ILLINOIS INDEPENDENT TAX TRIBUNAL

CAPITAL ONE FINANCIAL CORPORATION	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 16-TT-49**
	)	
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	

ANSWER TO FIRST AMENDED PETITION

NOW COMES the Illinois Department of Revenue (the "Department"), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to the Petition of Capital One Financial Corporation ("Petitioner") respectfully pleads as follows:

PARTIES

1. Petitioner's principal place of business at 1680 Capital One Drive, McLean, VA 22102.

ANSWER: Upon information and belief, Department admits the factual allegation in Paragraph 1.

2. Petitioner is represented by Horwood Marcus & Berk Chartered attorneys Marilyn Wethekam, Jordan M. Goodman and Christopher T. Lutz located at 500 West Madison St., Suite 3700, Chicago, Illinois 60661, and can be reached at 312-606-3240 or mwetheka@hmblaw.com; 312-606-3225 or Jgoodman@hmblaw.com; and 312-606-3222 or clutz@hmblaw.com, respectively.

ANSWER: Paragraph 2 contains information required by Independent Tax Tribunal Regulation ("Tribunal Rule") 5000.310(a)(1). 86 Ill. Admin. Code 5000.310(a)(1)(B). Because Paragraph 2 does not contain a material allegation of fact, it does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

3. Capital One Financial Corporation's FEIN is 54-1719854.

ANSWER: Department admits the factual allegation in Paragraph 3.

4. Petitioner's Illinois Account Number is 03469-97504.

ANSWER: Department admits Petitioner's Illinois Income Tax Account number is 03469-97504.

5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

ANSWER: Department admits that 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.), which is relevant to the legal claims raised in Petitioner's Petition. The term "tax laws" is vague and ambiguous and therefore the Department denies all other allegations in Paragraph 5.

NOTICE

6. On January 13, 2016 the Department issued Petitioner a Notice of Claim Denial ("Notice") for the taxable year ending December 31, 2008 ("Year at Issue") denying Taxpayer's claims for refund of its Illinois corporate income tax overpayments in the following amount $13,452,787.

ANSWER: Department admits the factual allegations in Paragraph 6.

7. A true and accurate copy of the Notice is attached hereto as Exhibit A.

ANSWER: Department admits the factual allegations in Paragraph 7.

JURISDICTION

8. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010/1-100.

ANSWER: The allegations in Paragraph 8 are not allegations of material facts, and therefore do not require an answer pursuant to Rule 310(b)(2). To the extent an answer is

required, Department admits that Petitioner claims this Tribunal has jurisdiction to hear Petitioner's claims pursuant to 35 ILCS 1010/1-1 et seq.

9. This Tribunal has jurisdiction over this matter pursuant to Sections 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

ANSWER: Paragraph 9 contains a legal conclusion, not a material allegation of fact. Whether the taxpayer timely filed its petition is a mixed question of law and fact to be determined by this tribunal.

BACKGROUND

10. The tax involved herein is the Illinois corporate income and replacement tax imposed under the Illinois Income Tax Act (the "Act"), 35 ILCS §5/201, et seq.

ANSWER: Department admits the allegations in Paragraph 10.

11. Petitioner is a financial holding company incorporated in Delaware.

ANSWER: Upon information and belief, Department admits the allegations in Paragraph 11.

12. Petitioner files Illinois income tax returns in Illinois because certain of Petitioner's subsidiaries are qualified to do business in Illinois.

ANSWER: Department admits that Petitioner filed an Illinois income tax return for the tax year ending December 31, 2008. Department admits that Petitioner's subsidiaries and affiliates conducted business in Illinois in the tax year ending December 31, 2008. Department objects to the phrase "qualified to do business" as it is undefined and therefore, vague and ambiguous. Therefore, Department denies the remaining allegations in Paragraph 12.

13. Capital One Bank (USA) ("COB") is a federally-chartered bank incorporated in Virginia.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 13.

14. COB is a wholly-owned subsidiary of Petitioner.

ANSWER: Upon information and belief, Department admits the factual allegation in Paragraph 14.

15. COB is not qualified to do business in Illinois.

ANSWER: Department objects to the phrase "qualified to do business" as it is undefined and therefore, vague and ambiguous. Therefore, Department denies the allegations in Paragraph 15.

16. Home Fed Realty Corporation ("Home Fed") was a Delaware corporation that qualified as a real estate investment trust ("REIT") for Federal income tax purposes for the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 16.

17. Reliance Preferred Funding ("Reliance") was a Connecticut corporation that qualified as a REIT for Federal income tax purposes during the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 17.

18. TC Preferred Funding Inc. ("TC Preferred") was a New Jersey corporation that qualified as a REIT for Federal income tax purposes during the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 18.

19. RHJ Holdings, Inc. ("RHJ Holdings") was a New York corporation that wholly- owned Home Fed, Reliance and TC Preferred during the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 19.

20. Home Fed, Reliance, TC Preferred, and RHJ Holdings were all members of Petitioner's Illinois unitary group during the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 20.

21. Petitioner was a financial holding company that filed an Illinois unitary return for the Year at Issue.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 21.

22. During the Year at Issue, COB was a federally-chartered bank.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 22.

23. During the Year at Issue, COB offered its products to customers primarily through direct mail solicitations that originated from its offices in Virginia.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 23.

24. During the Year at Issue, COB did not maintain any offices in Illinois, and did not own any property in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 24.

25. During the Year at Issue, COB did not have any employees in any location in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 25.

26. During the Year at Issue, COB did not perform any services in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 26.

CONTROVERSY

27. Petitioner filed an Illinois unitary combined corporate income tax return for the Year at Issue.

ANSWER: Department admits the factual allegations in Paragraph 27.

28. The Department conducted an audit of Petitioner for the Year at Issue based upon financial data and information provided by Plaintiff.

ANSWER: Department admits it conducted an audit of Petitioner for the Year at Issue based upon financial data and information provided by Petitioner.

29. The Department adjusted Plaintiff's apportionment factor for the Year at Issue by including interest and fee income from the COB credit card payments made to COB.

ANSWER: Department admits it adjusted Petitioner's apportionment factor for the Year at Issue by including interest and fee income from the COB credit card payments made to COB.

30. The Department included dividends paid by Home Fed, Reliance and TC Preferred to RHJ Holdings in calculating Plaintiff's combined net income.

ANSWER: Department admits it included dividends paid by Home Fed, Reliance and TC Preferred to RHJ Holdings in calculating Petitioner's combined net income.

31. On or about April 11, 2014 Department issued a Notice of Deficiency in the amount of $12,702,030.96 consisting of tax in the amount of $7,401,349, interest of $2,339,642.36 and penalty of $2,961,039.60. A true and accurate copy of the Notice Deficiency is attached hereto as Exhibit B.

ANSWER: Department admits the factual allegations in Paragraph 31.

32. On or about October 1, 2014, Petitioner mailed a payment in the amount of $12,702,030.96 to the Department.

ANSWER: Department admits the factual allegations in Paragraph 32.

33. On or about November 27, 2014, the Department issued a Taxpayer Statement showing an additional interest in the amounts of $62,765.14 due with respect to the Year at Issue. A true and accurate copy of the statement is attached hereto as Exhibit C.

ANSWER: Department admits the factual allegations in Paragraph 33.

34. On or about January 13, 2015, Petitioner mailed a payment in the amount of $62,865.14 to satisfy the additional interest assessed by the Department with respect to the Year at Issue.

ANSWER: Department admits that it received a payment of $62,865.14 from Petitioner on January 15, 2015.

35. On or about July 22, 2015, Petitioner filed an IL 1120X for the Year at Issue requesting a refund in the amount of $13,452,349. A true and accurate copy of the Refund Claim is attached as Exhibit D.

ANSWER: Department admits the factual allegations in Paragraph 35.

COUNT I

The Department has filed a Motion to Dismiss this Count I. Therefore, until such time as this Tribunal rules on that Motion to Dismiss, the Department stands on its Motion.

COUNT II

The Department has filed a Motion to Dismiss this Count II. Therefore, until such time as this Tribunal rules on that Motion to Dismiss, the Department stands on its Motion.

COUNT III

Subjecting COB to Illinois' taxing jurisdiction does not violate the Commerce Clause of the United States Constitution.

61. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 60, inclusive, hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 60 as if fully restated herein.

62. Corporations that earn income in the state are subject to the Illinois income and replacement tax. 35 ILCS § 5/201; 86 Ill. Admin. Code Section 100.9720.

ANSWER: Paragraph 62 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 62 does not require an

Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

63. The Commerce Clause of the U.S. Constitution prohibits a state from imposing taxes that unduly burden interstate commerce.

ANSWER: Paragraph 63 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 63 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

64. The United States Constitution limits the authority of states to tax businesses that operate both within and without their confines. "Under both the Due Process and the Commerce Clauses. . . a state may not, when imposing an income-based tax, tax value earned outside its borders." *Container Corp. of America v. Franchise Tax Board,* 463 U.S. 159, 164 (1983).

ANSWER: Paragraph 64 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 64 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

65. States may not exert jurisdiction to tax interstate commerce unless there are minimal connections between the activity to be taxed and the taxing state so that the asserted jurisdiction comports traditional notions of fair play and substantial justice. *International Shoe v. Washington,* 326 U.S. 310, 316 (1945).

ANSWER: Paragraph 65 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 65 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

66. A state tax will survive scrutiny under the Commerce Clause only if: (1) there is a substantial nexus between an out-of-state entity and a taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate; and (4) the tax is fairly related to the services provided by the state. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977).

ANSWER: Paragraph 66 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 66 does not require an

Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

67. The Department's inclusion of COB's receipts in the numerator of Petitioner's Illinois apportionment factor violates the Due Process Clause and Commerce Clause of the United States Constitution because it results in the inclusion of income that bore no relationship to activities conducted within the state.

ANSWER: Department denies the factual allegations in Paragraph 67.

68. COB is a Virginia corporation.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 68.

69. During the Year at Issue, COB did not maintain any offices in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 69.

70. During the Year at Issue, COB did not own or rent any property in Illinois.

ANSWER: Department denies the factual allegations in Paragraph 70.

71. During the Year at Issue, COB did not have any employees located in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 71.

72. During the Year at Issue, COB did not perform any services in Illinois.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 72.

73. COB did not undertake any collection activities in Illinois.

ANSWER: Department denies the factual allegations in Paragraph 73.

74. COB did not have any agents acting on its behalf in Illinois.

ANSWER: Department denies the factual allegations in Paragraph 74.

75. COB engaged in no business activities within Illinois during the Year at Issue.

ANSWER: Department denies the factual allegations in Paragraph 75.

76. As a result, COB has no connection with the State of Illinois that constitutes "substantial nexus" under the *Complete Auto* test.

ANSWER: Department denies the factual allegations in Paragraph 76.

77. There is an actual controversy between Petitioner and Department concerning Petitioner's entitlement to a refund of all or a portion of the payment.

ANSWER: Department admits the factual allegations in Paragraph 77.

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

a. finds and declares that COB has substantial nexus with Illinois;

b. finds and declares that COB's income must be apportioned to Illinois;

c. upholds the Department's Notice of Claim Denial; and

d. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IV

The Department properly included COB's interest income in the numerator of Petitioner's Illinois apportionment factor.

78. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 77, inclusive, hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 77 as if fully restated herein.

79. "In determining whether the activity of a nonresident taxpayer conducted in this State is sufficient to create nexus for application of Illinois income or replacement tax, the principles established in *Appeal of Joyce Inc.,* Cal. St. Bd. Of Equal. (11/23/66), commonly known as the 'Joyce Rule,' shall apply." 86 Ill. Admin. Code 100.9720(f).

ANSWER: Paragraph 79 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 79 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A). Department admits the existence force and effect of the Regulation cited in Paragraph 79, and asserts that the regulation speaks for itself.

80. "Activity conducted by any other person, whether or not affiliated with the nonresident taxpayer, shall not be considered attributable to the taxpayer, unless other person was acting in a representative capacity on behalf of the taxpayer." *Id.*

ANSWER: Paragraph 80 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 80 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A). Department admits the existence force and effect of the Regulation cited in Paragraph 80, and asserts that the regulation speaks for itself.

81. COB is a Virginia corporation maintaining its headquarters and commercial domicile in Virginia.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 81.

82. COB is not qualified to do business in Illinois.

ANSWER: Department objects to the phrase "qualified to do business" as it is undefined and therefore, vague and ambiguous. Therefore, Department denies the allegations in Paragraph 82.

83. COB has no connection to Illinois.

ANSWER: Department denies the allegations in Paragraph 83.

84. COB does not own or lease property in Illinois, nor does it not employ anyone in Illinois.

ANSWER: Department denies that COB does not own or lease property in Illinois, but admits that COB employs individuals in Illinois.

85. COB did not undertake any collection activities in Illinois.

ANSWER: Department denies the allegations in Paragraph 85.

86. COB engaged in no business activities within Illinois during the Year at Issue.

ANSWER: Department denies the allegations in Paragraph 86.

87. As a result, COB has no connection with the State of Illinois that constitutes "substantial nexus" under the *Complete Auto* test.

ANSWER: Department denies the allegations in Paragraph 87.

88. On audit, the Department adjusted Petitioner's apportionment factor for the Year at Issue to include COB's receipts from interest and fees paid by Illinois credit card customers in the numerator of Petitioner's Illinois apportionment factor.

ANSWER: Department admits the factual allegations in Paragraph 88.

89. Because COB did not have nexus with Illinois, its receipts should not have been included in the numerator of Petitioner's Illinois apportionment factor.

ANSWER: Department denies the allegations in Paragraph 89.

90. There is an actual controversy between Petitioner and Department concerning Petitioner's entitlement to a refund of all or a portion of the payment.

ANSWER: Department admits the allegations in Paragraph 90.

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

a. finds and declares that COB has the minimum connections with Illinois required in order to include its receipts in the numerator of Petitioner's Illinois apportionment factor;

b. finds and declares that the Department properly adjusted Petitioner's numerator for the Year at Issue;

c. upholds the Department's Notice of Claim Denial; and

d. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT V

The Department has filed a Motion to Dismiss this Count V. Therefore, until such time as this Tribunal rules on that Motion to Dismiss, the Department stands on its Motion.

COUNT VI

The Department properly included dividends paid to RHJ Holdings by Home Fed, Reliance and TC Preferred in Petitioner's Combined Base Income.

105. Petitioner realleges and incorporates by this reference the allegations made in Paragraphs 1 through 104, inclusive, hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 104 as if fully restated herein.

106. On its Illinois unitary combined return for the Year at Issue, Petitioner calculated its net income by excluding dividends paid by Home Fed, Reliance and TC Preferred (all REITs for Federal income tax purposes) to RHJ Holdings for purposes of calculating RHJ Holding's portion of the combined net income.

ANSWER: Department admits Petitioner excluded dividends paid by Home Fed, Reliance and TC Preferred to RHJ Holdings from its Illinois unitary combined return for tax year ending December 31, 2008.

107. Upon audit, the Department disallowed Petitioner's exclusion of dividends paid by Home Fed, Reliance, TC Preferred, all REITS for Federal income tax purposes, to RHJ Holdings.

ANSWER: Department admits the factual allegations in Paragraph 107.

108. The Department did not provide an explanation for its denial of Petitioner's exclusion of the dividends paid by Home Fed, Reliance, and TC Preferred to RHJ Holdings.

ANSWER: Department denies the allegations in Paragraph 108.

109. Pursuant to 35 ILCS 5/203(b)(2)(0), for years ending on or after December 31,

2008, taxpayers are required to reduce their base income by the dividends received from a captive REIT.

ANSWER: Paragraph 109 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 109 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

110. For the tax year ending December 31, 2008, there is no mechanism to add back the federal dividend paid deduction entitled to captive REITs.

ANSWER: Department denies the allegations in Paragraph 110.

111. Pursuant to 35 ILCS 5/203(b)(2)(E-15), add back dividends paid by a captive REIT are to be added back for tax years beginning after December 31, 2008.

ANSWER: Paragraph 111 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 111 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

112. For the tax year ending December 31, 2008, Illinois law specifically provides that while dividends received from a captive REIT should be deducted from a taxpayer's base income, those dividend payments should not be added back to the REIT's income. 35 ILCS 5/203(b)(2)(0); 35 ILCS 5/203(b)(2)(E-15).

ANSWER: Paragraph 112 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 112 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

113. As a result of the captive REIT dividend subtraction, Petitioner, for the tax year ending December 31, 2008, was entitled to reduce its income by the Dividends paid by Home

Fed, Reliance, and TC Preferred to RHJ Holdings.

ANSWER: Department denies the allegations in Paragraph 113.

114. Home Fed, Reliance, and TC Preferred were not required to add back the dividends that each captive REIT paid to RHJ Holdings for the tax year ending December 31, 2008.

ANSWER: Department denies the allegations in Paragraph 114.

115. There is an actual controversy between Petitioner and Department concerning Petitioner's entitlement to a refund of all or a portion of the protest payment.

ANSWER: Department admits the allegations in Paragraph 115.

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

a) finds and declares that the Department correctly included dividends paid to RHJ Holdings by Home Fed, Reliance and TC Preferred in Petitioner's combined base income;

b) finds and declares that the Department correctly adjusted Petitioner's apportionment factor for the Year at Issue;

c) upholds Department's Notice of Claim Denial; and

d) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VII

The Department properly assessed Petitioner Income Tax as a result of the Federal adjustments to Petitioner's taxable income.

116. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 115, inclusive and hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 115 as if fully restated herein.

117. Petitioner filed two sets of federal adjustments to its taxable income in Illinois, the first being filed on May 2012 and the second being filed on May 2014.

ANSWER: Department admits the factual allegations in Paragraph 117.

118. The first federal adjustment resulted in a reduction in income of approximately $108 million.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 118.

119. The second federal adjustment reduced the federal taxable income further by $88.6 million.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 119.

120. The Department adjusted Petitioner's income based on the first federal adjustment.

ANSWER: Department admits the factual allegations in Paragraph 120.

121. The Department refused to adjust Petitioner's income based on the second federal adjustment.

ANSWER: Department admits the factual allegations in Paragraph 121. The second federal adjustment was not finally determined at the close of the Illinois audit for the Year at Issue.

122. Defendants are required to calculate Petitioner's Illinois income tax liability pursuant to all federal changes made to Petitioner's taxable income as the amended returns were filed prior to the issuance of the Notice.

ANSWER: Paragraph 122 contains a legal conclusion, not a material allegation of fact, and

therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 122 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

123. If Defendants had based the assessment on both sets of federal adjustments, Petitioner would owe less tax.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 123.

124. Because the tax liability would be significantly reduced as a result of the federal adjustments to its income, the Notice of Deficiency is erroneous.

ANSWER: The Notice of Deficiency is Final and unappealable as a matter of law. 35 ILCS 5/904(d). Department denies the factual allegations in Paragraph 124.

125. There is an actual controversy between Petitioner and the Department concerning Petitioner's entitlement to a refund of all or a portion of the payment.

ANSWER: Department admits the factual allegations in Paragraph 125.

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

a) finds and declares that the Department properly adjusted Petitioner's income as a result of the federal adjustments for the Year at Issue;

b) upholds the Department's Notice of Claim Denial; and

c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT VIII

The United Kingdom Trust receipts must be included in the numerator of Petitioner's Illinois apportionment factor.

126. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 125, inclusive and hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to

Paragraphs 1 through 125 as if fully restated herein.

127. United Kingdom Trust is a credit card securitization entity that has securitization income equaling expense.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 127.

128. United Kingdom Trust has no federal taxable income by virtue of its income equaling its expenses.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 128.

129. Petitioner allocates the sales of United Kingdom Trust to each state based on its loan ratio across all fifty states.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 129.

130. Petitioner initially included United Kingdom Trust's Illinois receipts in both the Illinois apportionment factor numerator and denominator.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 130.

131. On Petitioner's federal return, United Kingdom Trust's sales were erroneously excluded.

ANSWER: Upon information and belief, Department admits the factual allegations in Paragraph 131.

132. The fact that United Kingdom Trust's sales were erroneously exclusion from Petitioner's federal return went unnoticed because Kingdom Trust's federal income was zero.

ANSWER: Department lacks sufficient information to either admit or deny the factual allegations in Paragraph 132.

133. On audit, the Department requested that Petitioner reconcile its gross receipts,

which excluded United Kingdom Trust's receipts, with its apportionment schedule, which included United Kingdom Trust's receipts.

ANSWER: Department admits the factual allegations in Paragraph 133.

134. The Department removed United Kingdom Trust's receipts from the denominator of Petitioner's Illinois apportionment factor.

ANSWER: Department admits the factual allegations in Paragraph 134.

135. The Department did not remove United Kingdom Trust's receipts from the numerator of Plaintiff's Illinois apportionment factor.

ANSWER: Department admits it did not remove United Kingdom Trust's receipts from the numerator of Petitioner's Illinois apportionment factor.

136. Because the Department removed United Kingdom Trust's receipts from the denominator of Petitioner's Illinois apportionment factor, the receipts must also be removed from the numerator of Petitioner's Illinois apportionment factor.

ANSWER: Department admits the factual allegations in Paragraph 136.

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

a) finds and declares that the receipts earned by United Kingdom Trust must be included in Petitioner's Illinois apportionment factor denominator;

b) upholds the Department's Notice of Claim Denial; and

c) grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT IX

No Reasonable Cause exists to abate Penalties.

137. Petitioner realleges and reincorporates the allegations in paragraphs 1 through

136, inclusive and hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 136 as if fully restated herein.

138. On its Notice of Deficiency, the Department assessed late payment penalties against the Plaintiff in the amount of $2,961,039.60.

ANSWER: Department's Notice of Deficiency is final and unappealable as a matter of law. 35 ILCS 5/904(d).

139. Illinois law provides that late payment penalties shall not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 734-8.

ANSWER: Paragraph 139 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 139 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

140. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its proper tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code § 700.400(b).

ANSWER: Paragraph 140 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 140 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

141. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

ANSWER: Paragraph 141 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 141 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

142. Petitioner filed all of its corporate income and replacement tax return for the Year at Issue in a timely fashion.

ANSWER: Paragraph 142 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 142 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

143. Petitioner made a good faith effort in determining its income tax liability for the Year at Issue.

ANSWER: Department denies the allegations in Paragraph 143.

144. Petitioner, relying on Illinois law and regulations, exercised ordinary business care and prudence when it reasonably determined that COB did not have nexus with Illinois for corporate income tax purposes; and therefore did not include COB's interest income in the numerator of its Illinois apportionment formula.

ANSWER: Department denies the allegations in Paragraph 144.

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

ANSWER: Department denies the allegations in Paragraph 145.

146. There is an actual controversy between Petitioner and Department concerning Petitioner's entitlement to a refund of all or a portion of the protest payment.

ANSWER: Department admits the allegations in Paragraph 146.

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

a. finds and declares that no reasonable cause exists to abate the late payment penalties; and

b. grants such further relief as this Tribunal deems appropriate under the circumstances.

COUNT X

The Department's imposition of double interest to the Petitioner pursuant to the Tax Delinquency Amnesty Act was upheld by the Illinois Supreme Court in *Metropolitan Life*

***Insurance Co. v. Hamer*, 2013 IL 114234.**

147. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 146, inclusive, hereinabove.

ANSWER: Department realleges and incorporates by this reference its answers to Paragraphs 1 through 146 as if fully restated herein.

148. By depriving Petitioner of its right to challenge the Department's assertion of tax through the statutorily prescribed administrative process without risking the imposition of interest and penalty at twice the statutory rate, the Tax Amnesty law in essence provides for the imposition of two potential penalties: one being double interest and the other being double penalty.

ANSWER: Department denies the allegations in Paragraph 148.

149. Illinois law provides that a penalty shall not apply if the taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

ANSWER: Paragraph 149 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 149 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

150. The most important factor to be considered in making a determination of whether a taxpayer acted with reasonable cause will be the extent to which the taxpayer made a good faith effort to file and pay the proper tax liability in a timely fashion. Ill. Admin. Code 700.400.

ANSWER: Paragraph 150 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 150 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

151. Petitioner filed its original Illinois tax return for the Year at Issue in a timely fashion.

ANSWER: Paragraph 151 contains a legal conclusion, not a material allegation of fact,

and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 152 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

152. Petitioner paid the tax it computed on its original Illinois tax return for the Year at Issue in a timely fashion.

ANSWER: Paragraph 152 contains a legal conclusion, not a material allegation of fact, and therefore, pursuant to Tribunal Rule 5000.310(b)(2), Paragraph 152 does not require an Answer. 86 Ill. Admin. Code 5000.310(b)(2)(A).

153. Petitioner had no means of anticipating or knowing the result of its Illinois audit.

ANSWER: Department denies the allegations in Paragraph 153.

154. Petitioner acted with reasonable cause when it filed its original Illinois tax return, and paid its tax and interest liability computed on each such return for the Year at Issue.

ANSWER: Department denies the allegations in Paragraph 154.

155. 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.

ANSWER: Department denies the allegations in Paragraph 155.

WHEREFORE, Department requests that this Tribunal enter an Order that:

d) holds that the double interest imposed by the Department pursuant to the Tax Delinquency Amnesty Act is not subject to abatement for reasonable cause under the Uniform Penalty and Interest Act;

e) upholds the Department's Notice of Claim Denial; and

f) grants such further relief as this Tribunal deems appropriate under the circumstances.

Respectfully submitted,

Lisa Madigan,

Attorney General of and for the State of Illinois

By:_____
Special Assistant Attorney General

Ronald Forman
Special Assistant Attorney General
Phone: (312) 814-9500
Ronald.Forman@Illinois.gov

Jennifer Kieffer
Special Assistant Attorney General
Phone: (312) 814-1533
Jennifer.Kieffer@Illinois.gov

Illinois Department of Revenue
Office of Legal Services
100 W. Randolph St., 7-900
Chicago, IL 60601
Fax: (312) 814-4344

CERTIFICATE OF SERVICE

Undersigned counsel of record hereby certifies that she caused a copy of the foregoing **ANSWER** to be served upon Petitioner's counsel of record herein by causing the same to be delivered by electronic mail before the hour of 5:00 p.m. on the 6th day of June, 2016 to:

Marilyn A. Wethekam
Jordan M. Goodman
Christopher T. Lutz
Horwood Marcus & Berk Chartered
500 W. Madison St., Ste. 3700
Chicago, IL 60661
(312) 606-3200

ILLINOIS INDEPENDENT TAX TRIBUNAL

CAPITAL ONE FINANCIAL CORPORATION	)	
Petitioner,	)	
v.	)	**No. 16-TT-49**
THE ILLINOIS DEPARTMENT OF REVENUE,	)	
Respondent.	)	

AFFIDAVIT OF ORI WEISZ
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)

STATE OF NEW JERSEY

COUNTY OF BERGEN

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, Ori Weisz, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I audited Capital One Financial Corporation's Illinois Corporate Income and Replacement Tax Returns for the tax years ending December 31, 2008.
4. I lack the requisite knowledge to either admit or deny the allegations alleged in Taxpayer's First Amended Petition paragraphs 24, 25, 26, 69, 71, 72, 118, 123, and 132.
5. I am an adult resident of the State of New Jersey and can truthfully and competently testify to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Ori Weisz

Date: 6/3/16

Ori Weisz
Revenue Auditor III
Illinois Department of Revenue