

**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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PREMIER AUTO FINANCE, INC.,	)	
Petitioner,	)	
	)	
v.	)	15 TT 175
	)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT	)	
OF REVENUE,	)	
Respondent.	)	

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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 Taxpayer’s Petition respectfully pleads as follows:

**Jurisdiction and Venue**

1. The Tax Tribunal has jurisdiction over this petition because this timely petition involves a Notice of Claim Denial (“NCD”) dated June 22, 2015 (attached as Exhibit A), denying a claim for refund in an aggregate amount in excess of \$15,000.00 under a tax law identified in Section 1-45 of the Tax Tribunal Act.

**ANSWER:** Department admits it issued Petitioner a Notice of Claim Denial dated June 22, 2015 that denied Petitioner’s claims for refund in the total amount of \$1,618,019. Petitioner’s assertions that its petition was timely filed and that this Tribunal has jurisdiction are legal conclusions. Department admits the existence force and effect of the statute cited in Paragraph 1. That law speaks for itself. Department denies all remaining factual allegations in Paragraph 1.

2. Premier accepts the Tax Tribunal's designation of its office in Cook County to conduct the hearing in this matter.

**ANSWER:** Paragraph 2 does not contain a material allegation of fact and therefore does not require an answer pursuant to Independent Tax Tribunal Rule 5000.310(b)(2) (86 Ill. Admin. Code § 5000.310).

## Facts Common to all Counts

### *The Parties*

#### *Petitioner*

3. For the taxable years 2006, 2007 and 2008 (the "Taxable Period") Premier was a Delaware corporation, with headquarters at 200 East Randolph Street, Illinois. And local phone number of 312-381-5855, holding a certificate of authority to transact business in Illinois.

**ANSWER:** Upon information and belief, Department admits the factual allegations in Paragraph 3.

4. For the Taxable Period, Premier was engaged in business within Illinois.

**ANSWER:** Department admits the factual allegations in Paragraph 4.

5. Premier's business included providing loans to fund purchases of automobiles.

**ANSWER:** Upon information and belief, Department admits the factual allegations in Paragraph 5.

6. Premier is a wholly-owned subsidiary of Aon Corporation ("Aon") (FEIN: 36-3051915).

**ANSWER:** Department admits the factual allegations in Paragraph 6 upon information and belief.

7. Aon, a Delaware corporation, is a holding company and the U.S. parent company of an affiliated group of entities including Premier (DE) (FEIN: 36-3730668), and several other affiliates including Cananwill, Inc. (PA) (FEIN: 36-1722081), Cananwill, Inc. (CA) (FEIN: 23-2382918), and Cananwill Corporation (DE) (FEIN: 36-3868951) (the three Cananwill companies are hereinafter referred to collectively as the "Cananwill entities").

**ANSWER:** Department denies that the FEIN for Cananwill, Inc. (PA) is 36-1722081.

Department admits the remaining factual allegations in Paragraph 7 upon information and belief.

***Respondent***

8. 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. The Department is authorized, among other functions, to administer and enforce provisions of the IITA. 35 ILCS 5/101 et seq.

**ANSWER:** Department admits that it is an agency of the State of Illinois and that it is authorized to enforce the Illinois Income Tax Act ("IITA"), which is the subject of the protested Notices of Claim Denial. Department admits it is authorized to administer and enforce the provision of the IITA. The phrase "Illinois tax laws" is ambiguous and therefore the Department denies the remaining factual allegations in Paragraph 8.

***The IITA and the "Unitary Business Group" Limitation***

9. The IITA imposes a tax on the net income of every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of Illinois. 35 ILCS 5/101 et seq.

**ANSWER:** Paragraph 9 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 9. That law speaks for itself. Department denies any factual allegations in Paragraph 9.

10. Corporations "who are members of a unitary business group are required to file combined returns under IITA Section 502(e)." 86 Ill. Admin. Code § 100.9700(b).

**ANSWER:** Paragraph 10 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the regulation cited in Paragraph 10. That regulation speaks for itself. Department denies any factual allegations in Paragraph 10.

11. As defined by 35 ILCS 5/1501(a)(27)(A), a unitary business group is "a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other . . . Unitary business activity can ordinarily be illustrated where the activities of such members are: (1) in the same general line (such as

manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation or finance) . . ." See also 86 Ill. Admin. Code § 100.9700(d).

**ANSWER:** Paragraph 11 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 11. That law speaks for itself. Department denies any factual allegations in Paragraph 11.

12. IITA section 1501(a)(27)(B) provides that "In no event, shall any unitary business group include members which are ordinarily required to apportion business income under different subsections of Section 30" and therefore, "If a unitary business group would, but for the preceding sentence, include members that are ordinarily required to apportion business income under different subsections of Section 304, then for each subsection of Section 304 for which there are two or more members, there shall be a separate unitary business group composed of such members." 35 ILCS 1501(a)(27)(B).

**ANSWER:** Paragraph 12 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 12. That law speaks for itself. Department denies any factual allegations in Paragraph 12.

13. IITA Section 304 provides specific formulas to apportion the business income of persons other than residents, as follows:
- a. subsection (a)(3) and subsection (h) for general businesses not required to apportion pursuant to subsections (b), (c), or (d);
  - b. subsection (b) for "insurance companies;
  - c. subsection (c) for "financial organizations" as defined in IITA section 1501(a)(8);
  - d. subsection (d) for "transportation services."

**ANSWER:** Paragraph 13 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 13. That law speaks for itself. Department denies any factual allegations in Paragraph 13.

***The Illinois "Financial Organization" Law and Definitions***

14. A "financial organization" is defined as "any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private

banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company.” 35 ILCS 5/1501(a)(8)(A); *see also* 86 Ill. Admin. Code § 100.9710(a).

**ANSWER:** Paragraph 14 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 14. That law speaks for itself. Department denies any factual allegations in Paragraph 14.

15. The term "sales finance company" is further defined in IITA Section 1501 (a)(8)(C), which provides in pertinent part:

. . . the term "sales finance company" has the meaning provided in the following item (i) or (ii):

(i) A person primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower. or the business of finance leasing. For purposes of this item (i), "customer receivable" means:

(a) a retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act, the Retail Installment Sales Act, or the Motor Vehicle Retail Installment Sales Act;

(b) an installment, charge, credit, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale; or

(c) the outstanding balance of a contract or agreement described in provisions (a) or (b) of this item (i).

\* \* \*

(ii) A corporation meeting each of the following criteria:

(a) the corporation must be a member of an "affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code, determined without regard to Section 1504(b) of

the Internal Revenue Code;

(b) more than 50% of the gross income of the corporation for the taxable year must be interest income derived from qualifying loans. A "qualifying loan" is a loan made to a member of the corporation's affiliated group that originates customer receivables (within the meaning of item (i)) or to whom customer receivables originated by a member of the affiliated group have been transferred, to the extent the average outstanding balance of loans from that corporation to members of its affiliated group during the taxable year do not exceed the limitation amount for that corporation. The "limitation amount" for a corporation is the average outstanding balances during the taxable year of customer receivables (within the meaning of item (i)) originated by all members of the affiliated group. If the average outstanding balances of the loans made by a corporation to members or its affiliated group exceed the limitation amount, the interest income of that corporation from qualifying loans shall be equal to its interest income from loans to members of its affiliated groups times a fraction equal to the limitation amount divided by the average outstanding balances of the loans made by that corporation to members of its affiliated group;

(c) the total of all shareholder's equity (including, without limitation, paid-in capital on common and preferred stock and retained earnings) of the corporation plus the total of all of its loans, advances, and other obligations payable or owed to members of its affiliated group may not exceed 20% of the total assets of the corporation at any time during the tax year; and

(d) more than 50% of all interest-bearing obligations of the affiliated group payable to persons outside the group determined in accordance with generally accepted accounting principles must be obligations of the corporation.

35 ILCS 5/1501(a)(8)(C).

**ANSWER:** Paragraph 15 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the statute cited in Paragraph 15. That law speaks for itself. Department denies any factual allegations in Paragraph 15.

16. The Department's IITA Regulation, Section 100.9710 (d)(10), in part, provides as follows:

10) Entities engaged in the business of a "sales finance company."

The term "sales finance company" has the meaning provided in subsection (d)(10)(A) or (B):

- A) Under IITA Section 1501 (a)(8)(C)(i), the term "sales finance company" means an entity primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing. For purposes of this subsection (d)(10)(A), a "customer receivable" means:
- i) A retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act [205 ILCS 660/2], the Retail Installment Sales Act [815 ILCS 405/2.6 and 2.7], or the Motor Vehicle Retail Installment Sales Act [815 ILCS 375/2.5];
  - ii) An installment, charge, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale;
  - iii) The outstanding balance of a contract or agreement described in subsection (d)(10)(A)(i) or (ii) or this Section; or
  - iv) A loan, or balance under a loan, made by a lender for the express purpose of funding purchases of tangible personal property or services by the borrower.

A customer receivable need not provide for payment of interest on deferred payments. A sales finance company may purchase a customer receivable from, or make a loan secured by a customer receivable to, the seller or lender in the original transaction or from or to a person who purchased the customer receivable directly or indirectly from that seller or lender.

**ANSWER:** Paragraph 16 contains a legal conclusion, not a material allegation of fact. Department admits the existence, force and effect of the regulation cited in Paragraph 16. That law speaks for itself. Department denies any factual allegations in Paragraph 16.

### *The Controversy*

17. For the Taxable Period, Aon filed three Illinois combined returns: one combined return for general corporations (the "Sub A Group"), a second combined return for insurance companies (the "Sub B Group"), and a third combined return for "financial organizations" (the "Sub C Group").

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

18. A portion of Aon's income/loss was included in each Illinois combined return based on the total amount of gross income of the entities included in each combined return, as provided for holding companies by IITA section 1501(a)(27)(C).

**ANSWER:** Department admits the factual allegations in Paragraph 18.

19. The originally filed 2006, 2007 and 2008 Sub C Group Illinois combined returns for "financial organizations" included Petitioner and the Cananwill entities. During the Taxable Period, the Cananwill entities were in the business of originating short-term (typically 12 months or less) loans to businesses to finance their commercial property and casualty insurance premium obligations, which allowed businesses to pay their insurance premiums over time rather than in one lump sum.

**ANSWER:** Department admits that Petitioner's original 2006, 2007 and 2008 Illinois combined returns for "financial organizations" included Petitioner and the Cananwill entities. Upon information and belief, Department admits the Cananwill entities were in the business of originating short-term loans to businesses to finance commercial property and casualty insurance premium obligations.

20. The Cananwill entities do not meet the requirements to be considered "financial organizations" as outlined in IITA Section 1501(a)(8)(A) and in 86 Ill. Admin Code 100.9710(a), specifically, the entities did not fall within the scope of any of the entities listed in section 1501(a)(8)(A), were not a "bank" under Section 1501(a)(8)(B), and did not conduct any of the activities of a "sales finance company"

described in section 1501(a)(8)(C).

**ANSWER:** Department denies the factual allegations in Paragraph 20.

21. On February 23, 2012, pursuant to 35 ILCS 5/91 1 (c), the statute of limitations for the 2006, 2007 and 2008 tax years was extended by a written agreement between the Illinois Department of Revenue and Aon Corporation and its Subsidiaries. On March 12, 2012, Petitioner timely filed amended Illinois combined returns for the tax years 2006, 2007 and 2008 to properly exclude the Cananwill entities from Petitioner's Sub C Group pursuant to 35 ILCS 5/1501(a)(8)(A).

**ANSWER:** Department admits that the statute of limitations for the 2006, 2007 and 2008 tax years was extended by a written agreement between the Illinois Department of Revenue and Aon Corporation and its Subsidiaries on or about February 23, 2012. Department admits that on March 12, 2012 Petitioner filed amended Illinois combined returns for the tax years 2006, 2007 and 2008 in which Taxpayer excluded the Cananwill entities from Petitioner's Sub C Group. Department denies the remaining factual allegations in Paragraph 21.

22. On March 12, 2012, Aon further timely filed amended Illinois combined returns for the tax years 2006, 2007, and 2008 for the Sub A Group – the general corporations – to include the Cananwill entities, pursuant to 35 ILCS 5/1501(a)(27)(A).

**ANSWER:** Department admits that on March 12, 2012 Aon filed amended Illinois combined returns for the tax years 2006, 2007, and 2008 for the Sub A Group – the general corporations – to include the Cananwill entities. Department denies the remaining factual allegations in Paragraph 22.

23. The amendments of Aon's Sub A Group Illinois combined general corporation returns resulted in an aggregate increase in tax of \$272,116 while the corresponding amendments to Petitioner's Sub C Group's Illinois combined financial organization returns resulted in an aggregate decrease in tax of \$1,618,019.

**ANSWER:** Department admits Petitioner's amended returns, as filed, resulted in an aggregate

decrease in tax of \$1,618,019. Department denies that it accepted Petitioner's amended returns for the years at issue.

24. Aon and Petitioner requested that the tax underpayments on Aon's amended returns offset and reduce the tax overpayments on Petitioner's amended Illinois combined financial organization returns, and the net overpayments on Petitioner's combined financial organization returns be refunded.

**ANSWER:** Department admits the factual allegations in Paragraph 24.

25. On July 31, 2013, the Department issued a Notice of Proposed Claim Denial denying Petitioner's refund claim of \$1,618,019 for the tax years 2006, 2007 and 2008. A true and accurate copy of the Notice is attached hereto as **Exhibit B.**

**ANSWER:** Department's Notice speaks for itself.

26. On May 22, 2015, the Department issued a negative Notice of Proposed Deficiency, decreasing Aon's combined general corporation group tax liability by \$272,116 for the tax years 2006, 2007 and 2008, and adjusting the composition of Aon's Sub A Group Illinois unitary group by removing the Cananwill entities. A true and accurate copy of the Notice is attached hereto as **Exhibit C.**

**ANSWER:** Department's Notice speaks for itself.

27. On June 22, 2015, the Department issued a Notice of Claim Denial (the "NCD") for the tax years 2006, 2007 and 2008 denying Petitioner's claim for refund of its Sub C Group amended Illinois combined returns for its "financial organizations" by adjusting Petitioner's tax liability by \$618,358 for 2006, \$956,200 for 2007, and

\$43,461 for 2008. A true and accurate copy of the NCD is attached hereto as

**Exhibit A.**

**ANSWER:** Department's Notice speaks for itself.

28. The NCD stated:

We determined that you and one or more of your related corporations were engaged in a unitary business during the tax years identified in this notice. Accordingly, you and the other members of the unitary business group must use combined apportionment to determine how much of your business income is taxable to Illinois.

**ANSWER:** Department's Notice speaks for itself.

29. On information and belief, the Department determined that the Cananwill entities should be included in Petitioner's Sub C Group unitary business group filing during the Taxable Period because the Department believes that the Cananwill entities are "financial organizations."

**ANSWER:** Department admits the factual allegations in Paragraph 29.

**COUNT I**

30. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 29, inclusive, hereinabove.

**ANSWER:** Department realleges and incorporates herein its answers to Paragraphs 1 through 29 as if fully set forth in this Paragraph.

31. The Claim Denial is improper because the Cananwill entities did not meet the statutory and regulatory requirements to be classified as "financial organizations" under IITA section 1501(a)(8)(A), and therefore, under section 1501(a)(27)(B), the Cananwill entities cannot be included in Petitioner's Sub C Group unitary business group.

**ANSWER:** Department denies the allegations in Paragraph 31.

32. Petitioner's erroneous inclusion of the Cananwill entities on its original return was contrary to section 1501(a)(8) and forbidden by section 1501(a)(27)(B).

**ANSWER:** Department denies the allegations in Paragraph 32.

33. The Department erroneously rejected amended returns properly identifying the Cananwill entities as Sub A Group members, comprised of non-insurance company, non-financial organization entities-required to apportion their income under IITA Section 304(a).

**ANSWER:** Department denies the allegations in Paragraph 33.

34. The Department erroneously included the Cananwill entities as members of Petitioner's Sub C Group unitary group as financial organizations required to apportion their income under IITA Section 304(c), contrary to section 150 I(a)(27)(B).

**ANSWER:** Department denies the allegations in Paragraph 34.

35. Petitioner properly amended its tax returns for the tax years 2006, 2007 and 2008 to report its income as a Sub A Group member, the correct combined unitary business group for non-insurance and non-financial entities.

**ANSWER:** Department denies the allegations in Paragraph 35.

36. The Department's Claim Denial is contrary to the law and not supported by the facts.

**ANSWER:** Department denies the allegations in Paragraph 36.

**WHEREFORE,** Department prays that the Tax Tribunal enter an Order:

- a. finding that the Cananwi ll entities are "financial organizations" as defined by 35 ILCS 5/1501(a)(8)(A) and 86 Ill. Admin. Code § 100.9710(a) and must therefore be included in Petitioner's financial organization unitary group and

- excluded from Petitioner's general corporation unitary group;
- b. finding that the Petitioner's original 2006, 2007 and 2008 combined returns for Sub C Group financial organizations are correct;
  - c. holding that the Department's Notice of Claim Denial is correct;
  - d. entering judgment in favor of Department and against Petitioner; and
  - e. granting such further relief as this Tax Tribunal deems appropriate under the circumstances.

## **COUNT II**

Department moves to dismiss Count II on the basis that this Tribunal does not have subject matter jurisdiction to hear Petitioner's claim. Petitioner's claim in Count II is raised in the improper jurisdiction. Department Moves to Dismiss Count II of the Petition for lack of subject matter jurisdiction pursuant to 735 ILCS 5/2-619(a)(1).

Respectfully Submitted,

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DATED: October 2, 2015

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