he caused a copy of the foregoing **Petition** to be served upon other counsel of record by messenger delivery before the hour of 5:00p.m. on the 24th day of July, 2014, addressed as follows:

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