

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>PEPPERIDGE FARM INCORPORATED,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-139</b>
	)	
<b>ILLINOIS DEPARTMENT OF REVENUE,</b>	)	
	)	
<b>Defendant.</b>	)	

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**ANSWER**

NOW COMES the Department of Revenue of the State of Illinois (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to the Pepperidge Farm Incorporated (“Petitioner”) Petition and respectfully pleads 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.

**ANSWER:** The years at issue, referred to as “Years in Issue” is required by Illinois Independent Tax Tribunal Regulation (“Rule”) 310(a)(1)(E) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Petitioner’s name and address is required by Rule 310(a)(1)(A) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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](mailto:fmarcus@hmblaw.com); 312-606-3212 or [dhughes@hmblaw.com](mailto:dhughes@hmblaw.com); and 312-606-3222 or [clutz@hmblaw.com](mailto:clutz@hmblaw.com), respectively.

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

3. Petitioner's FEIN is 06-0613103.

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

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 4 and demands strict proof thereof.

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.

**ANSWER:** Department admits the factual allegations contained in Paragraph 5.

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.

**ANSWER:** Department admits the factual allegations contained in Paragraph 6.

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.

**ANSWER:** Department admits that Department is an agency of the Executive Branch of the Illinois State Government and is tasked with enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's petition. The term "Illinois tax laws" is ambiguous and therefore Department denies all other allegations related thereto.

#### **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.

**ANSWER:** A copy of the Statutory Notice is required to be attached to the Taxpayer's petition pursuant to Rule 310(a)(1)(D) and is not a material allegation of fact and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits Department issued Notices of Deficiency for the tax years ending July 31, 2007 and July 31, 2008 in the amounts of \$2,263,803.40 and \$3,310,582.76, respectively.

## **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.

**ANSWER:** Department admits the statements contained in Paragraph 9.

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.

**ANSWER:** Paragraph 10 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force, and effect at all relevant times of the statutes set forth or referred to in Paragraph 10.

## **BACKGROUND**

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

**ANSWER:** Department admits Department received Form IL-1120 for Petitioner and its unitary affiliates for the tax years 2007 and 2008.

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”).

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

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

**ANSWER:** Department admits the factual allegations contained in Paragraph 13.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 14 and demands strict proof thereof.

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.).

**ANSWER:** Department admits that Petitioner excluded Sales' Illinois gross receipts from the numerator of its combined sales factor. Petitioner's statement that Sales was not subject to Illinois income tax in accordance with P.L. 86-272 (15 U.S.C. Sec. 381 et seq.) is a legal conclusion and therefore does not require a response pursuant to Rule 301(b)(2). Notwithstanding the above, Department denies that Sales was not subject to Illinois income tax.

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

**ANSWER:** Department admits the factual allegations contained in Paragraph 16.

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.

**ANSWER:** Department admits the factual allegations contained in Paragraph 17.

### COUNT I

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 17 as if fully set forth herein.

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.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force, and effect of P.L. 86-272 referred to in Paragraph 19 and states that such law speaks for itself.

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.

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 20 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 21 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 22 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 23 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 24 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 25 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 26 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 27 and demands strict proof thereof.

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.

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 28 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 29 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 30 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 31 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 32 and demands strict proof thereof.

33. Sales employees do not repossess property in Illinois.

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 33 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 34 and demands strict proof thereof.

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

**ANSWER:** Department lacks sufficient knowledge to either admit or deny the allegations contained in paragraph 35 and demands strict proof thereof.

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).

**ANSWER:** Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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.

**ANSWER:** Paragraph 37 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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

**ANSWER:** Paragraph 38 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

## **COUNT II**

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

**ANSWER:** Department incorporates and repeats its answers to Paragraphs 1 through 38, as if fully set forth herein.

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

**ANSWER:** Department admits that for the tax years ending 2007 and 2008, it assessed penalties in the amounts of \$481,800 and \$758,188.80, respectively.

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.

**ANSWER:** Paragraph 41 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 35 ILCS 735/3-8 referred to in Paragraph 41 and states that such law speaks for itself.

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).

**ANSWER:** Paragraph 42 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 42 and states that such law speaks for itself.

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).

**ANSWER:** Paragraph 43 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Notwithstanding the above, Department admits the existence, force, and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 43 and states that such law speaks for itself.

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.

**ANSWER:** Paragraph 44 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

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

**ANSWER:** Paragraph 45 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

**WHEREFORE,** Department prays that the Tribunal enter an order to:

- a. deny any prayer for relief in the Petitioner's Petition;
- b. find the Notices of Deficiency at issue correct as issued;
- c. order judgment in favor of Department and against Petitioner; and
- d. grants such further relief as this Tribunal deems appropriate under the circumstances.

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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STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS

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Petitioner,	)	
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v.	)	Case No. 14-TT-139
	)	
THE ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Respondent.	)	

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**NOTICE OF FILING**

TO: Mr. Fred O. Marcus  
Mr. David A. Hughes  
Mr. Christopher Lutz  
Horwood Marcus & Berk Chartered  
500 W. Madison, Suite 3700  
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**PLEASE TAKE NOTICE**, that on August 27, 2014, the Department filed the enclosed **ANSWER** with the Illinois Independent Tax Tribunal, Illinois Department of Revenue, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601.

Respectfully submitted,  
Illinois Department of Revenue

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

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CHICAGO, ILLINOIS**

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<b>THE ILLINOIS DEPARTMENT</b>	)	
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**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 August 27, 2014, before the hour of 5:00 p.m. (C.S.T.) he served a true and exact copy of the foregoing instrument entitled ANSWER on the above Taxpayer/Petitioner by sending the same as an attachment to an electronic mail message addressed to Taxpayer/Petitioner at his designated email address:

Fred O. Marcus: fmarcus@hmbllaw.com

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