ILLINOIS INDEPENDENT

TAX TRIBUNAL

B&G Realty, Inc.,	)	
	)	
Petitioner,	)	15 TT 227
v.	)	Judge Brian F. Barov
	)	
THE STATE OF ILLINOIS	)	
DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

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:

THE PARTIES

1. Petitioner, B&G Realty, Inc. ("B&G") is a corporation duly organized and existing under the laws of Wisconsin.

ANSWER: The information contained in paragraph 1 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). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 1.

2. Petitioner maintains its principal place of business at 100 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202-4125.

ANSWER: The information contained in paragraph 2 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). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 2.

3. Petitioner's tax identification number is 39-1047119.

ANSWER: The information contained in paragraph 3 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). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 3.

4. Petitioner is represented by Foley & Lardner LLP attorney John B. Palmer, who is located at 321 N. Clark Street, Suite 2800, Chicago, Illinois 60654-5313 and can be reached at (312) 832-4575.

ANSWER: The information contained in paragraph 4 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). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 4.

5. The Marcus Corporation ("Marcus Corporation") is a corporation duly organized and existing under the laws of Wisconsin.

ANSWER: The information contained in paragraph 5 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). Notwithstanding the above, the Department admits the factual allegations contained in Paragraph 5.

6. The Marcus Corporation owns 100% of B&G.

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

7. B&G is a member of Marcus Corporation's unitary business group.

ANSWER: The Department admits the factual allegations contained in Paragraph 7.

8. Respondent, Illinois Department of Revenue ("Department"), is an agency of the state of Illinois responsible for administering and enforcing the revenue laws of the state of Illinois. 20 Ill. Comp. Stat. 5/5-15.

ANSWER: The Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.) and the Retailers' Occupation Tax Act, which are relevant to the legal claims raised in Taxpayer's petition. The term "tax laws" is ambiguous and therefore the Department denies all other allegations contained in Paragraph 8.

JURISDICTION

9. The Department issued the Notice to B&G denying B&G's claim for refund of income tax overpayment in the amount of $102,486 for the taxable year ended May 26, 2005. A copy of the Notice is attached as Exhibit A.

ANSWER: Department admits that parts of the Notice of Denial dated 9/4/15 are attached as a factual allegation contained in Paragraph 9.

10. This Tribunal has original jurisdiction over all Department determinations reflected on a Notice of Denial where the amount at issue in the Notice exceed $15,000, exclusive of penalties and interest. 35 Ill. Comp. Stat. 1010/1-45.

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). Notwithstanding the above, the Department admits the sections of the Tribunal Act referred to in Paragraph 10 exists and is in effect and states that such Sections of the Tribunal Act speak for themselves.

11. B&G is hereby timely filing this Petition within 60 days of the date of the Notice. 35 Ill. Comp. Stat. 5/910(a)

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). Notwithstanding this objection or waiving same, the Department admits that 35 Ill. Comp. Stat. 5/910(a) referred to in Paragraph 11 exists and is in effect and states that such statute speaks for itself. The Department further admits that this Petition was filed within 60 days of the Notice.

PROCEDURAL HISTORY

12. B&G filed an amended Illinois tax return on April 1, 2010 for its fiscal year ended May 26, 2005, correcting its error that it made on its originally filed income tax return (it erroneously included an Illinois add back for deferred gains on exchanges that qualified under section 1031 of the federal Internal Revenue Code), which results in a $102,486 refund.

ANSWER: The Department admits that Taxpayer filed an amended return that was postmarked 4/27/2010 for FYE 5/26/2005 and requested a refund of $102,486 to reduce an addition modification as contained in paragraph 12.

13. The Department on audit agrees that this add back was in error.

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

14. However, the Department made other adjustments, all of which are agreed to except the adjustments excluding incidental or occasional sales from the sales factor.

ANSWER: The Department admits the factual allegations contained in Paragraph 14.

15. As a result of this adjustment, the Department issued the Notice to B&G denying the $102,486 refund.

ANSWER: The Department admits the factual allegations contained in Paragraph 15.

16. B&G is part of the Marcus Corporation unitary group, which conducts

numerous businesses throughout the United States.

ANSWER: Paragraph 16 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 B&G was part of the Marcus Corporation unitary group, objects to the term "numerous businesses" as vague and undefined and denies the remaining factual allegations contained in Paragraph 16.

17. Marcus Corporation's business activities include lodging, movie theatres, restaurants, and significant real estate development and sales.

ANSWER: The Department objects to the terms "lodging, movie theatres, restaurants, and significant real estate development and sales" as vague and undefined. Notwithstanding the above, the Department admits that Marcus Corporation engaged in activities that involved movie theatres, restaurants and lodging. The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 17.

18. During the fiscal year ended May 26, 2005, B&G sold the assets of its Baymont Inn & Suites division for approximately $350 million, recognizing approximately $178 million of gain.

ANSWER: The Department admits the factual allegations *as approximations* contained in Paragraph 18.

19. Marcus Corporation included the Baymont Inn & Suites sales proceeds in its sales factor (both the numerator and denominator) for its fiscal year ended May 26, 2005.

ANSWER: The Department admits the factual allegations contained in Paragraph 19.

20. The Department views the sale of the Baymont Inn & Suites as an occasional sale and excluded the sales proceeds from the sales factor (both the numerator and denominator)

ANSWER: The Department objects to the term "views" as vague and undefined. Notwithstanding the above, Department admits the factual allegations contained in Paragraph 20.

21. As a result, the Department increase Marcus Corporation's Illinois apportionment factor from approximately 8.4% to approximately 10,8%.

ANSWER: The Department admits the factual allegations *as approximations* contained in Paragraph 21.

22. Applying the higher sales factor increases the income apportioned to Illinois from approximately $15.3 million to approximately $19.8 million and gain from the sale of **t**he Baymont Inn & Suites from approximately $14.9 million to approximately $19.3 million, whereas the actual gain from the sale of Baymont Inn & Suites assets located in Illinois is only approximately $3.7 million.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 22.

RELEVANT FACTS AND BACKGROUND

23. Since the early 1990s, Marcus Corporation has engaged in numerous real estate transactions as part of its regular ongoing business operations**.**

ANSWER: The Department objects to the term "numerous" as vague and undefined. The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 23.

24. Marcus Corporation regularly purchases, develops, and sells real estate related to each of its business units. Each year, such activity is a specific focus of Marcus Corporation's management team and contributes to the profitability of Marcus Corporation.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 24.

25. Marcus Corporation developed and operated 18 Applebee's within Wisconsin and northern Illinois. After years of growing the investment, Marcus Corporation sold the Applebee's properties in 1996.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 25.

26. Similarly, Marcus Corporation developed and operated a chain of 31 Kentucky Fried Chicken restaurants in Wisconsin and subsequently sold the properties in 2001.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 26.

27. Marcus Corporation remained in the restaurant real estate business by developing and expanding new dining concepts in a growing number of hotels and movie theatre megaplexes it manages. These dining concepts include the Mason Street Grill, the chop House restaurants, Miller Time Pub & Grill restaurants, Zaffiro's Pizzerias, and numerous Take 5 cocktail lounges.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 27.

28. In addition to restaurant related real estate transactions, Marcus Corporation regularly purchases large parcels of land for constructing movie theatre megaplexes.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 28.

29. In conjunction with developing megaplexes, Marcus Corporation sells out lots to third parties to develop complimentary retail developments.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 29.

30. After constructing a replacement movie theatre, Marcus Corporation customarily sells the old properties for redevelopment by its purchasers.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 30.

31. Throughout the early 2000s, Marcus Corporation expanded numerous existing movie theatre locations and purchased several others in nearby states.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 31.

32. The lodging and hotel business line follows a similar pattern of real estate investment. Since the year 2000, Marcus Corporation has purchased ownership positions in several hotels to expand its business holdings.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 32.

33. In 2005, this included the opening of a newly constructed Four Points by Sheraton developed by Marcus Corporation in downtown Chicago as well as the purchase of the Wyndham Milwaukee Center (subsequently converted into the InterContinential Milwaukee)

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 33.

34. In 2006, Marcus Corporation acquired the Westin Columbus hotel, undertaking significant renovations, selling the appreciated property in 2007, and retaining a 15% joint venture interest after the sale.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 34.

35. From 2004 to 2006, Marcus Corporation developed the Platinum Hotel & Spa, valued at over $100 million, in Las Vegas, Nevada. Marcus Corporation sold all but 16 units in the high-rise condominium hotel and currently manages the rental pool of 255 condominium units.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 35.

36. In early 2007, Marcus Corporation re-opened the Skirvin Hilton following a more than $50 million renovation of the historic hotel. The property was acquired a 99% equity partner after the hotel remained vacant for nearly 20 years.

ANSWER: The Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 36.

37. Other renovations include the $30 million redesign of the Milwaukee Hilton City Center Hotel.

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

38. This consistent pattern of activity in the real estate market by Marcus Corporation shows that it does not simply engage in incidental or occasional sales of capital assets. Rather, the investment, development, and sales of real estate is an integral part of Marcus Corporation's unitary business, grossing an average of $18 million per year from its fiscal year need May 1996 through its fiscal year ended May 2007 (excluding the B&G sale of Baymont Inn & Suites).

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). To the extent an answer is required; the Department denies the allegations in paragraph 38.

39. Since the fiscal year ended May, 2003, the last year that tax records are readily available, Marcus Corporation has included the sale proceeds from the sales described in paragraphs 34, 35, and 38 in its unitary group's sales factor reported on IL-1120.

ANSWER: This is better left to discovery as the Department cannot verify without further information the allegations contained in paragraphs 34, 35, and 38. Therefore, the Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 39.

APPLICABLE LAW

40. Petitioner relies on the general rule in 35 Ill. Comp. Stat. 5/304 and Ill. Admin. Code 100.3370(a)(1) that requires a taxpayer to include all gross receipts derived from the transactions and activity in the regular course of its trade or business as sales when calculating the taxpayer's Illinois sales factor.

ANSWER: Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of 35 Ill. Comp. Stat. 5/304 and Ill. Admin. Code 100.3370(a)(1) referred to in Paragraph 40 and states that said statute and regulation speak for themselves.

41. The Department, however, relies upon the special rules in Ill. Adm. Code 100.3380(c)(2) and Ill. Admin. Code 100.3380(a) for the position that the proceeds from the sale of the Baymont Inn & Suites assets constitute an "incidental and occasional sale" to be excluded from the sales factor. The Department reserves the right to rely on these regulations as well as any other pertinent legal authority.

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). The Department admits the existence, force and effect of the special rules in Ill. Adm. Code 100.3380(c)(2) and Ill. Admin. Code 100.3380(a) referred to in Paragraph 41 and states that said regulations speak for themselves. The Department reserves the right to rely on these regulations as well as any other pertinent legal authority.

ERROR 1

The Department incorrectly excluded the Baymont Inn & Suite sale from Marcus Corporation's Illinois Sales Factor.

42. Petitioner incorrectly restates and realleges the allegations contained in paragraphs 1 through 41 as if set forth fully herein.

ANSWER: The Department incorporates and repeats its answers to paragraphs 1 through 41 as if fully set forth herein.

43. The sales factor is a fraction, the numerator of which is the total sales in Illinois during the taxable year, and the denominator of which is the total sales everywhere during the taxable year. 35 Ill. Comp. Stat. 5/304(a)(3)

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). The Department admits the existence, force and effect of 35 Ill. Comp. Stat. 5/304(a)(3) referred to in Paragraph 43 and states that said statute speaks for itself.

44. Illinois tax law requires a taxpayer to include all gross receipts derived from transactions and activity in the regular course of its trade or business as sales when calculating the taxpayer's Illinois sales factor. 35 Ill. Comp. Stat. 5/304(a)(3); Ill. Admin. Code 100.3370(a)(l).

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). The Department admits the existence, force and effect of 35 Ill. Comp. Stat. 5/304(a)(3) and Ill. Admin. Code 100.3370(a)(l) referred to in Paragraph 44 and states that said statute and regulation speak for themselves.

45. Gross receipts deemed to arise from an incidental or occasional sale of assets are excluded when calculating the sales factor. 86 Ill. Admin. Code 100.3380(c)(2). The incidental or occasional sale exception is meant to apply in limited circumstances, such as the one-time sale of a factory. *Id.*

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). The Department admits the existence, force and effect of 86 Ill. Admin. Code 100.3380(c)(2) referred to in Paragraph 45 and states that said regulation speaks for itself.

46. Proceeds from the sale, rental, leasing, licensing, or other use of real property are supposed to be included in the sales factor of a business. 86 Ill. Admin. Code 100.3370(c)(3)(A)(ii)

ANSWER: Paragraph 46 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of 86 Ill. Admin. Code 100.3370(c)(3)(A)(ii) referred to in Paragraph 46 and states that said regulation speaks for itself.

47. Additionally, if a taxpayer derives receipts from the sale of equipment used in its trade or business, such receipts constitute "sales." 86 Ill. Admin. Code 100.3370(a)(1)(F) The administrative code uses the example of a truck company that owns a fleet of trucks and

sells them under a regular replacement program. The gross receipts from the sale of the equipment are required to be included in the sales factor.

ANSWER: Paragraph 47 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of 86 Ill. Admin. Code 100.3370(a)(1)(F) referred to in Paragraph 47 and states that said regulation speaks for itself.

48. In 2005, when B&G sold the Baymont Inn & Suites assets, it was acting consistently with Marcus Corporation's regular business practices of investing in, developing, and ultimately selling property. Accordingly, Marcus Corporation included the sales in its Illinois sales factor.

ANSWER: Paragraph 48 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 48 and demands strict proof thereof.

49. As set forth in paragraphs 23 through 38, Marcus Corporation regularly purchases, develops, and sells real property as part of its unitary business. Marcus Corporation's real estate business in snot the equivalent of a manufacturing business selling a factory. Marcus Corporation does not sell real estate without any real business plan.

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). The Department denies any factual allegations in paragraph 49 and demands strict proof thereof.

50. Rather, Marcus Corporation identifies potential investments, purchases real property, develops the property into a successful business, and sells the property at a profit. If not for profit, the sale takes place after Marcus Corporation established a replacement. In

either case, the sales are not isolated or occasional, but an integral part of Marcus Corporation's business.

ANSWER: Paragraph 50 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 50 and demands strict proof thereof.

51. This understanding is consistent with the Illinois Administrative Code's discussion of the isolated or occasional sale relied upon by the Department. When discussing the occasional sale exclusion, the administrative code uses an example that excludes the sale of a factory or plant after years of operation. Ill Admin. Code 100.22809(c)(2)

ANSWER: Paragraph 51 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of 86 Ill. Admin. Code 100.22809(c)(2) referred to in Paragraph 51 and states that said regulation speaks for itself. The Department denies any factual allegations in paragraph 51 and demands strict proof thereof.

52. Marcus Corporation's regular sale of real estate and other property is not occasional or isolated in nature like the sale of a plant or factory. The regular sale of real estate and other property by Marcus Corporation in its trade or business is more akin to a business selling equipment in Ill. Admin. Code 100.3370(a)(1)(F).

ANSWER: Paragraph 52 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits the existence, force and effect of 86 Ill. Admin. Code 100.3370(a)(1)(F) referred to in Paragraph 52 and states that said regulation speaks for itself. The Department denies any factual allegations in paragraph 52 and demands strict proof thereof.

53. Inclusion of the Baymont Inn & Suites proceeds in Marcus Corporation's

Illinois sales factor also does not cause a gross distortion of Marcus Corporation's Illinois apportionment, but rather prevents further distortions. Including the Baymont Inn & Suites proceeds results in an 8.4% Illinois apportionment factor for fiscal year ended May 26, 2005, and result in approximately $15.3 million of Illinois income.

ANSWER: Paragraph 53 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that the inclusion of the Baymont Inn & Suites gain results in an approximate 8.4% Illinois apportionment factor fiscal year ended May 26, 2005, and results in approximately $15.3 million of Illinois income, however, denies all other factual allegations in paragraph 53 and demands strict proof thereof.

54. Excluding the Baymont Inn & Suites proceeds from Marcus Corporation's Illinois sales factor leads to an inequitable result. Excluding the Baymont Inn & Suites proceeds results in a 10.8% apportionment to Illinois for fiscal year ended May 26, 2005, and results in approximately $19.8 million of Illinois income, or approximately <u>$4.8 million more income.</u>

ANSWER: Paragraph 54 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department admits that the exclusion of the Baymont Inn & Suites gain results in an approximate 10.8% Illinois apportionment factor for fiscal year ended May 26, 2005, and results in approximately $19.8 million of Illinois income which is $4.8 million more, however, denies all other factual allegations in paragraph 54 and demands strict proof thereof.

55. Importantly, actual gain from the sale of Baymont Inn & Suites assets located in Illinois is <u>only approximately $3.7 million.</u>

ANSWER: This is better left to discovery as the Department cannot verify without further

information the allegations contained in paragraph 55. Therefore, the Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 55.

56. If the total Baymont Inn and Suites approximate $178 million gain is excluded from apportionable income, only $5.0 million of apportionable income remains, resulting in approximately $0.5 million apportioned to Illinois (using the Department's 10.8% apportionment factor).

ANSWER: This is better left to discovery as the Department cannot verify without further information the allegations contained in paragraph 56. Therefore, the Department lacks the knowledge or information sufficient to form a belief as to the truth or falsity for the remaining allegations contained in Paragraph 56.

57. The gain from Baymont Inn & Suites assets located in Illinois was only $3.7 million, which if added to the $0.5 million of apportioned income (in paragraph 56), results in Illinois taxable income in total of approximately $4.2 million, or approximately $11 million less than reported by Marcus Corporation. Adopting the Department's apportionment factor exacerbates this disparity. Thus, excluding the proceeds from the sales facto increase an already distortive apportionment.

ANSWER: The Department denies the factual allegation in paragraph 57 and demands strict proof thereof.

58. The occasional sale exclusion is meant to apply in situations in which an asset sale grossly distorts Illinois income. Here, no such distortion exists.

ANSWER: Paragraph 58 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). The Department denies any factual allegations in paragraph 58 and demands strict proof thereof.

59. Including the Baymont Inn & Suites assets will more closely reflect B&G's (as part of Marcus Corporation's unitary group) Illinois income both inside and outside of Illinois.

ANSWER: Paragraph 58 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department denies any factual allegations in paragraph 58 and demands strict proof thereof.

CONCLUSION AND RELIEF REQUESTED

Baymont Inn & Suites sales proceeds must be included in the Illinois Sales Factor.

60. Petitioner requests that this Tribunal nullify and include B&G's (as part of Marcus Corporation's unitary group) sales proceeds in the Illinois sales factor for the fiscal year ended May 26, 2005, and grant its $102,486 refund.

ANSWER: The Department denies any factual allegations in paragraph 60 and demands strict proof thereof:

WHEREFORE, the Department respectfully requests this Tribunal to:

(a) deny the prayer for relief in this petition;

(b) find that the Petitioner's did not exercise ordinary business care and prudence by attempting to allocate their income for fiscal year ending May 26, 2006;

(c) find that the Notice of Deficiency correctly reflects the Petitioner's 2005 Illinois income tax assessment, including penalties and interest;

(d) enter judgment in favor of the Department and against the Petitioner; and

(e) grant any further relief this Tribunal deems just and appropriate.

Dated: January 29, 2016

Respectfully submitted,

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