

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>RPMG INC.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-149</b>
	)	
<b>THE ILLINOIS DEPARTMENT</b>	)	<b>Chief Judge James M. Conway</b>
<b>OF REVENUE,</b>	)	
<b>Respondent.</b>	)	

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**RESPONDENT’S REPLY TO PETITIONER’S RESPONSE TO RESPONDENT’S  
MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS II, III, AND IV**

Now comes Respondent, the Illinois Department of Revenue (“Department”), through its attorney, Lisa Madigan, Illinois State Attorney General, for its Reply to Petitioner’s Response to Respondent’s Motion for Partial Summary Judgment on Counts II, III, and IV of Petitioner’s Petition and states as follows:

**BACKGROUND**

RPMG, Inc. (“Petitioner”) is incorporated in Minnesota with its principal business address in Minnesota. Petition, ¶ 1. Petitioner markets ethanol, distiller’s grain, corn oil, and corn syrup. *Id.* at ¶ 4. Petitioner has nexus with Illinois and pays state and corporate income and personal property replacement income tax in Illinois. *Id.* at ¶ 14. Renewable Products Marketing Group LLC (“Parent” or “Partnership Parent”) is a Minnesota limited liability company. *Id.* at ¶ 1. Parent wholly owns Petitioner. *Id.* Parent also markets ethanol, distiller’s grain, and corn oil. Petitioner and Parent are engaged in a unitary relationship. Petition, ¶ 30. However, on its Illinois Corporate Income and Replacement Tax Returns (“Returns”) for the tax years ending September 30, 2008 and September 30, 2009 (“Years in Issue”), Petitioner

calculated its income tax liability without regard to Parent's Illinois apportionment factor or income. *Id.* at ¶ 17. These are the underlying facts and they are not in dispute.

The Department audited Petitioner's Returns for the Years in Issue and determined that Petitioner and Parent were engaged in a unitary business relationship. As demonstrated herein, because Partnership Parent and Petitioner could not file a combined unitary return, they should have determined their income tax liability on a separate unitary basis. On or about June 2, 2014, the Department issued two Notices of Deficiency ("Notices") to Petitioner for the Years in Issue, in the amounts of \$40,171.88 and \$17,339.06, respectively.

On or about August 1, 2014, Petitioner filed a four-count Petition against the Department in protest of the Notices. On September 3, 2014, the Department filed its Answer.

On October 29, 2014, the Department moved for partial summary judgment against Petition Counts II, III, and IV ("Motion"). Petitioner filed its Response ("Response") on December 12, 2014. The Department herein provides its Reply.

## **ARGUMENT**

Petitioner is masterful in the art of distraction, raising in its Response a host of new arguments not previously raised by Petitioner in its Petition or by the Department in its Motion. Nevertheless, the Department herein faithfully attempts to track Petitioner's odyssey.

**I. The Illinois Taxpayer Bill of Rights does not impose upon the Department the exceedingly broad obligation with respect to providing guidance that Petitioner claims. Nevertheless, the Department provided ample and sufficient guidance that Petitioner failed to follow.**

Count II is based upon the Taxpayer Bill of Rights. Petitioner asserts that "[u]nder the Illinois Taxpayer Bill of Rights, it is the Department's responsibility to give taxpayers 'correct and complete information to help [taxpayers] comply with the tax laws in Illinois.'" Petition, ¶ 29. Petitioner in its Response admits that this language is not actually found in the Taxpayer Bill of Rights. Response, p. 3. Instead, Petitioner reveals that the language is apparently a

“paraphrase” provided by the Department on the Department’s website. *Id.* Under the heading “Our [the Department’s] Responsibilities, the website currently provides, “[the Department] must give [taxpayers] correct and complete information to help you comply with tax laws in Illinois.” *See* Response, Exhibit A. Petitioner’s interpretation, as explained *infra*, of what this obligation imposes upon the Department goes entirely too far.

Moreover, Petitioner neglects the section on the website immediately below relating to taxpayers’ corresponding responsibilities. That section provides in relevant part, “[t]he Illinois tax system is based, in large part, on your ability to calculate the amount of tax you owe and pay that amount when it is due . . . [i]t is your responsibility to obtain [the most recent tax] information and use it concerning your registration, filing, and payment requirements.” *See* Response, Exhibit A. (emphasis added). Rights and obligations are a two-way street.

*Arguendo*, the Department presumably has an obligation to provide taxpayers with at least some minimal amount of information a taxpayer may need to comply. However, a taxpayer has a corresponding obligation to obtain whatever information it believes it requires to comply. If a taxpayer is uncertain how to comply, there are numerous methods of contacting the Department in search of clarification. In fact, directly above the language Petitioner relies upon, the Department website provides a Department mailing address and a toll-free number for the specific purpose of enabling a taxpayer to seek additional help. Here, if Petitioner genuinely believed that the Department’s tax forms were confusing or incorrect, Petitioner had an obligation to seek clarification. For example, it could have sought a private letter ruling. *See* 2 Ill. Admin. Code § 1200.110(a). Instead, Petitioner chose to do nothing.

Nevertheless, the Department made available the precise information Petitioner required to comply. Petitioner alleges that the “Department provided no guidance with respect to situations where a corporation is engaged in a unitary relationship with its partnership parent.

Petition, ¶ 30. Petitioner correctly identifies that, per the 2008 Schedule UB Instructions, unitary partnerships were not to be included on 2008 Schedule UB. Response, p. 4. *See also* Motion, Exhibit A. Petitioner also correctly identifies that 2008 K-1-P was inapplicable because 2008 K-1-P did not relate to situations where a unitary partnership was engaged in a unitary relationship with a corporate subsidiary. *Id.* *See also* Response, Exhibit B. At this point, Petitioner made an erroneous assumption that because neither 2008 Schedule UB nor 2008 K-1-P applied to a unitary partnership parent of a subsidiary corporation, it was therefore appropriate to calculate Petitioner’s Illinois income tax liability without regard to Parent’s apportionment factor or income. Unfortunately, Petitioner’s effort in seeking guidance to properly complete its tax return prematurely ended there.

Instead of Petitioner giving up when it decided a couple Illinois tax Schedules were confusing or inapplicable, Petitioner should have turned to the statute and regulations for guidance. IITA Section 304(e) and Subchapter Q of the Illinois Administrative Code, entitled “Combined Returns,” provides unitized taxpayers ample and dispositive guidance. 35 ILCS 5/304(e); 86 Ill. Admin. Code §§ 100.5200 – 100.5280.

Section 304(e) provides that “[w]here 2 or more persons are engaged in a unitary business . . . a part of which is conducted in this State by one or more members of the group, the business income attributable to this State by any such member or members shall be apportioned by means of the combined apportionment method.” 35 ILCS 5/304(e). Here, Petitioner and Parent (2 or more persons) were engaged in a unitary business, a part of which was conducted in this State (Illinois) by any such member (Petitioner). Under a relatively common structuring scheme (e.g. a corporate parent over a partnership subsidiary), the combined apportionment method would be appropriate. But one size does not fit all.

Section 100.5215 of the Illinois Administrative Code provides instruction relevant to

Petitioner's circumstances:

a) *Not every member of a unitary business group is eligible to join in the filing of a combined return* and, for taxable years ending prior to December 31, 1993, joining in the filing of a combined return was elective.

b) *Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return must file a separate return*, and compute its business income apportionable to Illinois by computing the base income of the unitary business group in accordance with Section 100.5270(a)(1) of this Part and by multiplying the business income included in such base income by an apportionment fraction computed by using the Illinois apportionment factor or factors applicable to the return filer under IITA Section 304 and the everywhere factor or factors of the entire unitary business group.

86 Ill. Admin. Code § 100.5215. (emphasis added). *See* Exhibit A.

Section 100.5201(l) of the Illinois Administrative Code provides further meaningful guidance:

*Separate unitary return. The term "separate unitary return" means an Illinois income tax return of a member of a unitary business group which has not elected to file a combined return for a taxable year ending prior to December 31, 1993 or by a member of a unitary business group which is not eligible to join in the filing of a combined return.*

86 Ill. Admin. Code § 100.5201(l). (emphasis added).

There is no language whatsoever in the relevant statutory and regulatory language to indicate that Partnership Parent over its corporate subsidiary Petitioner is special or different and somehow exempt from filing a separate unitary return. Indeed, Petitioner has failed to address whatsoever why a separate unitary basis is inappropriate.

In sum, Petitioner's Count II is based on its belief that the Taxpayer Bill of Rights is a sufficient means to require withdrawal of the Notices. Focusing only on two tax schedules, Petitioner concludes that the Department failed to provide adequate guidance as to how to comply. Although the Taxpayer Bill of Rights presumably imposes a limited obligation upon the Department to provide at least some minimally sufficient level of guidance, it does not however

obligate the Department to provide guidance that will affirmatively and prospectively explain every question or scenario a taxpayer may have in complying with its filing obligations.

Moreover, taxpayers have a corresponding obligation to seek assistance from the Department should a taxpayer be uncertain as to how to comply. In any event, the Department provided ample and sufficient guidance in the regulations to enable Petitioner to comply with its filing obligations. Petitioner prematurely gave up when it became confused and chose not to consult the Department or regulations for assistance. As such, the Taxpayer Bill of Rights argument (i.e., Count II) fails to provide the remedy Petitioner seeks.

Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law. Respondent therefore requests that this court enter summary judgment on Count II in favor of Respondent and against Petitioner.

**II. Petitioner chose not to follow the Regulations by first petitioning the Department for Section 304(f) alternative apportionment; as such, alternative apportionment is not a protestable issue in this matter and the Tax Tribunal therefore does not have jurisdiction to adjudicate the issue.**

Petitioner originally claimed in Count III that it is “entitled” to Section 304(f) alternative apportionment because by including Parent’s income in Petitioner’s Illinois income tax returns, “the Department guaranteed that [Parent’s] income would be taxed twice . . . .” Petition, ¶ 41. In its Response, Petitioner appears to make three new claims in support of its claim to entitlement. First, Petitioner claims that its 304(f) petition was “timely filed” pursuant to the Department’s regulations; second, that a 304(f) petition outside the Department is “not without precedent,” and; third, the alternative apportionment statute and regulation is “inequitable.” *See generally* Response pp. 6-7. As explained below, Petitioner’s arguments are not supported by, and actually contradict, the relevant authority.

Petitioner argues that its petition for Section 304(f) alternative apportionment “was ‘timely filed’ as a protest to the Notices per the Department’s regulations” and is therefore

“entitled to petition for alternative apportionment before this Tribunal.” Response, pp. 5-6. In support of this legal conclusion, Petitioner relies on the subsection of the regulation governing a timely filed petition. Unfortunately, Petitioner only provided about half the relevant language of 100.3390(e)(3) and omits critical language. The full language Section 100.3390(e) is as follows:

e) Timely Filed Petitions. A taxpayer petition for use of a separate accounting method or any other alternative apportionment method will not be considered by the Director unless such petition has been timely filed. A taxpayer who petitions the Director for an alternative apportionment formula does so subject to the Department's right to verify, by audit of the taxpayer's return and supporting books and records within the applicable statute of limitations, the facts submitted as the basis of the petition. A petition for alternative allocation or apportionment is timely filed if the petition is filed:

- 1) 120 days prior to the due date of the tax return (including extensions) for which permission to use such alternative method is sought. A taxpayer who does not petition more than 120 days prior to the due date of the original return must file the return and pay tax according to the statutorily approved allocation or apportionment method.
- 2) as an attachment to a return amending an original return which was filed using the statutory allocation and apportionment rules. A taxpayer who has not filed a petition for alternative apportionment under subsection (e)(1) above, or whose subsection (e)(1) petition has been rejected, may thereafter file such petition with an amended return and the Department will consider the petition along with any other issues raised in the claim for refund pursuant to the procedures set forth at Section 100.9110 of this Part.
- 3) as part of a protest to a notice of deficiency issued as a result of the audit of the taxpayer's return and supporting books and records; provided that the audit adjustments being protested result in the need for the petition for alternative apportionment. *Alternative apportionment may not be raised in a protest to a notice of deficiency if such petition could have been submitted under subsection (e)(1) or (e)(2) above* (i.e., the petition for an alternative apportionment formula is not necessitated by the proposed adjustments made to the taxpayer's return during the course of the audit).

86 Ill. Admin. Code § 100.3390(e). (emphasis added). See Motion, Exhibit B.

Thus, there are three ways to timely file a petition for alternative apportionment. The first option, pursuant to (e)(1), is not satisfied as it is undisputed that Petitioner did not file a 304(f) petition 120 days prior to the due date of the tax return. The second option, pursuant to

(e)(2), is not satisfied as it is undisputed that Petitioner has not filed a 304(f) petition as an attachment to a return amending an original return. Because the first and second options are not satisfied, Petitioner focuses on the third option, (e)(3). However, Petitioner misunderstands the third option. The regulation specifically provides that “alternative apportionment may not be raised in a protest to a notice of deficiency if such petition could have been submitted under (e)(1) or (e)(2).” Petitioner could have submitted under either of the first two options but chose not to do so and instead raised the issue in its protest of the Notices. Petitioner’s claim that it timely filed in accordance with Section 100.3390(e)(3), the third option, is patently incorrect.

Compliance with the petition procedures (i.e., 100.3390(e)) prescribed in the regulation is critical, in part, because the General Assembly only gave the Tribunal jurisdiction to adjudicate determinations made by the Department as evidenced in a notice (here, the Notices). The General Assembly in creating the Tribunal’s jurisdiction provided that “the Tax Tribunal shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency . . . .” 35 ILCS 1010/1-45(a). Thus, a taxpayer may not petition the Tribunal for relief against a Department determination that does not exist. Because Petitioner now raises the Section 304(f) issue for the first time, meaning the Department did not have an opportunity to make a determination, it is not a protestable issue. The Tribunal simply does not have jurisdiction to adjudicate this question. Had the General Assembly seen fit, it could have amended Section 304(f) to allow for taxpayers to petition the Tribunal for relief. Instead, it maintained the long-standing interpretation in Section 100.3390 that a taxpayer must petition the Director for permission to use an alternative apportionment method.

To be clear, the Department has not intended to claim or imply that no taxpayer may petition the Tribunal with respect to a Section 304(f) petition. Instead, the Department asserts that this particular taxpayer, Petitioner, may not do so for the reasons explained.

Petitioner next argues very briefly that “alternative apportionment of income outside the Department is not without precedent.” Response, p. 6. Petitioner does not provide a specific example, and instead generally concludes that under the Illinois Protest Monies Act,<sup>1</sup> taxpayers may bring a challenge to a notice of deficiency in the Circuit Court without first resorting to the Department’s administrative protest procedures.” *Id.* at 6-7. It is undisputed that Petitioner did not bring an action under the State Officers and Employees Money Disposition Act, which therefore has nothing to do with the present matter. Ultimately, if Petitioner believes that the Act it refers to provides certain rights or advantages, Petitioner was free to protest the Notices pursuant to that Act. Petitioner chose not to do so and may not now cherry-pick purported benefits from an Act that is not the least bit relevant in this matter. Indeed, in the only reported decision addressing alternative apportionment, the appellate court agreed with the Department that a taxpayer may not raise alternative apportionment in the circuit court without first petitioning the Director. *See Mead Corp. v. Department of Revenue*, 371 Ill. App. 3d 108, 121 (1<sup>st</sup> Dist. 2007), *rev’d on other grounds*, 128 S. Ct. 1428 (2008).

Petitioner next argues that the Department’s application of Section 304(f) is “unfortunate and inequitable” and “the inequitable result of finding in the Department’s favor . . . should be rejected.” Response, p. 7. An increase in tax liability resulting from an audit determination that Petitioner failed to properly report income does not equate to “inequitable.” Nevertheless, the Tribunal may not make its decision on the Department’s Motion, or ultimately the matter in general, based on principles of equity.

Instead, the Tax Tribunal “shall decide questions regarding the constitutionality of statutes and rules adopted by the Department as applied to the taxpayer, but shall not have the power to declare a statute or rule unconstitutional or otherwise invalid on its face.” 35 ILCS

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<sup>1</sup> The “Illinois Protest Monies Act” presumably is intended to mean the State Officers and Employees Money Disposition Act (30 ILCS 230/1 *et seq.*).

1010/1-45(f). A “taxpayer challenging the constitutionality of a statute or rule on its face may present such challenge to the Tax Tribunal for the sole purpose of making a record for review by the Illinois Appellate Court.” *Id.* Here, in Count III, the Tribunal is asked to decide whether Petitioner may seek Section 304(f) alternative apportionment outside the clear and valid rules adopted by the Department.

“Administrative regulations have the force and effect of law and are interpreted with the same canons as statutes.” *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 38. “Additionally, administrative agencies enjoy wide latitude in adopting regulations reasonably necessary to perform the agency's statutory duty.” *Id.* Pursuant to its authority to adopt regulations, the Department has adopted clearly detailed procedures delineating how a taxpayer may petition for alternative apportionment, and those “are the *exclusive means* by which a taxpayer may petition for an alternative apportionment formula.” 86 Ill. Admin. Code § 100.3390(b) (emphasis added). “Pursuant to Section 304(f), the Director has *sole and exclusive authority* to grant a petition for an alternative apportionment formula.” *Id.*, (emphasis added). Neither Petitioner nor Parent, either individually or collectively, availed themselves of the designated procedures for requesting alternative apportionment.

If the Department’s regulations interpreting and applying Section 304(f) have somehow missed the mark, the General Assembly is free to manifest any displeasure by revising the statute accordingly. The General Assembly has declined to do so. The General Assembly has authorized the Department to make, promulgate, and enforce rules and regulations relating to the administration and enforcement of the Illinois Income Tax Act “as it may deem appropriate.” 35 ILCS 5/1401(a). Thus, “[t]he legislature kn[ows] that interpretation [is] inevitable, and it [is] with this knowledge that the power to make regulations [is] given to the Department.” *Illinois Bell Tel. Co. v. Allphin*, 95 Ill. App. 3d 115, 125 (1981). Pursuant to its authority granted by the

General Assembly, the Department promulgated 86 Ill. Admin. Code § 100.3390 in an effort to effectuate its obligation to administer Section 304(f).

There is no reason to believe that the Department's interpretation and application of Section 304(f), as effectuated through Section 100.3390, is inconsistent with the General Assembly's intent. Section 100.3390 interprets Section 304(f) and became effective November 1, 1993. Section 304 has been amended many times since the adoption of Section 100.3390. At no point has the General Assembly revised the statute so as to alter the Department Director's authority under Section 100.3390. If the General Assembly desired to extend such authority to the Tribunal, and beyond the realm of the Department, it easily could have done so when it enacted the relevant provisions giving life to the Tax Tribunal. To boot, the General Assembly recently amended Section 304(f), but chose not to do so in such a way that would alter the applicability of Section 100.3390. *See* P.A. 98-478, § 5, eff. Jan. 1, 2014. Petitioner now seeks to vicariously amend the statute by extending the Department's authority to the Tribunal.

In sum, Petitioner asserts in Count III that it is "entitled" to alternative treatment of its income. However, IITA Section 304(f) and Regulation Section 100.3390 are crystal clear - if a taxpayer wishes to avail itself of a Section 304(f) alternative apportionment method, it must petition the Department in one of three ways and the Department Director must make a determination. If the Department accepts the taxpayer's proposed alternative method, there is obviously no issue. If the Department denies the taxpayer's proposed alternative method, and ultimately issues a notice, the Department has made a determination and the taxpayer may therefore petition/protest that determination with the Tribunal. However, as is the case here, if a taxpayer fails to petition the Department for alternative treatment, and instead raises the issue only after a notice has already been issued, no determination has been made, meaning it is not a protestable issue and the Tribunal therefore does not have jurisdiction.

Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law. The Respondent therefore requests that this court enter summary judgment on Count III in favor of the Respondent and against Petitioner.

**III. Reasonable cause abatement only applies to specific penalties. The UPIA does not authorize reasonable cause abatement for interest, in any multiple.**

Petitioner alleges in Count IV that “because Petitioner acted with reasonable cause, double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability.” Petition, ¶ 59. In its Motion, the Department clearly identified the fatal flaws in Count IV. Nevertheless, Petitioner persists and now makes five new arguments in its Response.

Petitioner first alleges that the Department’s Motion regarding Count IV is “premature” because “the question of whether a taxpayer is entitled to abatement of double interest should not be answered until an answer on Petitioner’s substantive claims has been reached.” Response, p. 8. Petitioner does not cite any authority whatsoever to support this claim.

There is nothing premature about Count IV or the Department’s Motion in response thereto. “[W]hether an action is ‘premature,’ that is, not ripe for adjudication, focuses on an evaluation of the fitness of the issue for judicial decision at that point in time.” *Weber v. St. Paul Fire & Marine Insurance Co.*, 251 Ill.App.3d 371, 372–73 (1993). The doctrine of ripeness “seek[s] to insure that courts decide actual controversies and not abstract questions.” *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill.2d 314, 328 (1997); *See generally, Lebron v. Gottlieb Mem’l Hosp.*, 237 Ill. 2d 217, 252 (2010). It is rather unusual, to say the least, for the party who brought a claim (Count IV) to then take a wait-and-see approach by claiming that the claim is not yet ripe for adjudication. Generally, case law demonstrates that it is the adverse party that would make such a claim. In any event, there is nothing abstract about the question at hand, nor are there any facts in dispute that would shape the Tribunal’s decision. Count IV is an “actual controversy” that is ripe and ready for a summary judgment decision.

Petitioner next argues that the Uniform Penalty and Interest Act (“UPIA”) is not the only authority which provides abatement due to reasonable cause. Response, p. 8. Petitioner focuses on 35 ILCS 5/1005, titled “Penalty for Underpayment of Tax”, claiming that subsection “(b)(4) creates a general reasonable cause exception to *penalties . . .*” *Id.* (emphasis added). It is noteworthy that Petitioner made no mention of or reliance upon this Section in its Petition but does so only now after the Department identified the fatal flaws in Petitioner’s first attempt. Petitioner is correct that 35 ILCS 5/1005 “mentions” Amnesty penalties. However, Petitioner’s understanding is again flawed. In the entirety of 35 ILCS 5/1005, which petitioner now alternatively relies upon, “Amnesty” is mentioned once, providing in full:

Coordination with other penalties. Except as provided in regulations, the penalties imposed by this Section are in addition to any other penalty imposed by this Act or the Uniform Penalty and Interest Act. The doubling of *penalties and interest* authorized by the Illinois Tax Delinquency Amnesty Act (P.A. 93-26), are not applicable to the reportable transaction penalties and interest under subsections (b), (c), and (d). 35 ILCS 5/1005(e) (emphasis added).

Petitioner’s reliance on 35 ILCS 5/1005 is unpersuasive as it applies specifically to penalties and is in coordination with other penalties under the UPIA. Ultimately, in this matter, 35 ILCS 5/1005 does not contain anything relevant or helpful to Petitioner.

Instead, the UPIA governs the Amnesty double interest here at issue, providing:

If a taxpayer has a tax liability for the taxable period ending after June 30, 2002 and prior to July 1, 2009 that is eligible for amnesty under the Tax Delinquency Amnesty Act . . . and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act for that taxable period, then the interest charged by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section. 35 ILCS 735/3-2(g).

If double penalties have been imposed, the UPIA provides for the abatement of such penalties, but not interest, when taxpayers have acted with reasonable cause. *See* 35 ILCS 735/3-8. The statute provides that, “penalties imposed under the provisions of *Sections 3-3, 3-4, 3-5, and 3-7.5* of this Act shall not apply if the taxpayer shows that his failure to file a return or pay a

tax . . . was due to reasonable cause. *Id.*, (emphasis added). Absent from the statute is § 3.2, under which the Department imposed double interest upon Petitioner. Thus, the General Assembly chose not to include double interest (§ 3.2) as a candidate for abatement due to reasonable cause.

Given its plain and ordinary meaning, the UPIA does not provide reasonable cause abatement for double interest. “The primary purpose of statutory construction is to determine and give effect to the intent of the legislature.” *Metro. Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶ 18. “The best indication of that intent is the language of the statute, which must be given its plain and ordinary meaning.” *Id.* “It is improper for a court to depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent.” *Id.* To read the UPIA as granting reasonable cause abatement to interest, in any multiple, would inject “exceptions, limitations, or conditions” that “conflict with the clearly expressed legislative intent.”

Moreover, the General Assembly chose to grant taxpayers appeal rights with respect to penalties under the UPIA, but not to interest. UPIA Section 3-12 provides:

Appeal options. The Department of Revenue shall include a statement of the appeal options available to the taxpayer, either by law or by departmental rule, for each penalty for late payment [3-3], penalty for failure to file a tax return on or before the due date for filing [3-3], and penalty for failure to file correct information returns [3-4]. This Act is subject to the provisions of the Illinois Independent Tax Tribunal Act of 2012. 735 ILCS 35/3-12.

Again, the General Assembly chose not to include Section 3-2 governing interest, which is entirely consistent with the demonstration *supra* that the General Assembly bifurcated the treatment of interest and penalties. Here, the Department assessed double interest pursuant to Section 3-2(g). Section 3-2 was specifically excluded from both Section 3-8 (reasonable cause abatement) and Section 3-12 (appeal options) and may not now be lumped in by Petitioner.

Taxpayer's third argument with respect to double interest relies on the Taxpayer Bill of Rights. Petitioner again makes the same argument as in Count II (i.e., that the Department failed to provide sufficient guidance). Petitioner's new argument in its Response adds nothing to the Taxpayer Bill of Rights discussion from Count II discussed supra. In the interest of brevity, the Department incorporates herein its Taxpayer Bill of Rights arguments and discussion and again asserts that Petitioner's reliance upon the Taxpayer Bill of Rights as a means to withdraw the Notices is unsupported and its argument fails.

Finally, Petitioner argues that it "is entitled to abatement of double interest . . . as a matter of equity." Response p. 9. Petitioner reasons that because the Department of Revenue contains a board of appeals, which "is in effect, a board of equity" the Tax Tribunal should also have equity powers because "[n]othing in Illinois statute indicates that this [equity] authority is exclusive to the Department of Revenue." *Id.* Neither the Department's Office of Administrative Hearings nor the Tribunal may adjudicate a matter based on principles of equity.

Only after a notice is finalized may a taxpayer resort to the Department's Board of Appeals. "[T]he board [of Appeals] shall have no jurisdiction prior to the time a notice of deficiency or a notice of assessment has become *final* . . ." 20 ILCS 2505/2505-505. (emphasis added). Thus, a "final" assessment is requisite to the Department's Board of Appeals assuming jurisdiction. A protested/petitioned notice of deficiency is not final. "If a notice of deficiency has been issued, the amount of the deficiency shall be deemed assessed . . . upon the date when the decision . . . becomes final. 35 ILCS 5/903(d). The statutes demonstrate at least a two-stage process; it cannot be the case that the Tribunal shares equity authority and/or jurisdiction with the Department's Board of Appeals.

Petitioner puts forth a fifth and final case with respect to Count IV and double interest. In short, Petitioner claims that the term "double interest" is a "misnomer" and is not actually

interest. Response, p. 9. Petitioner relies on Merriam-Webster and a flash of creativity for its construction of “interest.” The Department instead turns to the UPIA.

The term interest as used in the UPIA clearly demonstrates that interest and penalties are two separate categories of taxpayer concern. Section 3-2 is simply labeled “Interest.” In fact, as provided supra, it is Section 3-2(g) that provides statutory authority for the double interest at issue. Sections 3-3 through 3-6 are specific to various penalties and are titled as such. Moreover, Sections 3-3(j), 3-4(e), 3-5(j), and 3-6(d), the penalty Sections, each specifically addresses double penalties based on the relevant penalty and Amnesty Period. The double interest section (3-2(g)) and the double penalty sections are entirely separate.

Lastly, Section 3-8 titled “Reasonable Cause” does not use the term “interest” whatsoever. It is specific to penalties and reads in relevant part “[t]he penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause.” 35 ILCS 735/3-8. Thus, the General Assembly chose to exclude Section 3-2 interest.

In sum, the issue with Count IV is whether “double interest” under UPIA Section 3-2 may be recharacterized as “in essence” a “penalty” and may therefore be a candidate for reasonable cause abatement under UPIA Section 3-8. However, it is absolutely clear that interest and penalties are different issues and that the General Assembly chose to permit reasonable cause abatement for one and not the other. No matter how hard Petitioner tries, Section 3-2 interest, in any multiple, is not eligible for Section 3-8 reasonable cause abatement.

Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law. The Respondent therefore requests that this court enter summary judgment on Count IV in favor of the Respondent and against Petitioner.

Respectfully Submitted,

**LISA MADIGAN**  
State of Illinois Attorney General

By: /s/ Jonathan M. Pope  
Jonathan M. Pope  
One of the Department's Attorneys

Jonathan M. Pope  
Special Assistant Attorney General  
Illinois Department of Revenue  
Office of Legal Services  
100 W. Randolph St., 7-900  
Chicago, IL 60601  
(312) 814-3185  
jonathan.pope@Illinois.gov

Dated: January 9, 2014

# **Exhibit A:**

**86 Ill. Admin. Code § 100.5215**

Illinois Department of Revenue  
Regulations

**Title 86 Part 100 Section 100.5215 Filing of Separate Unitary Returns**

**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.5215 Filing of Separate Unitary Returns**

- a) Not every member of a unitary business group is eligible to join in the filing of a combined return and, for taxable years ending prior to December 31, 1993, joining in the filing of a combined return was elective.
- b) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return must file a separate return, and compute its business income apportionable to Illinois by computing the base income of the unitary business group in accordance with Section 100.5270(a)(1) of this Part and by multiplying the business income included in such base income by an apportionment fraction computed by using the Illinois apportionment factor or factors applicable to the return filer under IITA Section 304 and the everywhere factor or factors of the entire unitary business group.
- c) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return shall separately determine the amount of its nonbusiness income allocable to Illinois, the amount of the exemption allowed to it under IITA Section 204, the amounts of net loss carryovers, and the amounts of any credits and credit carryforwards to which it is entitled, without regard to the income, deductions, credits and other tax items of other members of the unitary business group, except to the extent such items enter into the computation of business income of the member apportioned to Illinois under subsection (b) of this Section.

(Source: Added at 26 Ill. Reg. 13237, effective August 23, 2002)

## **Exhibit B:**

**86 Ill. Admin. Code § 100.5201**

Illinois Department of Revenue  
Regulations

<b>Title 86 Part 100 Section 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns</b>
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**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns**

- a) In general. These definitions and provisions apply to this Subpart P.
- b) Combined group. The term "combined group" means those eligible members of a unitary business group who have made an election to be treated as one taxpayer, or who are required to be treated as one taxpayer, under IITA Section 502(e).
- c) Combined return. The term "combined return" means a single tax return filed on behalf of a combined group. A combined return shall be filed using a single Form IL-1120 with Schedule UB (Unitary Business Schedule).
- d) Combined return year. The term "combined return year" means a taxable year for which a combined return is filed or is required to be filed.
- e) Common taxable year. The term "common taxable year" means the taxable year used by a combined group in reporting its combined net income, as determined under the provisions of Section 100.5265.
- f) Controlling corporation. The "controlling corporation" of a combined group is the corporation, if any, that directly or indirectly owns a controlling interest in all of the other eligible members of a combined group. A controlling interest means more than 50% of the outstanding voting stock of a member. Indirect ownership of an interest in a corporation includes constructive ownership (under Section 318 of the Internal Revenue Code) of an interest in the corporation which is owned by a related party, whether or not the related party is itself a member of the combined group.
- g) Designated agent. The term "designated agent" means the member appointed under Section 100.5220.
- h) Election. The term "election" refers to the election provided in Section IITA 502(e), as in effect for taxable years ending prior to December 31, 1993, to be treated as one taxpayer.
- i) Eligible member. The term "eligible member" means a corporation which is a member of a unitary business group and which has taxable presence in Illinois. Part-year members of a unitary business group are eligible members. Noncorporate taxpayers and Subchapter S corporations are not eligible members, either in combination with corporations which are eligible members or in combination with other noncorporate taxpayers or Subchapter S corporations. Members of a unitary business group are

eligible members even though the unitary business group includes noncorporate members or Subchapter S corporations which are not eligible to join in the filing of a combined return.

- j) Separate company return. The term "separate company return" means an Illinois income tax return filed by a corporation which is not a member of a unitary business group.
- k) Separate company items. The term "separate company items" means the income, deductions, credits, tax liability and other facts of a corporation relevant to the computation of its Illinois Income Tax liabilities, determined as if such corporation was neither a member of an affiliated group filing consolidated federal income tax returns nor a member of a combined group.
- l) Separate unitary return. The term "separate unitary return" means an Illinois income tax return of a member of a unitary business group which has not elected to file a combined return for a taxable year ending prior to December 31, 1993 or by a member of a unitary business group which is not eligible to join in the filing of a combined return.
- m) Unitary business group. The term "unitary business group" shall have the same meaning as provided in IITA Section 1501(a)(27) and Section 100.9700 of this Part.

(Source: Added at 22 Ill. Reg. 19033, effective October 1, 1998)

**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

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<b>RPMG INC.,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-TT-149</b>
	)	
<b>THE ILLINOIS DEPARTMENT OF REVENUE,</b>	)	<b>Chief Judge James M. Conway</b>
<b>Respondent.</b>	)	

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**NOTICE OF FILING**

TO: Mr. Fred O. Marcus  
Mr. Christopher T. Lutz  
Horwood Marcus & Berk Chartered  
500 W. Madison, Suite 3700  
Chicago, Illinois 60601  
(312) 606-3200

**PLEASE TAKE NOTICE** that on January 9, 2015, Respondent filed, by electronic-mail, with the Illinois Independent Tax Tribunal, located at 160 N. LaSalle Street Room N506, Chicago, Illinois 60601, **RESPONDENT'S REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS II, III, AND IV** in the above captioned matter.

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

Jonathan M. Pope  
Illinois Department of Revenue  
100 West Randolph Street, 7-900  
Chicago, IL 60601  
(312) 814-3185 phone  
(312) 814-4344 facsimile  
jonathan.pope@illinois.gov

Dated: January 9, 2015