

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

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

**DEPARTMENT’S RESPONSE TO PETITIONER’S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

NOW COMES the Illinois Department of Revenue (“Department”), by its duly authorized representatives, Rebecca L. Kulekowskis, Ronald Forman, and Jonathan Pope, Special Assistant Attorneys General, for its Response to Petitioner’s Motion to Compel Production of Documents (“Motion”) states as follows:

INTRODUCTION

Generally, the issue in this matter is whether Petitioner may properly exclude the gross receipts of Campbell Sales Company (“Sales”) from the numerator of Petitioner’s combined Illinois sales factor. The issue narrows as to 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.

In order to better understand the nature of Sales’ employees’ robust Illinois activities, the parties exchanged discovery requests, including written interrogatories and production requests. Petitioner was unsatisfied with the Department’s initial responses and objections, specifically Production Request No. 6 and No. 7. Pursuant to Illinois Supreme Court Rule 201(k), Petitioner wrote the Department a letter indicating dissatisfaction with the Department’s objections. *See*

Petitioner's Exhibit A. The Department timely replied in a detailed response letter. *See* Petitioner's Exhibit B. Petitioner remains unsatisfied and therefore filed the Motion at hand.

The objects of disagreement in Petitioner's discovery request are: (1) the Department's Audit Manual ("Audit Manual") (Production Request No. 6); and (2) the Department's Informal Conference Board ("ICB") File (Production Request No. 7). Intuitively, it is clear that neither the Audit Manual nor the ICB File provide any value in resolving the issue in this matter. For the reasons stated herein, these items of dispute are not discoverable and this Tribunal should therefore deny Petitioner's Motion to Compel Production of Documents.

ARGUMENT

I. Petitioner's request to compel production of the Audit Manual (Production Request No. 6) should be denied.

The Department objects to Petitioner's motion to compel the Audit Manual. Pursuant to 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. "[A] court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant or will lead to such evidence." *Youle v. Ryan*, 349 Ill. App. 3d 377, 380-81 (4th Dist. 2004).

The Audit Manual is neither relevant nor likely to lead to the discovery of relevant evidence. 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.

The Department also objects to the disclosure of the Audit Manual because the Audit Manual does not provide authoritative value and is merely intended to aid in the internal administration of the Department. *See, Carlson v. United States (In re Carlson)*, 126 F.3d 915, 922 (7th Cir. 1997). Nor does the Audit Manual confer any rights whatsoever upon taxpayers. *Id.* Here, the Audit Manual does not provide a factual basis for any adjustment to Petitioner's tax liability nor was it cited as authority by the auditor or used as such. Instead, authority for an adjustment is derived from Illinois statutory law, the Department's Regulations, or established case law. As such, authority for the Department's adjustments is not derived from the Audit Manual. Instead, the Department has referred Petitioner to 86 Ill. Admin. Code § 100.9720, which provides extremely detailed authoritative guidance relevant to this matter. Unlike the Department's regulations, to which courts give deference, the Department's Audit Manual has no such luster. *See, Carlson v. United States (In re Carlson)*, 126 F.3d, at 922.

Lastly, the Department 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 could be seriously impaired.

II. Petitioner's request to compel production of the ICB File (Production Request No. 7) should also be denied.

The Department objects to Petitioner's motion to compel disclosure of the ICB file, to whatever extent it exists. The Department's Office of Legal Services 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. 86 Ill. Admin. Code § 215.100. This informal taxpayer tool is intended to help resolve disagreements at the earliest opportunity possible in the administrative process; ICB jurisdiction is limited to making non-binding recommendations in reaching this goal. *Id.* 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. *Id.*, at 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 120(e). To require otherwise would jeopardize the efficacy of this valuable and protected process. Indeed, Petitioner voluntarily chose to participate in the ICB process governed by 86 Ill. Admin. Code § 215.100 *et seq.* Petitioner now asks this Tribunal to effectively ignore or simply discard these clear and unambiguous rules. As such, the Department, including the ICB as a unit within the Department, is not required to produce the ICB file.

WHEREFORE, the Department respectfully requests that this Tribunal deny the Petitioner's Motion to Compel Production of Documents and enter such further relief that this Tribunal deems just and appropriate.

Respectfully Submitted,

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