

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

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AUTOMATIC DATA PROCESSING, INC.,) No. 15 TT 165
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THE ILLINOIS DEPARTMENT OF REVENUE,) Judge Brian Barov
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**CERTIFICATE OF SERVICE BY ELECTRONIC TRANSMISSION AND
NOTICE OF FILING**

To: (312) 606-3212
 Mr. David Hughes
 Horwood, Marcus & Berk Chartered
 500 West Madison Street, Suite 3700
 Chicago, Illinois 60661

PLEASE TAKE NOTICE that on October 22, 2015, the Illinois Department of Revenue’s Answer to Taxpayer’s Petition was filed with the Illinois Independent Tax Tribunal by email at ITT.TaxTribunal@Illinois.gov . A copy of the attached Answer was also served on the Taxpayer’s counsel listed above by email at dhughes@hmblaw.com.

Respectfully submitted,

s/Rebecca L. Kulekowskis
Special Assistant Attorney General

October 22, 2015

Rebecca L. Kulekowskis
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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

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AUTOMATIC DATA PROCESSING, INC.,)	No. 15 TT 165
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Petitioner,)	
)	
v.)	
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian Barov
)	
Defendant.)	
)	
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ANSWER TO PETITION

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 Taxpayer’s Petition pleads as follows:

PARTIES

1. For the taxable periods ended June 30, 2004, June 30, 2005, and June 30, 2006 (the “Periods at Issue”), Petitioner was a Delaware corporation whose principal business address was One ADP Boulevard, MS 433, Roseland, NJ 07068, and who could be reached at 973-974-5000.

ANSWER: The Department admits the statements contained in Paragraph 1.

2. Petitioner is represented by David A. Hughes of Horwood Marcus & Berk Chartered, located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3212 or dhughes@hmblaw.com.

ANSWER: The Department admits the statements contained in Paragraph 2.

3. Petitioner's FEIN is 22-1467904.

ANSWER: The Department admits the statement contained in Paragraph 3.

4. The Department is an agency of the Executive Department of the State Government and is responsible for administering and enforcing the revenue laws of the state of Illinois. 20 ILCS 5/5-15.

ANSWER: The Department admits the statements contained in Paragraph 4.

NOTICES AND FILINGS

5. On June 18, 2015, the Department issued a Notice of Denial, denying Petitioner's claim for refund of \$1,308,985 for the period ended June 30, 2004, \$1,777,774 for the period ended June 30, 2005, and \$2,350,790 for the period ended June 30, 2006, for a total of \$5,437,549 for the Periods at Issue. A true and accurate copy of the Notice of Denial is attached hereto as Exhibit A. Unless otherwise stated, the following paragraphs relate to the Periods at Issue.

ANSWER: The Department admits the statements contained in Paragraph 5.

6. Petitioner's claim for refund was made on amended Illinois corporation income and replacement tax returns filed on or about November 9, 2010 ("Second Amended Returns"), which: (1) characterized certain income arising from investment portfolios as nonbusiness income, and allocated that income outside of Illinois; and (2) characterized other income arising from investment portfolios as apportionable business income, and included certain gross receipts from the investment assets generating such income in the denominator of its Illinois sales factor.

ANSWER: The Department admits that amended tax returns were filed on November 9, 2010 for tax years ending June 30, 2004, 2005 and 2006. With respect to all other statements in Paragraph 6, these statements contain legal conclusions, not material allegations of fact, and therefore do not require an answer pursuant to Rule 310(b)(2).

7. Petitioner's initial amended Illinois corporation income and replacement tax returns filed on or about November 5, 2010 ("First Amended Returns"): (1) treated all income arising from the relevant investment portfolios as apportionable business income; and (2) included the net gain from the investment assets generating such income in the denominator of its Illinois sales factor.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 7.

8. Petitioner's original Illinois corporation income and replacement tax returns filed on or about April 1, 2005, March 29, 2006, and February 28, 2007, respectively ("Original Returns"): (1) characterized certain income arising from investment portfolios as nonbusiness income, and allocated that income outside of Illinois; and (2) characterized other income arising from investment portfolios as apportionable business income, and included certain gross receipts from the investment assets generating such income in the denominator of its Illinois sales factor.

ANSWER: The Department admits that the Petitioner's original tax returns for tax years ending June 30, 2004, 2005 and 2006 were filed timely, but not on the dates listed in Paragraph 8. With respect to all other statements contained in Paragraph 8, these statements contain legal conclusions, not material statements of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

JURISDICTION

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

ANSWER: The 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 Notice.

ANSWER: The Department admits the statements contained in Paragraph 10.

BACKGROUND

11. Petitioner and its affiliates (collectively, “ADP”) are engaged in two distinct activities: (1) data processing services; and (2) investment management.

ADP’s Data Processing Business

ANSWER: The Department denies the statements contained in Paragraph 11.

12. During the Periods at Issue, ADP’s data processing services were conducted by numerous legal entities doing business in all fifty states and in several foreign countries.

ANSWER: The Department denies the statements contained in Paragraph 12 since no entities are specified.

13. ADP’s data processing services included an array of outsourcing solutions for business clients, including services offered through ADP’s Employer Services group, a division of ADP. The Employer Services group earned revenue by providing payroll data processing and related employment tax processing and tax remittance services, human resource management, benefits administration, and other services to thousands of small, mid-sized, and large clients. These services were provided both to clients of ADP (companies for which ADP provides services including federal and state income tax withholding, payment of employer FICA, FUTA, or SUI), and to the clients’ employees (such as personal FICA, etc.).

ANSWER: The Department admits that ADP earned revenue providing the services listed in Paragraph 13. The Department denies any inference from these statements that the services listed were the sole source of revenue of ADP’s businesses.

14. ADP's Employer Services clients transfer money to designated accounts at local banks to fund payments to the tax authorities. Clients authorize ADP to impound such funds one day prior to the end of a pay period. Once impounded, certain of these funds ("Tax Funds") were immediately transferred to one of ADP's Investment Subsidiaries, described below in paragraph 20.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 14.

15. On any given remittance due date, investments either matured or were sold. The necessary funds were then transferred to the Employer Services group, which remitted funds to the appropriate government agencies.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 15.

16. During the time it held the funds before disbursement to government agencies, ADP owned the impounded funds. These funds were not held in trust for clients, and ADP bore the entire economic burden of any gains or losses on these assets while they were owned by ADP. ADP recorded a liability to its customers for the amounts impounded.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 16.

17. During the Periods at Issue, ADP's other data processing activities included providing clients with securities transaction data processing services, software applications, and integrated information systems, and car repair estimating applications and databases.

ANSWER: The Department admits the statements contained in Paragraph 17.

18. ADP's data processing services have been significantly profitable over the past 45 years. This record of reliable and recurring profitability has resulted in the production of vast amounts of cash, not needed or used in ADP's business operations, in virtually every year since the inception of the company.

ANSWER: The Department denies the statement contained in Paragraph 18.

19. Annual revenue from data processing activities ranged between \$5.4 billion and \$5.9 billion during the Periods at Issue.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statement contained in Paragraph 19.

Investment Management Activities

20. ADP's investment management activities were separate and distinct from ADP's data processing business activities, and during the Periods at Issue were conducted by the following companies, referred to as the "Investment Subsidiaries": (i) ADP Atlantic, Inc. (converted to a single member limited liability company on March 5, 2007, owned by Petitioner); (ii) ADP East, Inc. (liquidated into ADP Pacific, Inc. on June 30, 2006); (iii) ADP Pacific, Inc.; and (iv) ADP South, Inc. (liquidated into ADP Pacific, Inc. on June 30, 2006).

ANSWER: The Department denies the statement contained in Paragraph 20 as it relates to the characterization of ADP's investment management activities being separate and distinct. With respect to the statements relating the ownership structure of ADP's subsidiaries, the Department has insufficient knowledge and information to form a belief as to the truth or falsity of the referred statements.

21. Two additional companies, referred to as the "Other Portfolio Companies," also held investment portfolios: ADP of North America, Inc. (merged into ADP, Inc. on June 29,

2008); and ADP Payroll Services, Inc. The funds and securities held for investment by the Other Portfolio Companies were managed by ADP Capital Management, Inc., a related entity, for a fee.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 21.

22. All ADP entities engaged in investment management activities, including the Investment Subsidiaries, the Other Portfolio Companies, and ADP Capital Management, Inc., were commercially domiciled outside of Illinois.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 22.

23. ADP's investment management activities were conducted outside of Illinois.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 23.

24. The Investment Subsidiaries were formed to professionally manage the investment of large portfolios of marketable securities. Securities were originally received in a capital contribution directly or indirectly from Petitioner.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 24.

25. Additional securities were purchased by the Investment Subsidiaries' investment managers in subsequent years. Such additional securities were funded from, in addition to the capital contributions, two sources: (1) excess cash generated by the data processing service business, not needed in the operation of the business, and the reinvestment of investment income, referred to as "Excess Cash"; and (2) Tax Funds.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 25.

26. The funds and securities owned by the Investment Subsidiaries were managed in five separate portfolios.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 26.

27. Excess Cash was invested in two portfolios: the “Working Capital” Portfolio and the Long Term Passive Investment (“LTPI”) Portfolio.

ANSWER: The Department denies the statements contained in Paragraph 27.

28. The Working Capital Portfolio held short-term liquid funds to meet ADP’s working capital needs. ADP’s business operations have typically been funded entirely from the annual income from its data processing service activities and from the Working Capital Portfolio.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 28.

29. Income from the Working Capital Portfolio was treated as apportionable business income by ADP on its Original Returns, First Amended Returns, and Second Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 29.

30. The LTPI Portfolio held surplus cash resulting from the investment of unneeded recurring profits from the data processing business, and from the reinvestment of investment income from all five investment Portfolios. It was comprised of long-term marketable securities, and income generated from the LTPI Portfolio was almost never needed in ADP’s business operations.

ANSWER: The Department denies the statement in Paragraph 30 related to the characterization of the LTPI Portfolio holding “surplus cash” as a result of recurring profits. The Department has insufficient knowledge and information to form a belief as to the composition of the LTPI Portfolio and the need for the funds contained in the LTPI Portfolio in ADP’s business operations.

31. Income from the portion of the LTPI Portfolio that was never needed or used in ADP’s business (the “non-invaded portion”) was treated as nonbusiness income by ADP on its Original Returns and Second Amended Returns.

ANSWER: The Department denies the statement contained in Paragraph 31 pertaining to the allegation that part of the income in the LTPI Portfolio was never needed or used in ADP’s business. The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statement that the income referred to in Paragraph 31 was included in the Taxpayer’s reported amount of nonbusiness income on its income tax returns.

32. All of the income from the LTPI Portfolio, including the non-invaded portion, was treated as apportionable business income by ADP on its First Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 32.

33. Tax Funds were invested in three separate portfolios: (1) the “Soft Investment” Portfolio; (2) the “Core Investment” Portfolio; and (3) the “Extended Investment” Portfolio.

ANSWER: The Department the statements contained in Paragraph 33.

34. The Soft Investment Portfolio held funds from cash impounds that are expected to be used to fund client tax deposits in the near term, and the funds are invested in short-term liquid investments with maturities ranging from overnight to approximately four months. At the

client tax deposit remittance due date, securities in the Soft Investment Portfolio either matured or were sold to create funds to meet the tax filing requirements. The Soft Investment Portfolio balance fluctuated between a very small amount and several billion dollars during the course of the Periods at Issue.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 34.

35. Income from the Soft Investment Portfolio was treated as apportionable business income by ADP on its Original Returns, First Amended Returns, and Second Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a basis as to the truth or falsity of the statement contained in Paragraph 35.

36. The Core Investment Portfolio held funds that were not used for either client tax deposits or any other business expenditure of ADP's data processing service business.

ANSWER: The Department denies the statements contained in Paragraph 36.

37. The inflow and outflow of impounded funds exhibited a distinct seasonal pattern caused by wage payment patterns and the relationship between payroll dates and tax payment dates. The volume of Tax Funds typically reached low points in May and August. Each year, the seasonal low point has always been higher than in the previous year, due to economic growth as well as inflation. The balance in the Core Investment Portfolio was not used for any client tax deposits during the Periods at Issue.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 37.

38. The Core Investment Portfolio has been held as a separate pool of invested funds since its creation in the early 1980s and has continually grown since that time. Its funds are

invested in intermediate term (up to three-and-a-half years) and long-term (up to five-and-a-half years) investments, and investment income from the Core Investment Portfolio has always been reinvested in intermediate or long-term securities.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 38.

39. Income from the Core Investment Portfolio was treated as nonbusiness income by ADP on its Original Returns and Second Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statement contained in Paragraph 39.

40. Income from the Core Investment Portfolio was treated as apportionable business income by ADP on its First Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statement contained in Paragraph 40.

41. The Extended Investment Portfolio was derived from Tax Funds which were invested in long term (up to five-and-a-half years) marketable securities. The funds in the Extended Investment Portfolio have never been used to fund the remittance of client tax deposits or any other business expenditure. However, ADP engaged in a commercial paper borrowing program to borrow funds to meet client tax remittance requirements and not sell the investments in the Extended Investment Portfolio.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 41 as they relate to the Extended Investment Portfolio and where the funds were derived from and how the funds were

used. The Department admits the statements which relate to the issuance of commercial paper and the purpose of issuing commercial paper.

42. Income from the Extended Investment Portfolio was treated as apportionable business by ADP on its Original Returns, First Amended Returns, and Second Amended Returns.

ANSWER: The Department has insufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 42.

43. The Other Portfolio Companies also held investments in the LTPI Portfolio, the Soft Investment Portfolio, and the Core Investment Portfolio. The income from such investment assets was treated as business income or nonbusiness income consistent with the treatment of income earned by the Investment Subsidiaries in the LTPI Portfolio, the Soft Investment Portfolio, and the Core Investment Portfolio.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 43.

44. For those investment assets held by the Investment Subsidiaries and the Other Portfolio Companies that were classified as generating apportionable business income by ADP on its Original Returns and Second Amended Returns, ADP included "Modified Gross Receipts" from the sale and maturity of such assets in the denominator of the sales factor on these Returns. Modified Gross Receipts bear the same ratio to apportionment investment income that ADP's gross receipts from the data processing business bear to apportioned income from the data processing business.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 44.

45. Net gain from the sale and maturity of investment assets held by the Investment Subsidiaries and the Other Portfolio Companies in all Portfolios was included in the denominator of the sales factor by ADP on its First Amended Returns.

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 45.

COUNT I

Income From the Non-Invaded Portion of the LTPI Portfolio and the Core Investment Portfolio is Nonbusiness, Nonapportionable Income

46. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 45, inclusive, above.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 45 as if fully set forth herein.

47. “Business income” is defined as “all income that may be treated as apportionable business income under the Constitution of the United States.” 35 ILCS 5/1501(a)(1); *see also* 86 Ill. Adm. Code 100.3010(a)(2).

ANSWER: The Department denies the statement contained in Paragraph 47. Paragraph 47 does not accurately reflect the entire cited statute section. The cited statute and regulation speak for themselves.

48. “Nonbusiness income” is defined as “all income other than business income.” 35 ILCS 5/1501(a)(13).

ANSWER: The Department denies the statement contained in Paragraph 48. Paragraph 48 does not accurately reflect the entire cited statute section. The cited statute speaks for itself.

49. Nonbusiness income of a nonresident entity is not subject to apportionment under 35 ILCS 5/304(a). 35 ILCS 5/303.

ANSWER: Paragraph 49 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

50. Nonbusiness income classified as “[c]apital gains . . . from sales or exchanges of intangible personal property” is not allocable to Illinois if the taxpayer does not have its commercial domicile in Illinois at the time of the sale or exchange of the intangible personal property. 35 ILCS 5/303(b)(3).

ANSWER: Paragraph 50 contains a legal conclusion, not a material allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

51. An item of income may be treated as apportionable business income under the U.S. Constitution if it is derived from a unitary business. *Mobil Oil Corp. v. Comm’r of Taxes*, 445 U.S. 425, 438 (1980).

ANSWER: Paragraph 51 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

52. Passive investments which are held outside of a corporation’s normal line of business are not unitary. *See Allied-Signal, Inc. v. Div. of Tax’n*, 504 U.S. 788 (1992).

ANSWER: Paragraph 52 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

53. Assets held as investments used for working capital can create apportionable business income if they are used in business operations and serve an “operational function.” *Allied-Signal, Inc.*, 504 U.S. at 787-88.

ANSWER: Paragraph 53 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

54. The “operational function” test is not, however, an alternative means for finding a unitary business relationship. *MeadWestvaco Corp. v. Dep’t of Rev.*, 553 U.S. 16, 29 (2008). Instead, the operational function test “simply recognizes that an asset can be a part of a taxpayer’s unitary business even if what we may term a ‘unitary relationship’ does not exist between the ‘payor and payee.’” *Id.* (citation omitted). Two circumstances in which an asset can serve an operational function are when: (a) a taxpayer is not unitary with its bank, but the taxpayer has deposits representing working capital and thus operational assets with the bank; and (b) a taxpayer holds futures contracts serving to hedge against the risk of an increase in the price of a key cost input. *Id.*

ANSWER: Paragraph 54 contains legal conclusions, not allegations of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

55. Illinois case law further confirms that a “corporation’s use of . . . funds not the mere availability of . . . funds is the guiding factor in determining whether the income sought to be apportioned has an operational or investment function.” *Home Interiors and Gifts, Inc. v. Dep’t of Revenue*, 318 Ill. App. 3d 205, 212 (2000).

ANSWER: Paragraph 55 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

56. Income from both the Core Investment Portfolio and the non-invaded portion of the LTPI Portfolio constitutes nonbusiness income allocable outside Illinois because: (1) those investments were not used in ADP’s regular business operations or used for any of ADP’s operational needs, and never formed part of the working capital of ADP’s unitary business; and (2) all ADP entities engaged in investment management activities were commercially domiciled outside of Illinois. *MeadWestvaco*, 553 U.S. at 29.

ANSWER: The Department denies the statements contained in Paragraph 56.

57. The characterization of income from the non-invaded portion of the LTPI Portfolio and the Core Investment Portfolio as apportionable business income violates both Illinois statutes and the U.S. Constitution.

ANSWER: The Department denies the statements contained in Paragraph 57.

58. The Department's Notice of Denial, rejecting ADP's Second Amended Returns characterizing income from the non-invaded portion of the LTPI Portfolio and the Core Investment Portfolio as nonbusiness income not allocable to Illinois, was in error.

ANSWER: The Department denies the statement contained in Paragraph 58. The Department's audit of tax years ending June 30, 2004, 2005 and 2006 denied the Taxpayer's claim for refund contained in the Taxpayer's Second Amended Returns. Pursuant to 86 Ill. Admin. Code, Section 520.105(k)(3), a refund cannot exceed the amount determined by audit. See 86 Ill. Admin. Code, Section 520.105(k)(1)(E) and (F)(i) (No refund... is allowed because the reduction in base income is based on facts in existence as of the time the amnesty payment is made). Therefore, the claims for refund made pursuant to the Taxpayer's Second Amended Returns are not allowed.

WHEREFORE, the Department prays that this Tribunal enter an Order that:

- (a) Denies each prayer for relief in Count I of the Taxpayer's Petition;
- (b) Finds the Notice of Denial is correct;
- (c) Orders judgment in favor of the Department and against the Taxpayer; and
- (d) grants any further relief this Tribunal deems just and appropriate.

COUNT II

**Modified Gross Receipts From the Sales and Maturities of Investment Assets,
to the Extent Classified as Apportionable Business Income,**

Must Be Included in the Denominator of Petitioner's Illinois Sales Factor

59. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 58, inclusive, above.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 58 as if set forth herein.

60. "Business income" is apportioned to Illinois based on a "sales factor," which "is a fraction, the numerator of which is the total sales of the person in [Illinois] during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year." 35 ILCS 5/304(a) & (h).

ANSWER: The Department admits the statements contained in Paragraph 60.

61. The term "sales" means "all gross receipts of the taxpayer not allocated under Sections 301, 302, and 303." 35 ILCS 5/1501(a)(21); *see also* 86 Ill. Adm. Code 100.3370(a)(1) (stating that "for purposes of the sales factor of the apportionment formula . . . , the term 'sales' means all gross receipts derived by the person from transactions and activity in the regular course of such trade or business").

ANSWER: Paragraph 61 contains legal conclusions, not allegations of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

62. Under a plain reading of Illinois statutes, to the extent that income from ADP's investment assets is classified as business income for Illinois income tax purposes, then the gross receipts from the sale and maturity of the investment assets that generated such income must be included in the denominator of ADP's Illinois sales factor.

ANSWER: Paragraph 62 contains legal conclusions, not allegations of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

63. No amounts from the sale and maturity of ADP's investment assets should be included in the numerator of ADP's Illinois sales factor because all ADP entities engaged in investment management activities outside of Illinois. 35 ILCS 5/304(a)(3)(C).

ANSWER: Paragraph 63 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

64. ADP included Modified Gross Receipts in the denominator in order to fairly represent its business in Illinois. 35 ILCS 5/304(f).

ANSWER: The Department lacks sufficient knowledge or information to form a belief as to the truth or falsity of the statements contained in Paragraph 64.

65. To the extent that Illinois regulations require the sourcing of net gain from "business intangibles," such regulations exceed the statutory authority granted to the Department by Illinois statutes and are invalid.

ANSWER: The Department denies the statements contained in Paragraph 65.

66. To the extent that income is treated as apportionable business income, but the receipts generating such income are not sufficiently represented in the taxpayer's apportionment formula, there is a violation of the Commerce Clause of the U.S. Constitution. *Mobil Oil Corp.*, 445 U.S. at 461 (Stevens, J., dissenting) (stating that "[u]nless the sales . . . values connected with the production of income . . . are added to the denominator of the apportionment formula, the inclusion of earnings attributable to those corporations in the apportionable tax base will inevitably cause . . . income to be overstated").

ANSWER: Paragraph 66 contains legal conclusions, not allegations of material fact, therefore does not require an answer pursuant to Rule 310(b)(2).

67. The validity of Illinois regulations requiring the sourcing of net gain from “business intangibles” has not been considered by the Illinois Supreme Court.

ANSWER: Paragraph 67 contains a legal conclusion, not an allegation of material fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

68. The Department’s Notice of Denial, rejecting ADP’s Second Amended Returns that included in its sales factor denominator the Modified Gross Receipts from the sale or maturity of ADP’s investment assets that generated income treated as business income apportionable to Illinois, was in error.

ANSWER: The Department denies the statements contained in Paragraph 68.

69. To the extent that income from the non-invaded portion of the LTPI Portfolio and the Core Investment Portfolio is classified as apportionable business income, the Modified Gross Receipts from the investment assets generating such income must be included in the denominator of ADP’s Illinois sales factor.

ANSWER: The Department denies the statement contained in Paragraph 69.

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

- (a) Denies each prayer for relief in Count II of the Taxpayer’s Petition;
- (b) Finds the Notice of Denial is correct;
- (c) Orders judgment in favor of the Department and against the Taxpayer; and
- (d) Grants any further relief this Tribunal deems just and appropriate.

COUNT III

The Department’s Reasons for Issuing the Notice of Denial Are in Error

70. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 69, inclusive, above.

ANSWER: The Department incorporates and repeats its answers to Paragraphs 1 through 69 as if set forth herein.

71. The Department was in error to the extent that, as stated in the Notice of Denial, it denied ADP's claim for refund in the Second Amended Returns because it "re-characterized as business income the interest income from miscellaneous sources that was an integral part of [ADP's] trade or business operations."

ANSWER: The Department denies the statements contained in Paragraph 71. Further, the Taxpayer is barred from receiving refunds for its claims for refund contained on the Second Amended Returns pursuant to 35 ILCS 745/10 (Tax Delinquency Amnesty Act) and the related regulations contained in 86 Ill. Admin. Code, Section 520.105(k) (Amnesty Program Requirements-Overpayments of Eligible Liabilities).

72. The Department was in error to the extent that, as stated in the Notice of Denial, it denied ADP's claim for refund in the Second Amended Returns because it "excluded from [ADP's] sales factor receipts (other than receipts from sales of tangible personal property) that could not be attributed to an income-producing activity in any state, are arbitrary in nature and attempt to provide 'Investment income relief' pursuant to IITA 304(f) without the Director's consent."

ANSWER: See Department's answer to Paragraph 71.

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

- (a) Denies each prayer for relief in Count III of the Taxpayer's Petition;
- (b) Finds the Notice of Denial is correct;
- (c) Orders judgment in favor of the Department and against the Taxpayer; and
- (d) Grants any further relief this Tribunal deems just and appropriate.

COUNT IV

Attorney's Fees and Expenses Under 5 ILCS 100/10-55(c)

73. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 72, inclusive, above.

74. **ANSWER:** Petitioner realleges and reincorporates the allegations in paragraphs 1 through 69, inclusive, above.

75. Section 10-55(c) of the Illinois Administrative Procedure Act, 5 ILCS 100/10-55(c), provides that:

In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees.

ANSWER: The Department denies that the cited statute is relevant to the facts and circumstances in this case. The Petitioner has alleged no facts which give rise to a claim under this statute. Further, there is no provision to award expenses of litigation or attorney fees under the Tribunal's statutes or regulations pursuant to 35 ILCS 1010/1-55.

76. This provision of law authorizes a party to recover its attorney's fees if the Tribunal invalidates a regulation because the agency exceeded its statutory authority in promulgating the regulation.

ANSWER: See the Department's answer to Paragraph 75.

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

- (a) Denies each prayer for relief in Count IV of the Taxpayer's Petition;
- (b) Finds the Notice of Denial is correct;
- (c) Orders judgment in favor of the Department and against the Taxpayer; and
- (d) Grants any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

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