

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

| | | |
|--|---|---------------------------------|
| PEPPERIDGE FARM INCORPORATED, |) | |
| |) | |
| Petitioner, |) | Case No. 14-TT-139 |
| |) | |
| v. |) | |
| |) | Chief Judge James Conway |
| ILLINOIS DEPARTMENT OF REVENUE, |) | |
| |) | |
| Respondent. |) | |

DEPARTMENT’S MOTION TO COMPEL

Now comes the Illinois Department of Revenue (“Department”), by its duly authorized representatives, Ronald Foreman, Rebecca L. Kulekowskis, and Jonathan M. Pope, Special Assistant Attorneys General, and moves the Administrative Law Judge (“ALJ”) in this matter pursuant to Illinois Supreme Court Rules 213 and 214 and Illinois Independent Tax Tribunal Rule 315 (86 Ill. Admin. Code § 5000.315) to enter an order compelling Pepperidge Farm, Incorporated (“Petitioner” or “Taxpayer”) to fully respond to the Department’s First Set of Interrogatories and First Request for Production of Documents, and in support thereof states as follows:

A. Background.

1. Campbell Soup Company (“Parent” or “Soup”) is the parent company of an affiliated group of corporations involved in the manufacture and distribution of various food products. Parent manufactures and distributes its food products through its affiliates and operating subsidiaries. Parent is headquartered in Camden, New Jersey.

2. Campbell Soup Supply Company (“Supply”) is a wholly-owned subsidiary of Parent. Supply operates as the manufacturer of soup products on behalf of Parent and affiliates.

3. Campbell Soup Company Brands, LP (“Brands”) is a wholly-owned subsidiary of Parent. Brands performs brand management, product development, and marketing activities on behalf of Parent’s affiliates.

4. Campbell Sales Company (“Sales”) is a wholly-owned subsidiary of Parent. Sales operates as a limited risk distributor of Parent and affiliates and is primarily in charge of customer acquisitions and customer service functions. Sales is incorporated under the laws of New Jersey. For the Years at Issue, Sales employed at least twenty-two Illinois based employees.

5. Brands and Sales have a distribution agreement in place for the Years at Issue (“Sales Agreement”). The Sales Agreement obligates Sales to perform certain undertakings. For example, Sales is obligated to “ensure that the products, whether in storage or on customers’ shelves or elsewhere, are properly rotated at all times.” Sales Agreement, ¶ 6.3 (Exhibit 1). Sales, at its own expense, is obligated to “destroy any and all Products . . . that have exceeded their expiration date.” *Id.* Further, Sales is obligated to “keep Brands promptly and fully informed of any changes in local or general conditions which may affect the market . . . including up-to-date information on competitive products and prices” *Id.*, ¶ 6.7. Lastly, per the Sales Agreement, Sales is obligated to “immediately” notify Brands if Sales learns of any improper or wrongful use of Brands’ intellectual property and to “use every effort to safeguard the [intellectual] property rights and interests of Brands” *Id.*, ¶ 13.

6. Sales sells the product through Acosta, Inc. (“Acosta”), an independent broker. Sales and Acosta entered into a sales contract (“Acosta Agreement”) under which Acosta is “the sole and exclusive Sales Representative of [Sales] for negotiating sales of the merchandise and products” Acosta Agreement ¶ 13 (Exhibit 2). Sales agreed not to enter into any contract with any other sales representative with respect to the products. *Id.* Nonetheless, the parties agreed that nothing in the Sales Agreement would prohibit Sales from communicating with or visiting the customers to which Acosta exclusively represents. *Id.*

7. Although Sales had contracted with Acosta, such that Acosta would perform the sales related activities for the products, Sales of course remained contractually obligated to Brands for the activities agreed to in the Sales Agreement.

8. The chain of operations is as such: Supply manufactured product, which it sold to Brands. Brands sold the product to Sales. Sales, as the exclusive U.S. distributor of Brands, sold the product to various wholesale retailers (through Acosta).

9. Petitioner Pepperidge Farm is an indirect wholly-owned subsidiary of Parent. Petitioner is incorporated under the laws of Connecticut.

10. Petitioner is the designated agent for this unitary group of affiliates (which does not include Acosta) and files Illinois corporate and replacement tax returns on a combined basis.

11. Petitioner and its unitary affiliates timely filed Illinois combined corporate income and replacement tax returns (“IL-1120”) for tax years ending July 31, 2007 and July 31, 2008 (the “Years at Issue”).

12. On its returns for the Years at Issue, Petitioner excluded Sales' Illinois gross receipts from the numerator of its combined sales factor.

13. The Department conducted an audit of Petitioner's IL-1120s for the Years at Issue. Based on the information obtained during the audit, the Department's auditor determined that Sales is subject to Illinois' taxing jurisdiction and therefore included Sales' Illinois gross receipts in the numerator of Petitioner's combined Illinois sales factor. This determination led to a deficiency for the Years at Issue.

14. The Department issued Petitioner a Notice of Deficiency, dated June 4, 2014, for the 2007 tax year in the amount of \$2,263,803.40, and for the 2008 tax year in the amount of \$3,310,582.76 (collectively, the "Notices"). Exhibit 3.

15. On July 24, 2014, Petitioner timely protested the Notices. Petitioner asserts that Sales was not subject to Illinois income tax pursuant to P.L. 86-272 (15 U.S.C. Sec. 381 *et seq.*). *See e.g.*, Petition, ¶ 15.

16. On September 26, 2014, the Department propounded its First Set of Interrogatories and First Request for Production of Documents (collectively, "Discovery Requests").

17. On December 15, 2014, Petitioner propounded its Responses to Defendant's First Written Interrogatories ("Interrogatory Responses") and First Request for Production of Documents ("Production Responses"). Production Responses, Exhibit 4. On May 4, 2015, Petitioner propounded its Supplemental Responses to the Department's First Set of Interrogatories ("Supplemental Responses"). Exhibit 5.

18. On May 20, 2015, Petitioner's Counsel and the Department's attorneys met in person in an attempt to resolve differences concerning the Department's Discovery Requests and Petitioner's responses thereto. In satisfaction of Illinois Supreme Court Rule 201(k), the Department's attorneys state that reasonable attempts to resolve differences with respect to discovery have been made and the parties are unable to reach an accord as to what information and documentation Petitioner will provide to the Department in response to the Department's Discovery Requests.

19. The Department asserts that critical portions of Petitioner's responses to the Department's Discovery Request are deficient. Accordingly, the Department now files this Motion to Compel Petitioner's complete response to the Department's Discovery Requests, as detailed *infra*.

20. Generally, the issue in this matter is whether Petitioner may properly exclude Sales' gross receipts from the numerator of Petitioner's combined Illinois sales factor, thereby eliminating the tax deficiency.

21. The narrower issue is whether Petitioner can demonstrate that the Illinois and non-Illinois employees of Sales, or its affiliates acting on behalf of Sales, properly limited their activities performed in Illinois such that those activities are protected by P.L. 86-272. Therefore, the Department is entitled to explore the boundaries of the activities performed in Illinois as those activities are directly relevant to the question of nexus.

22. Activity conducted in interstate commerce may establish sufficient nexus with Illinois to permit imposition of Illinois income tax upon a non-resident taxpayer when the non-resident earns or receives income in Illinois within the meaning of the

Illinois Income Tax Act (“IITA”). 86 Ill. Admin. Code § 100.9720(a); *Citing Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076 (1977); *Quill v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992).

23. Public Law 86-272, codified at 15 U.S.C. §§ 381-384, may shield a non-resident from state income taxation if the actions of the non-resident do not exceed the “mere solicitation” of orders in the state for sale of tangible personal property. *See e.g.*, 86 Ill. Admin. Code § 100.9720(c)(2).

24. However, if a nonresident taxpayer’s activities exceed the limited scope of “mere solicitation” of orders, or its activities are not “ancillary” to such invitations for orders, P.L. 86-272 does not provide immunity and the non-resident taxpayer is therefore subject to Illinois income and replacement tax as apportioned under IITA Section 304. *Id.*

25. Accordingly, the Department propounded Discovery Requests to ascertain who performed activities in Illinois for the Years at Issue and what those activities entailed.

26. Illinois courts allow great latitude in the scope of discovery. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 692 N.E.2d 790 (1st Dist. 1998). The concept of relevance is broader for discovery purposes than for purposes of admission of evidence at trial because it includes not only what is admissible at trial but also that which leads to what is admissible. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 692 N.E.2d 790 (1st Dist. 1998); *Crnkovich v. Almeida*, 261 Ill. App. 3d 997, 634 N.E.2d 1130 (3rd Dist. 1994); *United Nuclear Corp. v. Energy Conversion Devices, Inc.*, 110 Ill. App. 3d 88, 441 N.E.2d 1163 (1st Dist. 1982).

27. It is the Department's position that the following Petitioner responses to the Department's Discovery Requests are insufficient.

B. Interrogatories.

28. Interrogatory No. 6. This interrogatory sought information regarding which *non-Illinois* Sales employees entered Illinois for the purpose of conducting business on behalf of Sales or Parent and any affiliates. Taxpayer made a host objections, too numerous to duplicate here in full. *See* Exhibit 5, p. 4-5.

29. Generally, Petitioner provided its objections and responses based on the date of the information sought in conjunction with Petitioner's method of record retention. According to Petitioner, any information prior to 2008 is in hardcopy paper format; information for the 2008 calendar year and forward is in electronic format. *Id.* Recall that the tax years here at issue end July 31, 2007 and July 31, 2008. Thus, according to Petitioner, seventeen months of relevant records are in paper format; seven months are stored electronically.

30. With respect to pre-2008 records, Petitioner objects that, assuming the records can be produced "if at all," such "exercise would require a very substantial investment of time and expense by the Petitioner" due to the perceived nuisance of "manually reviewing paper files which are not readily available or organized in a manner susceptible to searches for information." *See* Exhibit 5, pp. 4-5. Records are retained in case the information they contain is needed at a later time, say, should litigation arise. This is entirely predictable. It is remarkable that Petitioner chose to store its records in such a way that is "not readily available or organized in a manner susceptible to searches for information" and now objects when asked to search those

records. Nevertheless, the information sought is critical to understanding what activities Sales' non-Illinois employees performed in Illinois.

31. With respect to records for 2008 and forward, Petitioner objects that, because "the electronically maintained information does not identify the purpose of the travel, Petitioner had to expend substantial additional time and resources separately conducting a reasonable investigation." *Id.* In other words, it appears that what the Department has received is what it's going to get. This objection is also remarkable in that Petitioner's records relating to its employees' business travel habits apparently do not indicate the purpose for such travel.

32. Given that Petitioner's position is that Sales' employee activities in Illinois are protected by P.L. 86-272, the Department asserts that it is extremely reasonable to expect to discover the purpose as to why Sales' non-Illinois employees traveled to Illinois and what activities they performed therein. Indeed, if Petitioner does not know the reason for travel and cannot say what exactly the employees did in Illinois, how can Petitioner claim in good faith that those employees' activities did not go beyond the limited protection of P.L. 86-272?

33. Subject to its objections, Petitioner provided a list of eighty-six current and former employees who traveled to Illinois in the first seven months of 2008. *See* Exhibit 5, pp. 5-7. Petitioner further provided that these eighty-six non-Illinois Sales employees' "visits fell into one of three general categories" but does not indicate to which of the categories the employees' activities relate. *Id.*, at p. 5. Ultimately, even if that information is obtained, it would not be helpful. Moreover, this list of employees only covers the last seven months of the twenty-four months at issue and is

therefore woefully incomplete.

34. Answering precisely why eighty-six non-Illinois Sales employees entered Illinois within a seven month span is critical to determining whether nexus was established. So too is unraveling the facts of the remaining seventeen months of the Years at Issue. For example, given that Acosta is the sole selling representative in Illinois per the Acosta Agreement, why did Sales send no less than eighty-six employees to Illinois in such a short time-frame? This is in addition to the twenty-two Sales employees based in Illinois. Moreover, if Sales has outsourced the sales function to Acosta, why does Sales reserve the right to visit the customers? Coming full circle, what were all of these Sales employees and Acosta doing in Illinois? Petitioner's response fails to satisfy this simple but critical question.

35. In sum, there is no doubt that Sales sent employees to conduct business in Illinois. Interrogatory No. 6 seeks to establish who those employees were, and what precisely those employees did in Illinois (i.e., did their activities exceed P.L. 86-272). Petitioner is either unable or unwilling to produce straightforward and relevant information that should exist to answer this critical question. The Department herein seeks to compel Petitioner's cooperation in producing the information requested.

36. Interrogatory No. 7. This Interrogatory sought information identifying any Soup employees, including affiliates and exclusive of Sales employees, who entered into Illinois for the Years at Issue for the purpose of soliciting sales of the products sold by Sales. Taxpayer made a number of objections and did not provide a substantive response.

37. The information sought is relevant because it is entirely possible that

non-Sales employees performed activities in Illinois on behalf of Sales that Sales would be contractually obligated to perform. For example, given that Brands performs brand management, product development, and marketing activities on behalf of Parent's affiliates, including Sales, the Department seeks information illuminating what those activities were.

38. Interrogatory No. 8. This Interrogatory sought further detail for Interrogatory No. 7. Specifically, for each person identified in Interrogatory No. 7, this Interrogatory sought those employees' job titles and the affiliate that employed such persons. Taxpayer objected to Interrogatory No. 8 for the same reasons as to Interrogatory No. 7. For the same or similar reasons as identified in Interrogatory No. 7, the Department asserts that this information is relevant and the Department therefore seeks to compel its production.

C. Document Production Requests.

39. Request No. 1. This request sought copies of all documents identified in Taxpayer's interrogatory responses that were not presented in response to a specific production request. Taxpayer did provide some limited documentation. However, the Department asserts that the response is incomplete.

40. Specifically, in response to Interrogatory No. 7, Taxpayer makes reference to paper files for the pre-2008 period, and produced a simple table of eighty-six employees and job titles for the 2008 and forward period. By Taxpayer's own admission, paper records exist to some extent for the pre-2008 period. Moreover, Taxpayer necessarily consulted 'something' in compiling the list of employees for 2008 and forward, begging the question, what documents did Taxpayer use to compile

the information it provided? The Department seeks to compel production of these documents.

41. The purpose of discovery is the ascertainment of truth and to promote either a fair settlement or a fair trial. *Computer Teaching Corp. v. Courseware Applications, Inc.* (4th Dist. 1990), 199 Ill.App.3d 154, 556 N.E.2d 816, *app. den.* 133 Ill.2d 553, 561 N.E.2d 688. Another purpose is to eliminate surprises so that a judgment will rest upon the merits, and not upon the skillful maneuvering of counsel. *Mistler v. Mancini* (1st Dist. 1982) 111 Ill.App.3d, 443 N.E.2d 1125.

42. For all of the foregoing reasons, the Department moves the Administrative Law Judge to enter an order compelling Taxpayer to fully respond to the Department's First Set of Interrogatories and First Request for Production of Documents as set forth above.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: /s/ Ronald Forman
Ronald Forman
Special Assistant Attorney General

By: /s/ Rebecca L. Kulekowskis
Rebecca L. Kulekowskis
Special Assistant Attorney General

By: /s/ Jonathan M. Pope
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EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

Notice of Deficiency

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



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
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 |

Notice of Deficiency

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



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 735-13-3(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 |

EXHIBIT 4

EXHIBIT 5

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

| | | |
|--------------------------------------|---|------------------------------------|
| PEPPERIDGE FARM INCORPORATED, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 14-TT-139 |
| |) | |
| THE ILLINOIS DEPARTMENT |) | Chief Judge James M. Conway |
| OF REVENUE, |) | |
| Respondent. |) | |

NOTICE OF FILING

TO: Mr. Fred O. Marcus
Mr. David A. Hughes
Horwood Marcus & Berk Chartered
500 W. Madison, Suite 3700
Chicago, Illinois 60601
(312) 606-3200

PLEASE TAKE NOTICE that on June 10, 2015, Respondent filed by email, with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601, **DEPARTMENT'S MOTION TO COMPEL** in the above captioned matter.

/s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General

Jonathan M. Pope
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-3185 phone
(312) 814-4344 facsimile
jonathan.pope@illinois.gov

Dated: June 10, 2015

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

| | | |
|--------------------------------------|---|------------------------------------|
| PEPPERIDGE FARM INCORPORATED, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 14-TT-139 |
| |) | |
| THE ILLINOIS DEPARTMENT |) | Chief Judge James M. Conway |
| OF REVENUE, |) | |
| Respondent. |) | |

NOTICE OF MOTION

TO: Mr. Fred O. Marcus
Mr. David A. Hughes
Horwood Marcus & Berk Chartered
500 W. Madison, Suite 3700
Chicago, Illinois 60601
(312) 606-3200

PLEASE TAKE NOTICE that on June 16, 2015, at 2:00 p.m., the undersigned will appear by telephone before James M. Conway, Chief Administrative Law Judge, or another Administrative Law Judge designated in his stead, at the Illinois Independent Tax Tribunal, to present the **DEPARTMENT'S MOTION TO COMPEL** in the above captioned matter.

/s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General

Jonathan M. Pope
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-3185 phone
(312) 814-4344 facsimile
jonathan.pope@illinois.gov

Dated: June 10, 2015

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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| PEPPERIDGE FARM INCORPORATED, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 14-TT-139 |
| |) | |
| THE ILLINOIS DEPARTMENT |) | Chief Judge James M. Conway |
| OF REVENUE, |) | |
| Respondent. |) | |

CERTIFICATE OF SERVICE

Jonathan M. Pope certifies that he is a Special Assistant Attorney General of the State of Illinois duly appointed by Lisa Madigan, Attorney General of the State of Illinois; that he is authorized to make this certificate; that on June 10, 2015, before the hour of 5:00 p.m. (C.S.T.) he served a true and exact copy of the foregoing instrument entitled **DEPARTMENT'S MOTION TO COMPEL** on the above Taxpayer/Petitioner by sending the same as an attachment to an email message addressed to Taxpayer/Petitioner at a designated email address:

Fred O. Marcus: fmarcus@hmbllaw.com
David A. Hughes: dhughes@hmbllaw.com

/s/ Jonathan M. Pope
Jonathan M. Pope
Special Assistant Attorney General
Illinois Department of Revenue
100 West Randolph Street, 7-900
Chicago, IL 60601
(312) 814-3185
jonathan.pope@illinois.gov